

118TH CONGRESS
2D SESSION

S. 4569

To require covered platforms to remove nonconsensual intimate visual depictions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 2024

Mr. CRUZ (for himself, Ms. KLOBUCHAR, Mrs. CAPITO, Mr. BLUMENTHAL, Ms. LUMMIS, Ms. ROSEN, Mr. BUDD, Ms. BUTLER, Mr. YOUNG, Mr. MANCHIN, Mr. CASSIDY, Mr. HICKENLOOPER, Mr. HEINRICH, and Mr. BARRASSO) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require covered platforms to remove nonconsensual intimate visual depictions, 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 “Tools to Address
5 Known Exploitation by Immobilizing Technological
6 Deepfakes on Websites and Networks Act” or the “TAKE
7 IT DOWN Act”.

1 **SEC. 2. CRIMINAL PROHIBITION ON INTENTIONAL DISCLO-**
2 **SURE OF NONCONSENSUAL INTIMATE VISUAL**
3 **DEPICTIONS.**

4 (a) IN GENERAL.—Section 223 of the Communica-
5 tions Act of 1934 (47 U.S.C. 223) is amended—

6 (1) by redesignating subsection (h) as sub-
7 section (i); and

8 (2) by inserting after subsection (g) the fol-
9 lowing:

10 “(h) INTENTIONAL DISCLOSURE OF NONCONSEN-
11 SUAL INTIMATE VISUAL DEPICTIONS.—

12 “(1) DEFINITIONS.—In this subsection:

13 “(A) CONSENT.—The term ‘consent’
14 means an affirmative, conscious, and voluntary
15 authorization made by an individual free from
16 force, fraud, duress, misrepresentation, or coer-
17 cion.

18 “(B) DEEPFAKE.—The term ‘deepfake’
19 means a video or image that is generated or
20 substantially modified using machine-learning
21 techniques or any other computer-generated or
22 machine-generated means to falsely depict an
23 individual’s appearance or conduct within an in-
24 timate visual depiction.

25 “(C) IDENTIFIABLE INDIVIDUAL.—

1 “(i) IN GENERAL.—The term ‘identifi-
2 able individual’ means an individual—

3 “(I) who appears in whole or in
4 part in an intimate visual depiction;
5 and

6 “(II) whose face, likeness, or
7 other distinguishing characteristic (in-
8 cluding a unique birthmark or other
9 recognizable feature) is displayed in
10 connection with such intimate visual
11 depiction.

12 “(ii) APPEARS.—For purposes of
13 clause (i), an individual appears in an inti-
14 mate visual depiction if—

15 “(I) the individual is actually the
16 individual identified in the intimate
17 visual depiction; or

18 “(II) a deepfake of the individual
19 is used to realistically depict the indi-
20 vidual such that a reasonable person
21 would believe the individual is actually
22 depicted in the intimate visual depic-
23 tion.

1 “(D) INTERACTIVE COMPUTER SERVICE.—
2 The term ‘interactive computer service’ has the
3 meaning given the term in section 230.

4 “(E) INTIMATE VISUAL DEPICTION.—The
5 term ‘intimate visual depiction’ has the mean-
6 ing given such term in section 1309 of the Con-
7 solidated Appropriations Act, 2022 (15 U.S.C.
8 6851).

9 “(F) MINOR.—The term ‘minor’ means
10 any individual under the age of 18 years.

11 “(2) OFFENSE.—

12 “(A) INVOLVING ADULTS.—Except as pro-
13 vided in subparagraph (C), it shall be unlawful
14 for any person, in interstate or foreign com-
15 merce, to use an interactive computer service to
16 knowingly publish an intimate visual depiction
17 of an identifiable individual who is not a minor
18 if—

19 “(i) the intimate visual depiction was
20 obtained or created under circumstances in
21 which the person knew or reasonably
22 should have known the identifiable indi-
23 vidual had a reasonable expectation of pri-
24 vacy;

1 “(ii) what is depicted was not volun-
2 tarily exposed by the identifiable individual
3 in a public or commercial setting;

4 “(iii) what is depicted is not a matter
5 of public concern; and

6 “(iv) publication of the intimate visual
7 depiction—

8 “(I) is intended to cause harm;
9 or

10 “(II) causes harm, including psy-
11 chological, financial, or reputational
12 harm, to the identifiable individual.

13 “(B) INVOLVING MINORS.—Except as pro-
14 vided in subparagraph (C), it shall be unlawful
15 for any person, in interstate or foreign com-
16 merce, to use an interactive computer service to
17 knowingly publish an intimate visual depiction
18 of an identifiable individual who is a minor with
19 intent to—

20 “(i) abuse, humiliate, harass, or de-
21 grade the minor; or

22 “(ii) arouse or gratify the sexual de-
23 sire of any person.

