[DISCUSSION DRAFT]

118TH CONGRESS
1ST SESSION

H. R. ______

To provide for individual property rights in likeness and voice.

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IN THE HOUSE OF REPRESENTATIVES

Ms. SALAZAR introduced the following bill; which was referred to the Committee on

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A BILL

To provide for individual property rights in likeness and voice.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “No Artificial Intel-
6 ligence Fake Replicas and Unauthorized Duplications Act
7 of 2024” or as the “No AI FRAUD Act”.
8 SEC. 2. FINDINGS.
9 Congress finds that recent advancements in artificial
10 intelligence (AI) technology and the development of
11 deepfake software have adversely affected individuals’ abil-
ity to protect their voice and likeness from misappropriation, including:

(1) On or around April 4, 2023, AI technology was used to create the song titled “Heart on My Sleeve,” emulating the voices of recording artists Drake and The Weeknd. It reportedly received more than 11 million views.

(2) On or around October 1, 2023, AI technology was used to create a false endorsement featuring Tom Hanks’ face in an advertisement for a dental plan.

(3) From October 16 to 20, 2023, AI technology was used to create false, nonconsensual intimate images of high school girls in Westfield, New Jersey.

(4) In fall 2023, AI technology was used to create the song titled “Demo #5: nostalgia,” manipulating the voices of Justin Bieber, Daddy Yankee and Bad Bunny. It reportedly received 22 million views on Tik Tok and 1.2 million views on YouTube.

(5) A Department of Homeland Security report titled the “Increasing Threat of Deepfake Identities” states that as of October 2020, researchers had reported more than 100,000 computer-generated fake
nude images of women created without their consent or knowledge.

(6) According to Pew Research Center, approximately 63 percent of American say made-up or altered videos create confusion about the basic facts of current issues.

SEC. 3. LIKENESS AND VOICE RIGHTS.

(a) DEFINITIONS.—In this Act:

(1) The term "individual" means a human being, living or dead.

(2) The term "digital depiction" means a replica, imitation, or approximation of the likeness of an individual that is created or altered in whole or in part using digital technology.

(3) The term "personalized cloning service" means an algorithm, software, tool, or other technology, service, or device the primary purpose or function of which is to produce one or more digital voice replicas or digital depictions of particular, identified individuals.

(4) The term "digital voice replica" means an audio rendering that is created or altered in whole or in part using digital technology and is fixed in a sound recording or audiovisual work which includes
replications, imitations, or approximations of an individual that the individual did not actually perform.

(5) The term "voice" means sounds in any medium containing the actual voice or a simulation of the voice of an individual, whether recorded or generated by computer, artificial intelligence, algorithm, or other digital technology, service, or device, to the extent that the individual depicted or simulated is readily identifiable from the sound of the voice or simulation of the voice, or from other information displayed in connection therewith.

(6) The term "likeness" means the actual or simulated image or likeness of an individual, regardless of the means of creation, that is readily identifiable as the individual by virtue of the individual's face, likeness, or other distinguishing characteristic, or from other information displayed in connection with the likeness.

(7) The term "digital technology" means a technology or device now known or hereafter created such as computer software, artificial intelligence, machine learning, quantum computing, or other similar technologies or devices.

(b) PROPERTY RIGHT IN LIKENESS AND VOICE.—
(1) IN GENERAL.—Every individual has a property right in their own likeness and voice.

(2) EXTENT.—The rights provided for in paragraph (1) constitute intellectual property rights and are freely transferable and descendible, in whole or in part, and do not expire upon the death of the individual, whether or not such rights were commercially exploited by the individual during the individual’s lifetime.

(3) TRANSFERABILITY.—The rights provided for in paragraph (1) shall be exclusive to the individual, subject to the transfer of such rights as provided in paragraph (2), during such individual’s lifetime and to the executors, heirs, transferees, or devisees for a period of ten years after the death of the individual, and shall be terminated by—

(A) proof of the non-use of the likeness or voice of any individual for commercial purposes by an executor, transferee, heir, or devisee to such use for a period of two years subsequent to the initial ten-year period following the individual’s death; or

(B) the death of all executors, transferees, heirs, or devisees.
(4) VALIDITY OF USE.—An agreement authorizing the use of a digital depiction or digital voice replica for a new performance of the individual in an advertisement or expressive work shall be valid only if—

(A) the applicable individual was—

(i) represented by counsel in the transaction and the agreement was in writing; and

(ii) 18 years of age or older at the time of entry into the agreement, or, if under 18 years of age at that time, the agreement is approved by a court in accordance with applicable State law; or

(B) the terms of the agreement are governed by a collective bargaining agreement.

e) UNAUTHORIZED SIMULATION OF VOICE OR LIKENESS.—

(1) IN GENERAL.—Any person or entity who, in a manner affecting interstate or foreign commerce (or using any means or facility of interstate or foreign commerce), and without consent of the individual holding the voice or likeness rights affected thereby—
(A) distributes, transmits, or otherwise makes available to the public a personalized cloning service;

(B) publishes, performs, distributes, transmits, or otherwise makes available to the public a digital voice replica or digital depiction with knowledge that the digital voice replica or digital depiction was not authorized by the individual holding the voice or likeness rights affected thereby; or

(C) materially contributes to, directs, or otherwise facilitates any of the conduct proscribed in subparagraphs (A) or (B) with knowledge that the individual holding the affected voice or likeness rights has not consented to the conduct,

shall be liable for damages as set forth in paragraph (2).

