

1 HOUSE BILL 221
2 57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025
3 INTRODUCED BY
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10 AN ACT

11 RELATING TO INTELLECTUAL PROPERTY; ENACTING THE VOICE AND
12 VISUAL LIKENESS RIGHTS ACT; PROVIDING FOR PRIVATE ENFORCEMENT;
13 PRESCRIBING CIVIL REMEDIES.
14

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

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

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

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

23 B. "digital replica" means a computer-generated,
24 highly realistic electronic representation that is readily
25 identifiable as the voice or visual likeness of an individual

1 and is embodied in a sound recording, image or audiovisual
2 work:

3 (1) in which the individual did not perform or
4 appear; or

5 (2) is a version of a sound recording, image
6 or audiovisual work in which the individual performs or appears
7 and the fundamental character of the performance or appearance
8 is materially altered; and

9 (3) does not include the electronic
10 reproduction, use of a sample of one sound recording or
11 audiovisual work into another, remixing, mastering or digital
12 remastering of a sound recording or audiovisual work authorized
13 by a copyright holder;

14 C. "individual" means an actual person whose voice
15 or individual likeness is at issue with respect to digital
16 replication;

17 D. "online service":

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

21 (a) videos, images, games, audio files
22 or other material;

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

25 (c) a social media service, social

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1 network or application store; and

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

8 E. "production" means the creation of a digital
9 replica;

10 F. "right holder" means a person that has acquired
11 the right to authorize the use of an individual's voice or
12 visual likeness in a digital replica;

13 G. "sexually explicit conduct" means actual or
14 simulated:

15 (1) sexual intercourse, including genital-
16 genital, oral-genital, anal-genital or oral-anal, whether
17 between persons of the same or opposite sex;

18 (2) bestiality;

19 (3) masturbation;

20 (4) sadistic or masochistic abuse; or

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

23 H. "sound recording artist" means a person who
24 performs in sound recordings for economic gain; and

25 I. "use" includes the commercial availability of a

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1 sound recording or audiovisual work in which the individual's
2 name or voice or visual likeness is readily identifiable.

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

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

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

22 C. The rights provided in Subsection A of this
23 section are exclusive to the individual and may be transferred
24 during the individual's lifetime. A right holder may transfer
25 the rights provided in Subsection B of this section during the

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1 individual's lifetime or during the ten-year period after the
2 death of the individual, and the right may be terminated by:

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

7 (2) the death of all executors, transferees,
8 heirs or devisees of the individual.

9 SECTION 4. [NEW MATERIAL] LICENSES INVOLVING ADULTS AND
10 MINORS.--

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

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

17 (2) includes a reasonably specific description
18 of the intended uses of the digital replica.

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

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

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

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

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

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

14 SECTION 5. [NEW MATERIAL] REQUIREMENTS FOR POST-MORTEM
15 TRANSFER.--A post-mortem transfer is valid only if the transfer
16 agreement is in writing and signed by the right holder or an
17 authorized representative of the right holder.

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

24 SECTION 7. [NEW MATERIAL] LIABILITY--CIVIL ACTION--
25 REMEDIES--LIMITATIONS OF ACTION--EXCLUSIONS.--

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

8 B. To incur liability, a person that engaged in the
9 violation shall have actual knowledge of the alleged violation,
10 which may be obtained through a notification from the right
11 holder or individual, or shall willfully avoid having knowledge
12 that the material is an unauthorized digital replica.

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

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

20 (2) digital replica is a representation of the
21 individual as the individual in a documentary or in a
22 historical or biographical manner, unless the production or use
23 of the digital replica creates the false impression that the
24 work is an authentic sound recording, image, transmission or
25 audiovisual work in which the individual participated or the

1 digital replica is embodied in a musical sound recording that
2 is synchronized to accompany a motion picture or other
3 audiovisual work;

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

7 (4) use of the digital replica is fleeting or
8 negligible; or

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

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

20 (1) is primarily designed to produce one or
21 more unauthorized digital replicas;

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

25 (3) is marketed, advertised or otherwise

1 promoted by that person or another acting in concert with that
2 person with that person's knowledge for use in producing an
3 unauthorized digital replica.

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

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

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

- 23 (1) a right holder;
24 (2) if the individual is a minor, a parent or
25 guardian of the individual;

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

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

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

10 (a) a contract for the exclusive use of
11 the sound recording artist as a sound recording artist; or

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

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

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

25 J. In a civil action brought pursuant to the Voice

1 and Visual Likeness Rights Act, a person that engages in
2 activity violating that act is liable to the injured party in
3 an amount equal to the greater of:

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

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

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

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

16 K. The plaintiff may seek injunctive or other
17 equitable relief.

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

24 (1) bringing the court action, the court may
25 award reasonable attorney fees; or

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

4 M. An online service that has an objectively
5 reasonable belief that material claimed to be an unauthorized
6 digital replica does not qualify as a digital replica pursuant
7 to the Voice and Visual Likeness Rights Act shall not be liable
8 for statutory or actual damages exceeding one million dollars
9 (\$1,000,000), regardless of whether the material is determined
10 to be an unauthorized digital replica.

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

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

24 SECTION 9. SEVERABILITY.--If any part or application of
25 the Voice and Visual Likeness Rights Act is held invalid, the

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1 remainder or its application to other situations or persons
2 shall not be affected.

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

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