24 “(C) EXCEPTIONS.—Subparagraphs (A)
25 and (B) shall not apply to—

1 “(i) a lawfully authorized investiga-
2 tive, protective, or intelligence activity of—

3 “(I) a law enforcement agency of
4 the United States, a State, or a polit-
5 ical subdivision of a State; or

6 “(II) an intelligence agency of
7 the United States;

8 “(ii) a disclosure made reasonably and
9 in good faith—

10 “(I) to a law enforcement officer
11 or agency;

12 “(II) as part of a document pro-
13 duction or filing associated with a
14 legal proceeding;

15 “(III) as part of medical edu-
16 cation, diagnosis, or treatment or for
17 a legitimate medical, scientific, or
18 education purpose; or

19 “(IV) in the reporting of unlaw-
20 ful content or unsolicited or unwel-
21 come conduct or in pursuance of a
22 legal, professional, or other lawful ob-
23 ligation; or

1 “(V) to seek support or help with
2 respect to the receipt of an unsolicited
3 intimate visual depiction;

4 “(iii) a disclosure reasonably intended
5 to assist the identifiable individual; or

6 “(iv) a person who possesses or pub-
7 lishes an intimate visual depiction of him-
8 self or herself engaged in nudity or sexu-
9 ally explicit conduct (as that term is de-
10 fined in section 2256(2)(A) of title 18,
11 United States Code).

12 “(3) PENALTIES.—

13 “(A) OFFENSES INVOLVING ADULTS.—Any
14 person who violates paragraph (2)(A) shall be
15 fined under title 18, United States Code, im-
16 prisoned not more than 2 years, or both.

17 “(B) OFFENSES INVOLVING MINORS.—Any
18 person who violates paragraph (2)(B) shall be
19 fined under title 18, United States Code, im-
20 prisoned not more than 3 years, or both.

21 “(4) RULES OF CONSTRUCTION.—For purposes
22 of paragraph (2)—

23 “(A) the fact that the identifiable indi-
24 vidual provided consent for the creation of the
25 intimate visual depiction shall not establish that

1 the individual provided consent for the publica-
2 tion of the intimate visual depiction; and

3 “(B) the fact that the identifiable indi-
4 vidual disclosed the intimate visual depiction to
5 another individual shall not establish that the
6 identifiable individual provided consent for the
7 publication of the intimate visual depiction by
8 the person alleged to have violated paragraph
9 (2).

10 “(5) THREATS.—Any person who intentionally
11 threatens to commit an offense under paragraph (2)
12 for the purpose of intimidation, coercion, extortion,
13 or to create mental distress shall be punished as pro-
14 vided in paragraph (3).

15 “(6) FORFEITURE.—

16 “(A) IN GENERAL.—The court, in impos-
17 ing a sentence on any person convicted of a vio-
18 lation of subparagraph (2), shall order, in addi-
19 tion to any other sentence imposed and irre-
20 spective of any provision of State law, that the
21 person forfeit to the United States—

22 “(i) any material distributed in viola-
23 tion of that paragraph;

24 “(ii) the person’s interest in property,
25 real or personal, constituting or derived

1 from any gross proceeds of the violation, or
2 any property traceable to such property,
3 obtained or retained directly or indirectly
4 as a result of the violation; and

5 “(iii) any personal property of the
6 person used, or intended to be used, in any
7 manner or part, to commit or to facilitate
8 the commission of the violation.

9 “(B) PROCEDURES.—Section 413 of the
10 Controlled Substances Act (21 U.S.C. 853),
11 with the exception of subsections (a) and (d),
12 shall apply to the criminal forfeiture of property
13 under subparagraph (A).

14 “(7) RESTITUTION.—The court shall order res-
15 titution for an offense under paragraph (2) in the
16 same manner as under section 2264 of title 18,
17 United States Code.”.

18 (b) DEFENSES.—Section 223(e)(1) of the Commu-
19 nications Act of 1934 (47 U.S.C. 223(e)(1)) is amended
20 by striking “or (d)” and inserting “, (d), or (h)”.

21 (c) TECHNICAL AND CONFORMING AMENDMENT.—
22 Subsection (i) of section 223 of the Communications Act
23 of 1934 (47 U.S.C. 223), as so redesignated by subsection
24 (a), is amended by inserting “DEFINITIONS.—” before
25 “For purposes of this section”.

1 **SEC. 3. NOTICE AND REMOVAL OF NONCONSENSUAL INTI-**
2 **MATE VISUAL DEPICTIONS.**

3 (a) IN GENERAL.—

4 (1) NOTICE AND REMOVAL PROCESS.—

5 (A) ESTABLISHMENT.—Not later than 1
6 year after the date of enactment of this Act, a
7 covered platform shall establish a process
8 whereby an identifiable individual (or an au-
9 thorized representative of such individual)
10 may—

11 (i) notify the covered platform of an
12 intimate visual depiction published on the
13 covered platform that—

14 (I) includes a depiction of the
15 identifiable individual; and

16 (II) was published without the
17 consent of the identifiable individual;
18 and

19 (ii) submit a request for the covered
20 platform to remove such intimate visual
21 depiction.

