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(Original Signature of Member)

119TH CONGRESS
2^D SESSION

H. R. _____

To provide visual artists the exclusive right to authorize the commercial exploitation, or public distribution in or affecting interstate commerce of a stylistic impersonation of that visual artist, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. VAN DUYNE introduced the following bill; which was referred to the Committee on _____

A BILL

To provide visual artists the exclusive right to authorize the commercial exploitation, or public distribution in or affecting interstate commerce of a stylistic impersonation of that visual artist, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Creative Rights Ensuring Artists’ Technique and Originality are Reserved Act”
5
6 or the “CREATOR Act”.

1 **SEC. 2. RIGHT AGAINST STYLISTIC IMPERSONATION.**

2 (a) GRANT OF RIGHT.—Subject to the limitations
3 and exclusions of this Act, each visual artist or right hold-
4 er shall have the exclusive right to authorize the commer-
5 cial exploitation, or public distribution in or affecting
6 interstate commerce of a stylistic impersonation of that
7 visual artist.

8 (b) NATURE OF THE RIGHT.—The right established
9 under this section—

10 (1) is a Federal intellectual property right dis-
11 tinct from copyright and trademark;

12 (2) does not extend to ideas, concepts, genres,
13 artistic movements, commonly used visual styles, or
14 artistic methods that are not publicly associated with
15 the work of a visual artist;

16 (3) applies only to deliberate stylistic imperson-
17 ation as defined in this Act;

18 (4) shall not be construed to prohibit general
19 artistic influence, independent human authorship, or
20 non-material artificial intelligence assistance; and

21 (5) is licensable and assignable, in whole or in
22 part, on an exclusive basis by written agreement.

23 (c) DURATION AND REGISTRATION.—

24 (1) LIVING VISUAL ARTISTS.—For a living vis-
25 ual artist, the right shall subsist for the life of the
26 visual artist.

1 (2) DECEASED VISUAL ARTISTS.—For a de-
2 ceased visual artist, the right shall subsist for 10
3 years after death and may be renewed in 5-year in-
4 crements, up to a maximum of 50 years after death.

5 (3) RENEWAL.—Renewal of a post-mortem
6 right shall be effective only upon filing a notice with
7 the Register of Copyrights identifying—

8 (A) the deceased artist;

9 (B) the right holder; and

10 (C) such additional information as the
11 Register of Copyrights may reasonably require.

12 (d) DIRECTORY OF POST-MORTEM RIGHTS.—The
13 Register of Copyrights shall maintain a publicly accessible
14 online directory of registered post-mortem rights under
15 this Act.

16 (e) RULE OF CONSTRUCTION.—Nothing in this Act
17 shall be construed to limit the ability of a visual artist
18 or right holder to authorize conduct that would otherwise
19 constitute stylistic impersonation under this Act.

20 **SEC. 3. LIABILITY.**

21 (a) CONDUCT GIVING RISE TO LIABILITY.—A person
22 shall be liable under this Act only if, in or affecting inter-
23 state commerce, the person knowingly engages in one of
24 the following acts without authorization:

1 (1) Offering for sale, selling, licensing, publicly
2 distributing, or otherwise commercially exploiting a
3 stylistic impersonation of a visual artist.

4 (2) Developing and expressly marketing for
5 commercial distribution a product or service that is
6 both—

7 (A) intentionally configured for the pur-
8 pose of generating stylistic impersonations of
9 one or more visual artists; and

10 (B) promoted as capable of generating
11 such stylistic impersonations.

12 (b) PROTECTION FOR GENERAL-PURPOSE ARTIFI-
13 CIAL INTELLIGENCE SYSTEMS.—

14 (1) IN GENERAL.—The development, distribu-
15 tion, licensing, or provision of a general-purpose ar-
16 tificial intelligence system shall not give rise to li-
17 ability under this Act unless the provider of the sys-
18 tem is both—

19 (A) intentionally configured the system for
20 the purpose of generating stylistic imperson-
21 ations of a specifically identified visual artist;
22 and

23 (B) expressly marketed the system as ca-
24 pable of generating such stylistic imperson-
25 ations.

