

HOUSE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 221

**57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

AN ACT

RELATING TO INTELLECTUAL PROPERTY; ENACTING THE VOICE AND  
VISUAL LIKENESS RIGHTS ACT; PROVIDING FOR PRIVATE ENFORCEMENT;  
PRESCRIBING CIVIL REMEDIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Voice and Visual Likeness Rights Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Voice and Visual Likeness Rights Act:

A. "copyright holder" means the owner of an  
exclusive right to an original work pursuant to the terms of a  
copyright agreement;

B. "digital replica" means a digital simulation of  
the voice or visual likeness of an individual that so closely  
resembles the individual's voice or visual likeness that a

1 layperson would not be able to readily distinguish the digital  
2 simulation from the individual's authentic voice or visual  
3 likeness;

4 C. "individual" means an actual person domiciled in  
5 the state, including a deceased individual who was domiciled in  
6 the state at the time of death, whose voice or individual  
7 likeness is at issue with respect to digital replication;

8 D. "information service" means the offering of a  
9 capability for generating, acquiring, storing, transforming,  
10 processing, retrieving, utilizing or making available  
11 information via telecommunications and includes electronic  
12 publishing, but does not include the use of any such capability  
13 for the management, control or operation of a  
14 telecommunications service;

15 E. "interactive computer service" means an  
16 information service, system or access software provider that  
17 provides or enables computer access by multiple users to a  
18 computer server, specifically including a service or system  
19 that provides access to the internet and systems operated or  
20 services offered by libraries or educational institutions;

21 F. "online service":

22 (1) means a public-facing website, application  
23 or virtual reality environment that provides a community forum  
24 for user-generated content, including:

25 (a) videos, images, games, audio files

1 or other material;

2 (b) a digital music provider as defined  
3 in 17 U.S.C. Section 115; or

4 (c) a social media service, social  
5 network or application store; and

6 (2) does not include a service by wire or  
7 radio that provides the capability to transmit and receive data  
8 from internet endpoints, including capabilities that are  
9 incidental to enable the operation of the communications  
10 service provider of online services or network access or the  
11 operator of facilities for services;

12 G. "production" means the creation of a digital  
13 replica;

14 H. "right holder" means a person that has acquired  
15 the right to authorize the use of an individual's voice or  
16 visual likeness in a digital replica;

17 I. "sexually explicit conduct" means actual or  
18 simulated:

19 (1) sexual intercourse, including genital-  
20 genital, oral-genital, anal-genital or oral-anal, whether  
21 between persons of the same or opposite sex;

22 (2) bestiality;

23 (3) masturbation;

24 (4) sadistic or masochistic abuse; or

25 (5) lascivious exhibition of the anus,

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1 genitals or pubic area of a person;

2 J. "sound recording artist" means a person who  
3 performs in sound recordings for economic gain;

4 K. "telecommunications service" means the offering  
5 of telecommunications for a fee directly to the public, or to  
6 classes of users as to be effectively available directly to the  
7 public, regardless of the facilities used; and

8 L. "use" includes the commercial availability of a  
9 sound recording or audiovisual work in which the individual's  
10 name or voice or visual likeness is readily identifiable.

11 SECTION 3. [NEW MATERIAL] DIGITAL REPLICATION RIGHT.--

12 A. The right to an individual's voice or visual  
13 likeness is a property right exclusive to that individual. The  
14 individual may license the use of the individual's voice or  
15 visual likeness with instructions, limitations and conditions  
16 provided by a licensing agreement. An individual may license  
17 the use of the individual's voice or visual likeness as often  
18 and to as many persons as the individual chooses. The property  
19 right shall not expire on the death of the individual  
20 regardless of whether the right was commercially exploited by a  
21 right holder.

22 B. A right holder who is not the individual may  
23 authorize the use of the voice or visual likeness of the  
24 individual in a digital replica in accordance with the terms of  
25 a licensing agreement. This right is a property right and is

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1 licensable by the right holder. A license may survive the  
 2 individual's death. On the individual's death, the right may  
 3 be bequeathed by will or pass as personal property by operation  
 4 of law.

5 C. The rights provided in Subsection A of this  
 6 section are exclusive to the individual and may be transferred  
 7 during the individual's lifetime. The term of this right is  
 8 limited to seventy years after the death of the individual. A  
 9 right holder may transfer the rights provided in Subsection B  
 10 of this section during the individual's lifetime or during the  
 11 ten-year period after the death of the individual, and the  
 12 right may be terminated by the earlier of:

13 (1) proof of the non-use of the name, likeness  
 14 or voice of an individual by a right holder for two years  
 15 subsequent to the initial ten-year period following the  
 16 individual's death;

17 (2) the death of all executors, transferees,  
 18 heirs or devisees of the individual; or

19 (3) seventy years following the death of the  
 20 individual.

