

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
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 newly created,
computer-generated, highly realistic electronic representation
that is readily identifiable as the voice or visual likeness of

1 an individual that:

2 (1) is embodied in a sound recording, an image
3 or an audiovisual work, including an audiovisual work that does
4 not have accompanying sounds or transmission:

5 (a) in which the individual did not
6 actually perform or appear; or

7 (b) that is a version of a sound
8 recording, an image or an audiovisual work in which the actual
9 individual did perform or appear in which the fundamental
10 character of the performance or appearance has been materially
11 altered; and

12 (2) does not include the electronic
13 reproduction, use of a sample of one sound recording or
14 audiovisual work into another, remixing, mastering or digital
15 remastering of a sound recording or an audiovisual work
16 authorized by a copyright holder;

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

21 D. "information service" means the offering of a
22 capability for generating, acquiring, storing, transforming,
23 processing, retrieving, utilizing or making available
24 information via telecommunications and includes electronic
25 publishing, but does not include the use of any such capability

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1 for the management, control or operation of a
2 telecommunications service;

3 E. "interactive computer service" means an
4 information service, a system or an access software provider
5 that provides or enables computer access by multiple users to a
6 computer server, specifically including a service or system
7 that provides access to the internet and systems operated or
8 services offered by libraries or educational institutions;

9 F. "online service":

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

13 (a) videos, images, games, audio files
14 or other material;

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

17 (c) a social media service, a social
18 network or an application store; and

19 (2) does not include a service by wire or
20 radio that provides the capability to transmit and receive data
21 from internet endpoints, including capabilities that are
22 incidental to enable the operation of the communications
23 service provider of online services or network access or the
24 operator of facilities for services;

25 G. "postmortem right" means a right to use an

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1 individual's voice or visual likeness after the death of the
2 individual pursuant to a written licensing agreement;

3 H. "production" means the creation of a digital
4 replica;

5 I. "right holder" means a person that has acquired
6 the right to authorize the use of an individual's voice or
7 visual likeness in a digital replica;

8 J. "sexually explicit conduct" means actual or
9 simulated:

10 (1) sexual intercourse, including genital-
11 genital, oral-genital, anal-genital or oral-anal, whether
12 between persons of the same or opposite sex;

13 (2) bestiality;

14 (3) masturbation;

15 (4) sadistic or masochistic abuse; or

16 (5) lascivious exhibition of the anus,
17 genitals or pubic area of a person;

18 K. "sound recording artist" means a person who
19 performs in sound recordings for economic gain;

20 L. "telecommunications service" means the offering
21 of telecommunications for a fee directly to the public, or to
22 classes of users as to be effectively available directly to the
23 public, regardless of the facilities used; and

24 M. "use" includes the commercial availability of a
25 sound recording or audiovisual work in which the individual's

1 name or voice or visual likeness is readily identifiable.

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

3 A. The right to an individual's voice or visual
4 likeness is a property right exclusive to that individual. The
5 individual may license the use of the individual's voice or
6 visual likeness with instructions, limitations and conditions
7 provided by a licensing agreement. An individual may license
8 the use of the individual's voice or visual likeness as often
9 and to as many persons as the individual chooses. The property
10 right shall not expire on the death of the individual
11 regardless of whether the right was commercially exploited by a
12 right holder.

13 B. A right holder who is not the individual may
14 authorize the use of the voice or visual likeness of the
15 individual in a digital replica in accordance with the terms of
16 a licensing agreement. This right is a property right and is
17 licensable by the right holder. A license may survive the
18 individual's death. On the individual's death, the right may
19 be bequeathed by will or pass as personal property by operation
20 of law.

21 C. The rights provided in Subsection A of this
22 section are exclusive to the individual and may not be
23 transferred during the individual's lifetime. The term of this
24 right is limited to seventy years after the death of the
25 individual. A right holder may transfer the rights provided in

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1 Subsection B of this section during the ten-year period after
2 the death of the individual, and the right may be terminated by
3 the earlier of:

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

8 (2) the death of all executors, transferees,
9 heirs or devisees of the individual; or

10 (3) seventy years following the death of the
11 individual.