1 (2) EXCEPTION FOR MERE CAPABILITY.—Mere
2 capability of a system to generate outputs resem-
3 bling the distinctive visual characteristics of a visual
4 artist, or the independent actions of a user of a gen-
5 eral-purpose artificial intelligence system, shall not
6 give rise to liability absent the conduct described in
7 paragraph (1).

8 (c) KNOWLEDGE OR NOTICE REQUIREMENT.—

9 (1) PERSONS OTHER THAN ONLINE SERV-
10 ICES.—

11 (A) IN GENERAL.—A person other than an
12 online service shall be liable under subsection
13 (a) only if the person knew, or deliberately
14 avoided confirming, that the work met the defi-
15 nition of stylistic impersonation of a specifically
16 identified visual artist under this Act.

17 (B) LIMITATION.—No person shall be
18 deemed to have such knowledge solely by reason
19 of the general capability of a system to generate
20 outputs resembling the works of a visual artist.

21 (2) ONLINE SERVICES.—An online service shall
22 not be liable for user-generated content unless, after
23 receipt of a valid notice under section 5 or a court
24 order, the service knowingly fails to act expeditiously
25 to remove or disable access to the user-generated

1 content identified in the notice as constituting a sty-
2 listic impersonation.

3 **SEC. 4. EXCLUSIONS.**

4 (a) **EXCLUDED ACTIVITIES.**—The following uses
5 shall not constitute a violation of this Act, provided that
6 such uses do not involve the commercial exploitation of
7 a stylistic impersonation intended to mislead as to source,
8 sponsorship, or approval—

9 (1) commentary, criticism, scholarship, re-
10 search, or teaching;

11 (2) parody or satire that comments upon or cri-
12 tiques the identified visual artist or the distinctive
13 visual characteristics at issue;

14 (3) historical, biographical, or documentary
15 works, including reasonable fictionalization, where
16 the use does not falsely suggest endorsement or au-
17 thorization;

18 (4) news reporting or public affairs commentary
19 in which reference to the distinctive visual character-
20 istics is materially relevant to the subject matter;
21 and

22 (5) uses resulting in fleeting, incidental, or neg-
23 ligible resemblance that do not reproduce a material
24 combination of distinctive visual characteristics.

1 (b) OBSCENITY.—Nothing in this section shall be
2 construed to exempt from liability the use of a stylistic
3 impersonation in material that is obscene under applicable
4 law.

5 **SEC. 5. ONLINE SERVICE SAFE HARBORS.**

6 (a) LIMITATION ON LIABILITY FOR ONLINE SERV-
7 ICES.—An online service shall not be liable for a violation
8 under section 3 arising from user-generated content if the
9 service—

10 (1) has designated an agent to receive notifica-
11 tions of claimed violations under this Act;

12 (2) upon receipt of a valid notice under sub-
13 section (b), acts expeditiously to remove or disable
14 access to the identified material; and

15 (3) adopts and reasonably implements a policy
16 providing for the termination, in appropriate cir-
17 cumstances, of repeat violators.

18 (b) NO REQUIREMENT TO MONITOR.—No online
19 service shall be required to monitor user content
20 proactively or to affirmatively seek facts indicating poten-
21 tial violations of this Act.

22 (c) NOTIFICATION REQUIREMENTS.—A notification
23 of claimed violation under this Act shall include—

24 (1) identification of the visual artist whose work
25 is allegedly impersonated;

1 (2) identification of the material claimed to con-
2 stitute a stylistic impersonation;

3 (3) a statement that the notifying party has a
4 good-faith belief that the use is not authorized; and

5 (4) information reasonably sufficient to permit
6 the online service to contact the notifying party.

