116TH CONGRESS 1ST SESSION  

H. R. 3230

To combat the spread of disinformation through restrictions on deep-fake video alteration technology.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2019

Ms. CLARKE of New York introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Energy and Commerce, and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To combat the spread of disinformation through restrictions on deep-fake video alteration technology.

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 “Defending Each and
5 Every Person from False Appearances by Keeping Explo-
6 tation Subject to Accountability Act of 2019” or the
7 “DEEP FAKES Accountability Act”.


SEC. 2. TRANSPARENCY REQUIREMENTS.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following:

§ 1041. Advanced technological false personation record

“(a) IN GENERAL.—Except as provided in subsection (j), any person who, using any means or facility of interstate or foreign commerce, produces an advanced technological false personation record with the intent to distribute such record over the internet or knowledge that such record shall be so distributed, shall ensure such record, complies with—

“(1) the watermark requirement under subsection (b); and

“(2)(A) in the case of an audiovisual record, the disclosure requirements under subsection (c);

“(B) in the case of a visual record, the disclosure requirements under subsection (d); or

“(C) in the case of an audio record, the disclosure requirements under subsection (e).

“(b) DIGITAL WATERMARK.—Any advanced technological false personation record which contains a moving visual element shall contain an embedded digital watermark clearly identifying such record as containing altered audio or visual elements.
“(c) Audiovisual Disclosure.—Any advanced technological false personation records containing both an audio and a visual element shall include—

“(1) not less than 1 clearly articulated verbal statement that identifies the record as containing altered audio and visual elements, and a concise description of the extent of such alteration; and

“(2) an unobscured written statement in clearly readable text appearing at the bottom of the image throughout the duration of the visual element that identifies the record as containing altered audio and visual elements, and a concise description of the extent of such alteration.

“(d) Visual Disclosure.—Any advanced technological false personation records exclusively containing a visual element shall include an unobscured written statement in clearly readable text appearing at the bottom of the image throughout the duration of the visual element that identifies the record as containing altered visual elements, and a concise description of the extent of such alteration.

“(e) Audio Disclosure.—Any advanced technological false personation records exclusively containing an audio element shall include, at the beginning of such record, a clearly articulated verbal statement that identi-
fies the record as containing altered audio elements and
a concise description of the extent of such alteration, and
in the event such record exceeds two minutes in length,
not less than 1 additional clearly articulated verbal state-
ment and additional concise description at some interval
during each two-minute period thereafter.

“(f) Penalty.—

“(1) Criminal penalty.—

“(A) Failure to disclose.—Whoever
knowingly violates subsection (a)—

“(i) with the intent to humiliate or
otherwise harass the person falsely exhib-
ited, provided the advanced technological
false personation record contains sexual
content of a visual nature and appears to
feature such person engaging in such sex-
ual acts or in a state of nudity;

“(ii) with the intent to cause violence
or physical harm, incite armed or diplo-
matic conflict, or interfere in an official
proceeding, including an election, provided
the advanced technological false
personation record did in fact pose a cred-
ible threat of instigating or advancing
such;
“(iii) in the course of criminal conduct related to fraud, including securities fraud and wire fraud, false personation, or identity theft; or

“(iv) by a foreign power, or an agent thereof, with the intent of influencing a domestic public policy debate, interfering in a Federal, State, local, or territorial election, or engaging in other acts which such power may not lawfully undertake;

shall be fined under this title, imprisoned for not more than 5 years, or both.

“(B) Altering Disclosures.—Whoever knowingly alters an advanced technological false personation record to remove or meaningfully obscure the disclosures required under subsection (a) with the intent to distribute such altered record and—

“(i) with the intent to humiliate or otherwise harass the person falsely exhibited, provided the advanced technological false personation record contains sexual content of a visual nature and appears to feature such person engaging in such sexual acts or in a state of nudity;
“(ii) with the intent to cause violence or physical harm, incite armed or diplomatic conflict, or interfere in an official proceeding, including an election, provided the advanced technological false personation record did in fact pose a credible threat of instigating or advancing such;

“(iii) in the course of criminal conduct related to fraud, including securities fraud and wire fraud, false personation, or identity theft; or

“(iv) by a foreign power, or an agent thereof, with the intent of influencing a domestic public policy debate, interfering in a Federal, State, local, or territorial election, or engaging in other acts which such power may not lawfully undertake;

shall be fined under this title, imprisoned for not more than 5 years, or both.

“(2) CIVIL PENALTY.—

“(A) FAILURE TO DISCLOSE.—Any person who violates subsection (a) shall be subject to a civil penalty of up to $150,000 per record or
alteration, as well as appropriate injunctive relief.

“(B) ALTERING DISCLOSURES.—Any person who alters an advanced technological false personation record to remove or meaningfully obscure the disclosures required under subsection (a) with the intent to distribute such altered record shall be subject to a civil penalty of up to $150,000 per record or alteration, as well as appropriate injunctive relief.