22 (B) REQUIREMENTS.—A notification and
23 request for removal of an intimate visual depic-
24 tion submitted under the process established
25 under subparagraph (A) shall include, in writ-
26 ing—

- 1 (i) a physical or electronic signature
2 of the identifiable individual (or an author-
3 ized representative of such individual);
- 4 (ii) an identification of the intimate
5 visual depiction of the identifiable indi-
6 vidual; and
- 7 (iii) a brief statement that the identi-
8 fiable individual has a good faith belief
9 that any intimate visual depiction identi-
10 fied under clause (ii) is not consensual, in-
11 cluding any relevant information for the
12 covered platform to determine the intimate
13 visual depiction was published without the
14 consent of the identifiable individual.

15 (2) NOTICE OF PROCESS.—A covered platform
16 shall provide on the platform a clear and con-
17 spicuous notice of the notice and removal process es-
18 tablished under paragraph (1)(A).

19 (3) REMOVAL OF NONCONSENSUAL INTIMATE
20 VISUAL DEPICTIONS.—Upon receiving a valid re-
21 moval request from an identifiable individual (or an
22 authorized representative of such individual) using
23 the process described in paragraph (1)(A)(ii), a cov-
24 ered platform shall remove the intimate visual depic-
25 tion and make reasonable efforts to remove any

1 identical copies of such depiction as soon as possible,
2 but not later than 48 hours after receiving such re-
3 quest.

4 (4) LIMITATION ON LIABILITY.—A covered plat-
5 form shall not be liable for any claim based on the
6 covered platform’s good faith disabling of access to,
7 or removal of, material claimed to be a nonconsen-
8 sual intimate visual depiction based on facts or cir-
9 cumstances from which the unlawful publishing of
10 an intimate visual depiction is apparent, regardless
11 of whether the intimate visual depiction is ultimately
12 determined to be unlawful or not.

13 (b) ENFORCEMENT BY THE COMMISSION.—

14 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
15 TICES.—A violation of this section shall be treated
16 as a violation of a rule defining an unfair or a de-
17 ceptive act or practice under section 18(a)(1)(B) of
18 the Federal Trade Commission Act (15 U.S.C.
19 57a(a)(1)(B)).

20 (2) POWERS OF THE COMMISSION.—

21 (A) IN GENERAL.—Except as provided in
22 subparagraph (D), the Commission shall en-
23 force this section in the same manner, by the
24 same means, and with the same jurisdiction,
25 powers, and duties as though all applicable

1 terms and provisions of the Federal Trade
2 Commission Act (15 U.S.C. 41 et seq.) were in-
3 corporated into and made a part of this section.

4 (B) PRIVILEGES AND IMMUNITIES.—Any
5 person who violates this Act shall be subject to
6 the penalties and entitled to the privileges and
7 immunities provided in the Federal Trade Com-
8 mission Act (15 U.S.C. 41 et seq.).

9 (C) AUTHORITY PRESERVED.—Nothing in
10 this Act shall be construed to limit the author-
11 ity of the Federal Trade Commission under any
12 other provision of law.

13 (D) SCOPE OF JURISDICTION.—Notwith-
14 standing sections 4, 5(a)(2), or 6 of the Federal
15 Trade Commission Act (15 U.S.C. 44, 45(a)(2),
16 46), or any jurisdictional limitation of the Com-
17 mission, the Commission shall also enforce this
18 section in the same manner provided in sub-
19 paragraph (A), with respect to organizations
20 that are not organized to carry on business for
21 their own profit or that of their members.

22 **SEC. 4. DEFINITIONS.**

23 In this Act:

24 (1) COMMISSION.—The term “Commission”
25 means the Federal Trade Commission.

1 (2) CONSENT; DEEPPFAKE; IDENTIFIABLE INDI-
2 VIDUAL; INTIMATE VISUAL DEPICTION.—The terms
3 “consent”, “deepfake”, “identifiable individual”,
4 “intimate visual depiction”, and “minor” have the
5 meaning given such terms in section 223(h) of the
6 Communications Act of 1934 (47 U.S.C. 223), as
7 added by section 2.

8 (3) COVERED PLATFORM.—

9 (A) IN GENERAL.—The term “covered
10 platform” means a website, online service, on-
11 line application, or mobile application that—

12 (i) serves the public; and

13 (ii) primarily provides a forum for
14 user-generated content, including mes-
15 sages, videos, images, games, and audio
16 files.

17 (B) EXCLUSIONS.—The term “covered
18 platform” shall not include the following:

19 (i) A provider of broadband internet
20 access service (as described in section
21 8.1(b) of title 47, Code of Federal Regula-
22 tions, or successor regulation).

23 (ii) Electronic mail.

24 (iii) An online service, application, or
25 website—

- 1 (I) that consists primarily of con-
2 tent that is not user generated but is
3 preselected by the provider of such on-
4 line service, application, or website;
5 and
- 6 (II) for which any chat, com-
7 ment, or interactive functionality is
8 incidental to, directly related to, or
9 dependent on the provision of the con-
10 tent described in subclause (I).

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