7 (d) COUNTER-NOTIFICATION AND RESTORATION.—

8 (1) SUBMISSION.—A user whose material has
9 been removed or disabled pursuant to a notification
10 under this section may submit a counter-notification
11 stating, under penalty of perjury, that the material
12 was removed or disabled as a result of mistake or
13 misidentification.

14 (2) NOTIFICATION.—Upon receipt of a valid
15 counter-notification, the online service shall promptly
16 notify the original notifying party.

17 (3) RESTORATION.—The online service may re-
18 store the removed material not less than 10 business
19 days and not more than 14 business days after re-
20 ceipt of the counter-notification unless the notifying
21 party provides notice that a civil action has been
22 filed seeking a court order restraining the user from
23 engaging in the allegedly unlawful activity.

24 (e) MISREPRESENTATION AND ABUSE OF PROC-
25 ESS.—

1 (1) LIABILITY.—Any person who knowingly and
2 materially misrepresents that material constitutes a
3 stylistic impersonation shall be liable for—

4 (A) actual damages suffered by the alleged
5 violator;

6 (B) costs and reasonable attorneys' fees;
7 and

8 (C) statutory damages of not less than
9 \$5,000 per material misrepresentation.

10 (2) FAILURE TO CONDUCT EVALUATION.—A
11 failure to conduct a reasonable and good-faith eval-
12 uation of whether the material meets the definition
13 of stylistic impersonation may constitute a knowing
14 material misrepresentation.

15 (3) REPEATED BAD-FAITH NOTIFICATIONS.—
16 Repeated bad-faith notifications may result in sus-
17 pension of notice privileges under this Act.

18 **SEC. 6. CIVIL ACTIONS AND REMEDIES.**

19 (a) CIVIL ACTION.—

20 (1) IN GENERAL.—A civil action under this Act
21 may be brought by a right holder against a person
22 who violates section 3.

23 (2) SAFE HARBORS.—A person whose conduct
24 falls within the limitations or safe harbors provided
25 in sections 3 or 5 shall not be liable under this Act.

1 (b) REMEDIES.—In a civil action under this Act, the
2 court may award the following:

3 (1) INJUNCTIVE RELIEF.—Temporary or per-
4 manent injunctive relief that is narrowly tailored to
5 prevent ongoing or future violations of this Act.

6 (2) OTHER RELIEF.—At the election of the pre-
7 vailing plaintiff, either—

8 (A) actual damages suffered by the right
9 holder and any profits of the violator attrib-
10 utable to the violation; or

11 (B) statutory damages as provided in para-
12 graph (3).

13 (3) STATUTORY DAMAGES.—Statutory damages
14 may be awarded, in lieu of actual damages and prof-
15 its, as follows:

16 (A) For a commercial actor that inten-
17 tionally engaged in stylistic impersonation: not
18 less than \$10,000 and not more than \$100,000
19 per stylistic impersonation work commercially
20 exploited.

21 (B) For willful violations involving inten-
22 tional targeting and commercial exploitation:
23 not less than \$50,000 and not more than
24 \$150,000 per work.

1 (4) CONSIDERATIONS FOR STATUTORY DAM-
2 AGES.—In determining statutory damages, the court
3 or jury, as applicable, shall consider—

4 (A) the willfulness of the conduct;

5 (B) the scale and duration of dissemina-
6 tion;

7 (C) the commercial impact on the right
8 holder;

9 (D) the defendant's efforts to comply with
10 this Act; and

11 (E) whether the defendant qualifies for
12 any limitation on liability under this Act.

13 (c) NO AWARD OF STATUTORY DAMAGES.—Statu-
14 tory damages shall not be awarded where the defendant
15 establishes that the conduct falls within a limitation, ex-
16 clusion, or safe harbor under this Act.