“(g) PRIVATE RIGHT OF ACTION.—

“(1) IN GENERAL.—Any living individual or affiliated corporate or other entity who has been exhibited as engaging in falsified material activity in an advanced technological false personation record may bring a civil action before the appropriate Federal district court for damages under paragraph (2) and injunctive relief under paragraph (3) against a person who violates subsection (a) or alters an advanced technological false personation record to remove or meaningfully obscure the disclosures required under subsection (a).

“(2) DAMAGES.—Damages shall consist of the greater of—
“(A) actual damages suffered by the living person or the affiliated corporation or entity, and any additional substantially derivative profits of the person who violated subsection (a) or altered an advanced technological false personation record to remove or meaningfully obscure the disclosures required under subsection (a);

“(B) $50,000 per record, if the living person or affiliated corporation or entity experienced a perceptible individual harm or faced a tangible risk of experiencing such;

“(C) $100,000 per record, if the living person or affiliated corporation or entity experienced a perceptible individual harm or faced a tangible risk of experiencing such and the record purported to depict extreme or outrageous conduct by the living person; or

“(D) $150,000 per record, if the advanced technological false personation record contains explicit sexual content of a visual nature intended to humiliate or otherwise harass the person falsely depicted as engaging in such sexual acts or in a state of nudity.
“(3) INJUNCTIVE RELIEF.—Injunctive relief under this subsection shall include mandated compliance with the requirements described in subsection (a).

“(h) PRIVACY PROTECTIONS.—

“(1) FEDERAL ACTIONS.—In pursuing criminal or civil penalties under this Act, Federal authorities shall, to the extent practicable, consult with living persons exhibited as engaging in falsified material activity in advanced technological false personation records regarding measures such authorities can reasonably undertake to protect their privacy and minimize additional public viewings of such records.

“(2) PRIVATE ACTIONS.—Private actions brought under subsection (g), upon petition of the plaintiff, shall be permitted to be filed under seal if such plaintiff can demonstrate a reasonable likelihood that the creation of public records regarding the advanced technological false personation record would result in embarrassing or otherwise harmful publicization of the falsified material activity in an advanced technological false personation record.

“(i) RULES OF CONSTRUCTION.—

“(1) Nothing in this section shall be interpreted as authorizing the production of an advanced tech-
nological false personation record which includes dis-
closures if such record is otherwise prohibited by law
or regulation.

“(2) The word ‘advanced’ within the term ‘ad-
vanced technological false personation record’ shall
not be interpreted as narrowing the definition of
such term.

“(3) Nothing in this section shall be interpreted
as a defense against, or as preempting or limiting,
any Federal, State, local, or territorial laws, regula-
tions, or policies that prohibit, impose more string-
gent standards in relation to, or provide additional
or alternative remedies or damages in relation to,
the production or distribution of advanced techno-
logical false personation records, deep fakes, or re-
lated content, including criminal and civil laws relat-
ing to copyright, tortious conduct, and false
personation.

“(j) EXCEPTIONS.—

“(1) DISCLOSURE.—The requirements under
 subsections (c), (d), and (e) shall not apply with re-
spect to any advanced technological false personation
record—

“(A) containing alternative disclosures re-
garding the falsity of the exhibited material ac-
tivities which a reasonable person would deem to be more prominent than those required under subsection (c), (d), or (e), as the case may be;

“(B) during the process of producing such record, provided the ultimately distributed record is in compliance;

“(C) which primarily contains images or sound recordings of actual persons, such as performing artists, and have not been substantially digitally modified;

“(D) created in connection with editing a motion picture, television, music, or similar production or creating a derivative production thereof, the original content of which was created prior to the enactment of this Act, in which the person appearing provided consent to their original appearance;

“(E) appearing in a context such that a reasonable person would not mistake the falsified material activity for actual material activity of the exhibited living person, such as parody shows or publications, historical reenactments, or fictionalized radio, television, or motion picture programming; or
“(F) produced by an officer or employee of the United States, or under the authority thereof, in furtherance of public safety or national security.

“(2) WATERMARK.—The watermark requirement under subsection (b) shall not apply with respect to any class of advanced technological false personation records which the Attorney General determines by regulation should be excluded from such requirement.

“(k) ADVISORY OPINIONS, WAIVER, AND STANDARDS.—

“(1) ADVISORY OPINIONS.—The Attorney General shall—

“(A) establish a process by which any producer of audio, visual, or audiovisual content may seek an advisory opinion regarding the legality of their proposed production under this section;

“(B) respond to such requests for advice not later than 30 days after the date of submission; and

“(C) not pursue enforcement action under this section against any producer who relied in good faith on such an advisory opinion.
“(2) WAIVER.—The Attorney General shall be authorized to grant, and shall establish and publish procedures to govern the issuance of, waivers from any requirements or liabilities under this section to additional categories of advanced technological false personation records upon petition of any producer thereof if such producer can demonstrate compliance with this section would impede their ability to engage in otherwise lawful activities protected by the First Amendment of the Constitution.

“(3) WATERMARK STANDARDS.—Not later than 1 year after the date of enactment of this section, the Attorney General shall issue rules governing the technical specifications of the digital watermarks required under subsection (b) which shall include, if such is determined appropriate, a requirement for such watermarks to contain embedded metadata.