21 SECTION 4. [NEW MATERIAL] LICENSES INVOLVING ADULTS AND  
 22 MINORS.--

23 A. A license for an adult individual's or  
 24 emancipated minor's right while the individual is living is  
 25 valid only to the extent that the license duration does not

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1 exceed ten years and is valid only if the license agreement:

2 (1) is in writing and signed by the individual  
3 or the authorized representative of the individual; and

4 (2) includes a reasonably specific description  
5 of the intended uses of the digital replica.

6 B. A license for a living minor's right is valid  
7 only to the extent that the license duration does not exceed  
8 five years but, in any case, terminates when the minor reaches  
9 eighteen years of age. The license is valid only if the  
10 license agreement:

11 (1) is in writing and signed by a parent or  
12 guardian of the individual;

13 (2) includes a reasonably specific description  
14 of the intended uses of the digital replica; and

15 (3) is approved by a court in accordance with  
16 the laws of the state.

17 C. The provisions of Subsections A and B of this  
18 section shall not apply if the license is governed by a  
19 collective bargaining agreement that addresses digital  
20 replicas.

21 D. The provisions of Subsections A and B of this  
22 section shall not affect terms and conditions of a license or  
23 related contract other than those described in those  
24 subsections, and the expiration of such license shall not  
25 affect the remainder of the license or related contract.

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1           SECTION 5.   [NEW MATERIAL] REQUIREMENTS FOR POST-MORTEM  
2 TRANSFER.--

3           A.   The holder of a postmortem right shall register  
4 ownership with the secretary of state and include in the  
5 registration a form that includes:

6                   (1) the name of the deceased individual;

7                   (2) a statement, under penalty of perjury,  
8 that the right holder has engaged in active and authorized use  
9 of the voice or visual likeness during the applicable period;

10                  (3) the identity and contact information of  
11 the right holder; and

12                  (4) other information as the secretary of  
13 state may prescribe by rule.

14           B.   The secretary of state shall publish a registry  
15 of postmortem digital replication rights authorized pursuant to  
16 the Voice and Visual Likeness Rights Act that is publicly  
17 accessible.

18           C.   The secretary of state may charge a reasonable  
19 filing fee to process registration forms.

20           SECTION 6.   [NEW MATERIAL] AUTHORIZED USE AFTER EXPIRATION  
21 OR TERMINATION OF LICENSE.--A digital replica embodied in a  
22 sound recording, image or audiovisual work, the use of which is  
23 authorized pursuant to the terms of a license, may be used in a  
24 manner consistent with the terms of the license after the  
25 expiration or termination of the license.

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underscoring material = new  
~~[bracketed material] = delete~~

1           SECTION 7.   ~~[NEW MATERIAL]~~ LIABILITY--CIVIL ACTION--  
2   REMEDIES--LIMITATIONS OF ACTION--EXCLUSIONS.--

3           A.   A person that produces, publishes, reproduces,  
4   displays, distributes or otherwise makes available digital  
5   replicas in the state without the written consent of the  
6   individual or the right holder is liable for a civil action.  
7   Each display made, copy made, transmission and instance of an  
8   unauthorized digital replica made available on an online  
9   service is a violation of the provisions of the Voice and  
10   Visual Likeness Rights Act.

11           B.   To incur liability, a person that engaged in the  
12   violation shall have actual knowledge that the material is a  
13   digital replica and the digital replica was not authorized,  
14   which may be obtained through a notification from the right  
15   holder or individual, or shall willfully avoid having knowledge  
16   that the material is an unauthorized digital replica.

17           C.   Unless the digital replica is used to depict  
18   sexually explicit conduct, a violation of the provisions of the  
19   Voice and Visual Likeness Rights Act does not occur if the:

20                   (1)   digital replica is produced or used in a  
21   bona fide news, public affairs or sports broadcast or account;  
22   provided that the digital replica is the subject of or is  
23   relevant to the subject of the broadcast or account;

24                   (2)   digital replica is a representation of the  
25   individual as the individual in a documentary or in a



1 historical or biographical manner, unless the production or use  
2 of the digital replica creates the false impression that the  
3 work is an authentic sound recording, image, transmission or  
4 audiovisual work in which the individual participated or the  
5 digital replica is embodied in a musical sound recording that  
6 is synchronized to accompany a motion picture or other  
7 audiovisual work;

8 (3) digital replica is produced or used  
9 consistent with the public interest in a bona fide commentary,  
10 criticism, scholarship, satire or parody;

11 (4) use of the digital replica is fleeting or  
12 negligible; or

13 (5) digital replica is used in an  
14 advertisement or commercial announcement for a purpose  
15 enumerated in Paragraphs (1) through (4) of this subsection and  
16 the digital replica is relevant to the subject of the work  
17 being advertised or announced.

18 D. A person shall not be secondarily liable for a  
19 violation of the provisions of the Voice and Visual Likeness  
20 Rights Act for manufacturing, importing, offering to the  
21 public, providing or otherwise distributing an unauthorized  
22 digital replica in a product or service, unless the product or  
23 service:

24 (1) is primarily designed to produce one or  
25 more unauthorized digital replicas;

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1                   (2) has only limited commercially significant  
2 purpose or use other than to produce an unauthorized digital  
3 replica; or

4                   (3) is marketed, advertised or otherwise  
5 promoted by that person or another acting in concert with that  
6 person with that person's knowledge for use in producing an  
7 unauthorized digital replica.