17 **SEC. 7. RULES OF CONSTRUCTION.**

18 (a) RULE OF CONSTRUCTION.—Nothing in this Act
19 shall be construed—

20 (1) to limit, expand, or replace copyright pro-
21 tection under title 17, United States Code;

22 (2) to grant exclusive rights over ideas, con-
23 cepts, genres, artistic movements, or commonly used
24 visual styles methods;

1 (3) to impose a duty on any online service or
2 provider of a general-purpose artificial intelligence
3 system to monitor content proactively or to affirma-
4 tively seek facts indicating potential violations of this
5 Act;

6 (4) to prohibit lawful artistic influence, stylistic
7 evolution, independent human authorship, or non-
8 material use of artificial intelligence;

9 (5) to create liability for the mere development,
10 availability, or licensing of an artificial intelligence
11 system absent intentional targeting as defined in
12 this Act; or

13 (6) to restrict speech protected by the First
14 Amendment to the Constitution of the United
15 States.

16 (b) NO TRAINING DATA INFERENCE.—The mere ca-
17 pacity of an artificial intelligence system to generate out-
18 puts that resemble or incorporate distinctive visual charac-
19 teristics publicly associated with a visual artist shall not
20 give rise to any presumption, inference, or evidentiary
21 showing that—

22 (1) the system was trained on any specific work
23 of that visual artist; or

1 (2) any particular dataset containing works as-
2 sociated with that visual artist was used in the
3 training, fine-tuning, or operation of the system.

4 (c) **LIMITATION ON CIVIL ACTION.**—No civil action
5 under this Act may be predicated solely on claims regard-
6 ing the training data, training process, or internal param-
7 eters of an artificial intelligence system, except to the ex-
8 tent such claims are independently actionable under other
9 applicable law.

10 **SEC. 8. PREEMPTION.**

11 (a) **LIMITED PREEMPTION.**—This Act shall preempt
12 State law causes of action only to the extent that such
13 causes of action impose liability for conduct that con-
14 stitutes stylistic impersonation as defined in this Act.

15 (b) **PRESERVATION OF OTHER LAW.**—Nothing in
16 this Act shall be construed to preempt or limit—

17 (1) State or Federal copyright law;

18 (2) State or Federal trademark or false en-
19 dorsement law;

20 (3) State right-of-publicity or misappropriation
21 claims based on name, likeness, voice, or other pro-
22 tected personal attributes; or

23 (4) State unfair competition or consumer pro-
24 tection laws that regulate deceptive or misleading

1 commercial conduct independent of stylistic imper-
2 sonation as defined in this Act.

3 **SEC. 9. SEVERABILITY.**

4 If any provision of this Act, or the application of such
5 provision to any person or circumstance, is held invalid,
6 the remainder of this Act and the application of its re-
7 maining provisions shall not be affected.

8 **SEC. 10. DEFINITIONS.**

9 In this Act:

10 (1) **ARTIFICIAL INTELLIGENCE SYSTEM.**—The
11 term “artificial intelligence system” means a ma-
12 chine-based system that infers from input data how
13 to generate visual expressive content in fixed or stat-
14 ic form and that operates with a degree of autonomy
15 beyond purely deterministic rule-based automation.

16 (2) **ARTIST.**—The term “artist” means a
17 human individual who has created and publicly dis-
18 tributed or exhibited original visual works of author-
19 ship.

20 (3) **AUTHORIZATION.**—The term “authoriza-
21 tion” means express written permission granted by
22 the applicable right holder for the commercial exploi-
23 tation or public distribution of a stylistic imperson-
24 ation.

1 (4) **DISTINCTIVE VISUAL CHARACTERISTICS.**—
2 The term “distinctive visual characteristics” means
3 identifiable visual elements, taken together, that are
4 consistently present in a visual artist’s publicly dis-
5 tributed works and that are publicly associated with
6 that artist.

7 (5) **GENERAL-PURPOSE ARTIFICIAL INTEL-**
8 **LIGENCE SYSTEM.**—The term “general-purpose arti-
9 ficial intelligence system” means an artificial intel-
10 ligence system designed for a broad range of lawful
11 uses and not primarily configured to generate works
12 emulating the distinctive visual characteristics of a
13 specifically identified visual artist.