(2) REMEDIES.—In any action brought under this section, the following shall apply:

(A) The person or entity who violated the section shall be liable to the injured party or parties in an amount equal to the greater of—

(i) in the case of an unauthorized distribution, transmission, or other making
available of a personalized cloning service,
fifty thousand dollars ($50,000) per viola-
tion or the actual damages suffered by the
injured party or parties as a result of the
unauthorized use, plus any profits from the
unauthorized use that are attributable to
such use and are not taken into account in
computing the actual damages; and

(ii) in the case of an unauthorized
publication, performance, distribution,
transmission, or other making available of
a digital voice replica or digital depiction,
five thousand dollars ($5,000) per violation
or the actual damages suffered by the in-
jured party or parties as a result of the
unauthorized use, plus any profits from the
unauthorized use that are attributable to
such use and are not taken into account in
computing the actual damages.

(B) In establishing profits under this sub-
division, the injured party or parties shall be re-
quired only to present proof of the gross rev-
ue attributable to the unauthorized use, and
the person or entity who violated this section
shall be required to prove his or her expenses deductible therefrom.

(C) Punitive damages and reasonable attorneys' fees may also be awarded to the injured party or parties.

(D) It shall not be a defense to an allegation of a violation of paragraph (1) that the unauthorized user displayed or otherwise communicated to the public a disclaimer stating that the digital depiction, digital voice replica, or personalized cloning service was unauthorized or that the individual rights owner did not participate in the creation, development, distribution, or dissemination of the unauthorized digital depiction, digital voice replica, or personalized cloning service.

(E) An action to enforce this section may be brought by—

(i) the individual whose voice or likeness is at issue;

(ii) any other person or entity to which the individual has assigned or exclusively licensed their voice or likeness rights; or
(iii) in the case of an individual who performs music as a profession, and has not authorized the use at issue, by any person or entity that has entered into a contract for the individual's exclusive personal services as a recording artist or an exclusive license to distribute sound recordings that capture the individual's audio performances.

(d) FIRST AMENDMENT DEFENSE.—First Amendment protections shall constitute a defense to an alleged violation of subsection (c). In evaluating any such defense, the public interest in access to the use shall be balanced against the intellectual property interest in the voice or likeness. Factors to be considered may include whether—

(1) the use is commercial;

(2) the individual whose voice or likeness is at issue is necessary for and relevant to the primary expressive purpose of the work in which the use appears; and

(3) the use competes with or otherwise adversely affects the value of the work of the owner or licensee of the voice or likeness rights at issue.

(e) LIMITATION.—
(1) IN GENERAL.—A person or entity who uses an individual’s voice or likeness in a manner that violates subsection (e) shall not be liable if the harm caused by such conduct is negligible.

(2) HARM.—For purposes of this section, the term “harm” includes—

(A) financial or physical injury, or an elevated risk of such injury, to any person whose voice or likeness rights are affected by the conduct at issue;

(B) severe emotional distress of any person whose voice or likeness is used without consent; and

(C) a likelihood that the use deceives the public, a court, or tribunal.

(3) PER SE HARM.—Any digital depiction or digital voice replica which includes child sexual abuse material, is sexually explicit, or includes intimate images constitutes harm.

(4) BALANCE OF EQUITIES.—Except when paragraph (3) applies, alleged harms shall be weighed against—

(A) whether the individual whose voice or likeness is at issue is necessary for and relevant
to the primary expressive purpose of the work
in which the use appears;
(B) whether the use is transformative; and
(C) whether the use constitutes constitutionally protected commentary on a matter of
public concern.

(f) LIMITATIONS PERIOD.—No civil action shall be
maintained under the provisions of this Act unless it is
commenced within four years after the party seeking to
bring the claim discovered, or with due diligence should
have discovered, the violation.

(g) NO PREEMPTION.—Nothing in this Act shall be
construed to limit any rights an individual may have under
any other law providing protections against the unauthorized
use of an individual’s name, voice, or likeness.

(h) SEVERABILITY.—If any provision of this Act, or
the application thereof, is held invalid, the validity of the
remainder of this Act and the application of such provision
to other persons and circumstances shall not be affected
thereby.

(i) CONSTRUCTION.—Nothing in this Act shall alter
the application by a court of First Amendment protections
in the event such a defense is asserted to subsection (c).

(j) APPLICATION.—This section shall be considered
to be a law pertaining to intellectual property for the pur-
poses of section 230(e)(2) of the Communications Act of
1934 (47 U.S.C. 230(e)(2)).

(k) EFFECTIVE DATE.—This Act shall be effective
180 days after the enactment of this Act, and shall apply
regardless of whether the individual has died before such
effective date.