12 SECTION 4. [NEW MATERIAL] LICENSES INVOLVING ADULTS AND
13 MINORS.--

14 A. A license for an adult individual's or
15 emancipated minor's right while the individual is living is
16 valid only to the extent that the license duration does not
17 exceed ten years and is valid only if the license agreement:

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

20 (2) includes a reasonably specific description
21 of the intended uses of the digital replica.

22 B. A license for a living minor's right is valid
23 only to the extent that the license duration does not exceed
24 five years but, in any case, terminates when the minor reaches
25 eighteen years of age. The license is valid only if the

1 license agreement:

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

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

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

8 C. The provisions of Subsections A and B of this
9 section shall not apply if the license is governed by a
10 collective bargaining agreement that addresses digital
11 replicas.

12 D. The provisions of Subsections A and B of this
13 section shall not affect terms and conditions of a license or
14 related contract other than those described in those
15 subsections, and the expiration of such license shall not
16 affect the remainder of the license or related contract.

17 SECTION 5. [NEW MATERIAL] POSTMORTEM RIGHTS--
18 ENFORCEABILITY.--

19 A. A postmortem right shall not be enforceable
20 unless the holder of the postmortem right has registered
21 ownership with the secretary of state by submitting a form
22 provided by the secretary of state that includes:

23 (1) the name of the deceased individual;
24 (2) a statement, under penalty of perjury,
25 that the right holder has engaged in active and authorized use

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1 of the voice or visual likeness during the applicable period;

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

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

6 B. The secretary of state shall publish an online
7 registry of postmortem digital replication rights authorized
8 pursuant to the Voice and Visual Likeness Rights Act that is
9 publicly accessible.

10 C. The secretary of state may charge a reasonable
11 filing fee to process registrations and maintain the online
12 registry.

13 SECTION 6. [NEW MATERIAL] AUTHORIZED USE AFTER EXPIRATION
14 OR TERMINATION OF LICENSE.--A digital replica embodied in a
15 sound recording, an image or an audiovisual work, the use of
16 which is authorized pursuant to the terms of a license, may be
17 used in a manner consistent with the terms of the license after
18 the expiration or termination of the license.

19 SECTION 7. [NEW MATERIAL] LIABILITY--CIVIL ACTION--
20 REMEDIES--LIMITATIONS OF ACTION--EXCLUSIONS.--

21 A. A person that produces, publishes, reproduces,
22 displays, distributes or otherwise makes available digital
23 replicas in the state without the written consent of the
24 individual or the right holder is liable for damages. Each
25 display made, copy made, transmission and instance of an

1 unauthorized digital replica made available on an online
2 service is a violation of the provisions of the Voice and
3 Visual Likeness Rights Act.

4 B. To incur liability, a person that engaged in the
5 violation shall have actual knowledge that the material is a
6 digital replica and the digital replica was not authorized,
7 which may be obtained through a notification from the right
8 holder or individual, or shall willfully avoid having knowledge
9 that the material is an unauthorized digital replica.

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

13 (1) digital replica is produced or used in a
14 bona fide news, public affairs or sports broadcast or account;
15 provided that the digital replica is the subject of or is
16 relevant to the subject of the broadcast or account;

17 (2) digital replica is a representation of the
18 individual as the individual in a documentary or in a
19 historical or biographical manner, including some degree of
20 fictionalization, unless the production or use of the digital
21 replica creates the false impression that the work is an
22 authentic sound recording, image, transmission or audiovisual
23 work in which the individual participated or the digital
24 replica is embodied in a musical sound recording that is
25 synchronized to accompany a motion picture or other audiovisual

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1 work;

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

5 (4) use of the digital replica is fleeting or
6 negligible; or

7 (5) digital replica is used in an
8 advertisement or commercial announcement for a purpose
9 enumerated in Paragraphs (1) through (4) of this subsection and
10 the digital replica is relevant to the subject of the work
11 being advertised or announced.