8                   E. An online service shall not be liable for  
9 violating the provisions of the Voice and Visual Likeness  
10 Rights Act if, upon receiving a notification of alleged  
11 violation, the online service removes or disables access to the  
12 material alleged to be an unauthorized digital replica as soon  
13 as is practicable.

14                   F. An online service shall not be liable for  
15 violating the provisions of the Voice and Visual Likeness  
16 Rights Act for storing third-party provided material that  
17 resides on a system or network controlled or operated by or for  
18 the online service if, upon receiving a notification of  
19 violation, the online service removes or disables access to all  
20 instances of the material claimed to be an unauthorized digital  
21 replica as soon as is practicable for the online service and  
22 takes reasonable steps to promptly notify the third party that  
23 provided the material that the online service has removed or  
24 disabled access to the material.

25                   G. Interactive computer services,

1 telecommunications services and information services shall not  
2 be liable for violating the provisions of the Voice and Visual  
3 Likeness Rights Act for content provided by another person.

4 H. A civil action for a violation of the provisions  
5 of the Voice and Visual Likeness Rights Act may be brought by:

6 (1) a right holder;

7 (2) if the individual is a minor, a parent or  
8 guardian of the individual;

9 (3) a person that controls, even by virtue of  
10 a license, the right to authorize the use of the voice or  
11 visual likeness of the individual;

12 (4) a person that owns or controls the right  
13 to authorize the use of the voice or visual likeness of a  
14 deceased person; or

15 (5) in the case of digital replica involving a  
16 sound recording artist, a person that has directly or  
17 indirectly entered into:

18 (a) a contract for the exclusive use of  
19 the sound recording artist as a sound recording artist; or

20 (b) an exclusive license to distribute  
21 or transmit one or more works that capture the audio  
22 performance of the sound recording artist.

23 I. A civil action for private enforcement of the  
24 provisions of the Voice and Visual Likeness Rights Act may be  
25 brought within three years after the date on which the party

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1 bringing the civil action discovered or with due diligence  
2 should have discovered the violation.

3 J. It shall not be a defense that the defendant  
4 displayed or otherwise communicated to the public a disclaimer  
5 stating that the applicable digital replica was unauthorized or  
6 disclosing that the digital replica was generated through the  
7 use of artificial intelligence or other technology.

8 K. In a civil action brought pursuant to the Voice  
9 and Visual Likeness Rights Act, a person that engages in  
10 activity violating that act is liable to the injured party in  
11 an amount equal to the greater of:

12 (1) in the case of a natural person, five  
13 thousand dollars (\$5,000) per work embodying the unauthorized  
14 digital replica;

15 (2) in the case of an online service, five  
16 thousand dollars (\$5,000) per violation;

17 (3) in the case of a person that is not an  
18 online service, twenty-five thousand dollars (\$25,000) per work  
19 embodying the unauthorized digital replica; or

20 (4) actual damages suffered by the injured  
21 party as a result of the activity, plus profits from the  
22 unauthorized use attributable to that use and that are not  
23 taken into account in computing the actual damages.

24 L. The plaintiff may seek injunctive or other  
25 equitable relief.

1 M. In the case of willful activity in which the  
2 injured party has proven that the defendant acted with malice,  
3 fraud, knowledge or willful avoidance of knowledge that the  
4 conduct violated the law, the court may award to the injured  
5 party punitive damages; and if the prevailing party is the  
6 party:

7 (1) bringing the court action, the court may  
8 award reasonable attorney fees; or

9 (2) defending the court action, the court may  
10 award reasonable attorney fees if the court determines that the  
11 action was not brought in good faith.

12 N. An online service that has an objectively  
13 reasonable belief that material claimed to be an unauthorized  
14 digital replica does not qualify as a digital replica pursuant  
15 to the Voice and Visual Likeness Rights Act shall not be liable  
16 for statutory or actual damages exceeding one million dollars  
17 (\$1,000,000), regardless of whether the material is determined  
18 to be an unauthorized digital replica.

19 O. In the event that the third party that provided  
20 the material that the online service has removed or to which  
21 the online service has disabled access files a lawsuit against  
22 the sender of a notice of violation claiming that the notice  
23 was false or deceptive, the online service may restore the  
24 removed material to its network for access by members of the  
25 public without monetary liability to either the notice sender

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1 or the third party that provided the material that the online  
2 service had removed or disabled access.

3 SECTION 8. [NEW MATERIAL] RULE OF CONSTRUCTION.--The  
4 Voice and Visual Likeness Rights Act is a law pertaining to  
5 intellectual property for the purposes of the federal  
6 Communications Act of 1934.

7 SECTION 9. SEVERABILITY.--If any part or application of  
8 the Voice and Visual Likeness Rights Act is held invalid, the  
9 remainder or its application to other situations or persons  
10 shall not be affected.

11 SECTION 10. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2025.