14 (6) **MATERIAL.**—The term “material” means
15 significant in relation to the work as a whole and
16 not merely incidental or de minimis.

17 (7) **ONLINE SERVICE.**—The term “online serv-
18 ice” means a provider of an interactive computer
19 service, as defined in section 230(f) of the Commu-
20 nications Act of 1934 (47 U.S.C. 230(f)), that hosts,
21 transmits, indexes, or provides access to user-gen-
22 erated content.

23 (8) **PUBLIC DISTRIBUTION.**—The term “public
24 distribution” means making a work available to the
25 public, whether for sale or otherwise, by offering it

1 for sale, display, transmission, posting, publication
2 on a website or online service, or other means of
3 public dissemination.

4 (9) RIGHT HOLDER.—The term “right holder”
5 means—

6 (A) the visual artist; or

7 (B) a person or entity that has lawfully ac-
8 quired, by written assignment, inheritance, or
9 operation of law, one or more of the exclusive
10 right granted under this Act.

11 (10) SPECIFICALLY IDENTIFIED VISUAL ART-
12 IST.—The term “specifically identified visual artist”
13 means a visual artist whose name or one or more
14 distinctive visual characteristics is expressly ref-
15 erenced in the prompting, configuration, marketing,
16 or operation of an artificial intelligence system, or in
17 the promotion of the resulting output.

18 (11) STYLISTIC IMPERSONATION.—

19 (A) IN GENERAL.—The term “stylistic im-
20 personation” means a visual work generated in
21 whole or in material part through the use of an
22 artificial intelligence system that—

23 (i) was intentionally configured,
24 prompted, marketed, or otherwise designed
25 to emulate the distinctive visual character-

1 istics publicly associated with a visual art-
2 ist;

3 (ii) reproduces a combination of those
4 distinctive visual characteristics in a man-
5 ner likely to mislead a reasonable viewer as
6 to the source, sponsorship, or approval of
7 the work or to affect the commercial mar-
8 ket for the visual artist’s work.

9 (B) INTENTIONAL DESIGN.—For purposes
10 of subparagraph (A), intentional design may be
11 established by evidence that the artificial intel-
12 ligence system or its operator—

13 (i) expressly referenced the visual art-
14 ist or their work in prompts, configuration
15 settings, or user-facing interfaces;

16 (ii) marketed or promoted the system
17 or the resulting output as capable of imi-
18 tating the visual artist’s work; or

19 (iii) configured the system for the
20 purpose to produce outputs substantially
21 reflecting the visual artist’s distinctive vis-
22 ual characteristics.

23 (C) LIMITATION.—The term “stylistic im-
24 personation” does not include—

1 (i) works reflecting general artistic in-
2 fluence, genre conventions, or historical
3 movements;

4 (ii) works created through inde-
5 pendent human authorship without delib-
6 erate targeting of a specifically identified
7 visual artist's work;

8 (iii) parody, satire, commentary,
9 scholarship, or other expressive uses pro-
10 tected under section 4; or

11 (iv) works generated by a general-pur-
12 pose artificial intelligence system absent
13 evidence of intentional targeting of a spe-
14 cifically identified visual artist's work.

15 (12) VISUAL WORK.—The term “visual work”
16 means a work consisting of a fixed or static visual
17 image, including illustrations, photographs, graphic
18 designs, paintings, drawings, or similar visual media,
19 but does not include motion pictures, audiovisual
20 works, or sound recordings.

21 **SEC. 11. EFFECTIVE DATE.**

22 (a) EFFECTIVE DATE.—This Act shall take effect
23 180 days after the enactment of the enactment of this Act.

1 (b) PROSPECTIVE APPLICATION.—This Act shall
2 apply only to conduct occurring on or after the effective
3 date.