12 D. A person shall not be secondarily liable for a
13 violation of the provisions of the Voice and Visual Likeness
14 Rights Act for manufacturing, importing, offering to the
15 public, providing or otherwise distributing an unauthorized
16 digital replica in a product or service, unless the product or
17 service:

18 (1) is primarily designed to produce one or
19 more unauthorized digital replicas;

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

23 (3) is marketed, advertised or otherwise
24 promoted by that person or another acting in concert with that
25 person with that person's knowledge for use in producing an

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1 unauthorized digital replica.

2 E. An online service shall not be liable for
3 violating the provisions of the Voice and Visual Likeness
4 Rights Act if, upon receiving a notification of alleged
5 violation, the online service removes or disables access to the
6 material alleged to be an unauthorized digital replica as soon
7 as is practicable.

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

19 G. A civil action for a violation of the provisions
20 of the Voice and Visual Likeness Rights Act may be brought by:

- 21 (1) a right holder;
- 22 (2) if the individual is a minor, a parent or
23 guardian of the individual;
- 24 (3) a person that controls, even by virtue of
25 a license, the right to authorize the use of the voice or

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1 visual likeness of the individual;

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

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

8 (a) a contract for the exclusive use of
9 the sound recording artist as a sound recording artist; or

10 (b) an exclusive license to distribute
11 or transmit one or more works that capture the audio
12 performance of the sound recording artist.

13 H. A civil action for private enforcement of the
14 provisions of the Voice and Visual Likeness Rights Act may be
15 brought within three years after the date on which the party
16 bringing the civil action discovered or by exercise of due
17 diligence should have discovered the violation.

18 I. It shall not be a defense that the defendant
19 displayed or otherwise communicated to the public a disclaimer
20 stating that the applicable digital replica was unauthorized or
21 disclosing that the digital replica was generated through the
22 use of artificial intelligence or other technology.

23 J. In a civil action brought pursuant to the Voice
24 and Visual Likeness Rights Act, a person that engages in
25 activity violating that act is liable to the injured party in

1 an amount equal to the greater of:

2 (1) in the case of an individual, five
3 thousand dollars (\$5,000) per work embodying the unauthorized
4 digital replica;

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

7 (3) in the case of an entity that is not an
8 online service, twenty-five thousand dollars (\$25,000) per work
9 embodying the unauthorized digital replica; or

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

14 K. The plaintiff may seek injunctive or other
15 equitable relief.

16 L. In the case of willful activity in which the
17 injured party has proven that the defendant acted with malice,
18 fraud, knowledge or willful avoidance of knowledge that the
19 conduct violated the law, the court may award to the injured
20 party punitive damages; and if the prevailing party is the
21 party:

22 (1) bringing the court action, the court may
23 award reasonable attorney fees; or

24 (2) defending the court action, the court may
25 award reasonable attorney fees if the court determines that the

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1 action was not brought in good faith.

2 M. An online service that has an objectively
3 reasonable belief that material claimed to be an unauthorized
4 digital replica does not qualify as a digital replica pursuant
5 to the Voice and Visual Likeness Rights Act shall not be liable
6 for statutory or actual damages exceeding one million dollars
7 (\$1,000,000), regardless of whether the material is determined
8 to be an unauthorized digital replica.

9 N. In the event that the third party that provided
10 the material that the online service has removed or to which
11 the online service has disabled access files a lawsuit against
12 the sender of a notice of violation claiming that the notice
13 was false or deceptive, the online service may restore the
14 removed material to its network for access by members of the
15 public without monetary liability to either the notice sender
16 or the third party that provided the material that the online
17 service had removed or disabled access.

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

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

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