“(l) VENUE.—Any action under this section may be brought, in addition to in any district otherwise described in section 1391 of title 28, in the district where or the person falsely depicted in the advanced technological false personation record resides.

“(m) EXTRATERRITORIALITY.—There is extraterritorial Federal jurisdiction over an offense under this section
if the defendant or the depicted person is a citizen or permanent resident of the United States.

“(n) Definitions.—

“(1) Advanced technological false personation record.—The term ‘advanced technological false personation record’ means any deep fake, which—

“(A) a reasonable person, having considered the visual or audio qualities of the record and the nature of the distribution channel in which the record appears, would believe accurately exhibits—

“(i) any material activity of a living person which such living person did not in fact undertake; or

“(ii) any material activity of a deceased person which such deceased person did not in fact undertake, and the exhibition of which is substantially likely to either further a criminal act or result in improper interference in an official proceeding, public policy debate, or election; and
“(B) was produced without the consent of such living person, or in the case of a deceased person, such person or the heirs thereof.

“(2) MATERIAL ACTIVITY.—The term ‘material activity’ means any falsified speech, conduct, or depiction which causes, or a reasonable person would recognize has a tendency to cause perceptible individual or societal harm, including misrepresentation, reputational damage, embarrassment, harassment, financial losses, the incitement of violence, the alteration of a public policy debate or election, or the furtherance of any unlawful act.

“(3) DEEP FAKE.—The term ‘deep fake’ means any video recording, motion-picture film, sound recording, electronic image, or photograph, or any technological representation of speech or conduct substantially derivative thereof—

“(A) which appears to authentically depict any speech or conduct of a person who did not in fact engage in such speech or conduct; and

“(B) the production of which was substantially dependent upon technical means, rather than the ability of another person to physically or verbally impersonate such person.
“(o) REPORTS.—The Attorney General, in coordination with other relevant Federal agencies, shall submit a report to Congress 5 years after the date of enactment of this section, and 5 years thereafter, describing trends related to prosecutions and civil penalties pursued under this section, and recommending any updates to this section necessitated by the emergence of new technologies.

“§ 1042. Deep fakes victim assistance

“(a) COORDINATOR FOR VIOLATIONS DIRECTED BY FOREIGN NATION-STATES.—The Attorney General shall designate a coordinator in each United States Attorney’s Office to receive reports from the public regarding potential violations of section 1041 (relating to deep fake depictions produced or distributed by any foreign nation-state, or any agent acting on its behalf) and coordinate prosecutions for any violation of such section.

“(b) COORDINATOR FOR FALSE INTIMATE DEPICTIONS.—The Attorney General shall designate a coordinator in each United States Attorney’s Office to receive reports from the public regarding potential violations of section 1041 (relating to deep fake depictions of an intimate and sexual nature) and coordinate prosecutions for any violation of such section.
“(c) PLAN AND GUIDANCE.—On the effective date of this Act, the Attorney General shall publish a report containing—

“(1) a plan to effectuate and enforce section 1041;

“(2) a description of the efforts of the Russian Federation and the People’s Republic of China, and such other states or groups as the Attorney General determines appropriate, to use deep fake technology to impact elections or public policy debates in the United States or other democracies;

“(3) a description of the impact of intimate and sexual deep fakes on women and marginalized communities; and

“(4) in order to increase the likelihood of such prosecutions, official guidance to Federal prosecutors regarding any potential legal concerns that may impede such prosecutions absent clarification.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

“1041. Advanced technological false personation record.

“1042. Deep fakes victim assistance.”.

SEC. 3. TRANSPARENCY FACILITATION.

Any manufacturer of software, who in the course of conducting such business produces software, in or affect-
ing interstate or foreign commerce, which such manufac-
turer reasonably believes, in the context of their intended
distribution of the product, will be used to produce deep
fakes, as such term is defined in section 1041 of title 18,
United States Code, as added by this Act, shall—

(1) ensure such software has the technical ca-
pability to insert watermarks and disclosures of the
nature described in such section into such deep
fakes; and

(2) include terms of use or other analogous dis-
closures with such software, which require the user
of such software to affirmatively acknowledge their
general awareness of their legal obligations under
this Act.

SEC. 4. IN REM LITIGATION AGAINST FOREIGN AND UN-
KNOWN DEFENDANTS.

(a) IN GENERAL.—A living person, or an affiliated
corporate or other entity substantially connected to such
living person, exhibited as engaging in falsified material
activity in an advanced technological false personation
record, as such term is defined in section 1041 of title
18, United States Code, as added by section 2 of this Act,
and subject to parallel exceptions to those enumerated in
section 1041(j) of such title, may file an in rem civil action
against an advanced technological false personation
record, in the judicial district in which such living person
or related entity resides, if—

(1) the creator of such advanced technological
false personation record is in violation of any provi-
sion in section 1041 of title 18, United States Code,
as added by section 2 of this Act, for which a pri-
ivate remedy is provided; and

(2) the court finds that such living person or
related entity—

(A) is not able to obtain in personam juris-
diction over a person who would have been a
defendant in a civil action in section 1041 of
title 18, United States Code, as added by sec-
tion 2 of this Act; or

(B) through reasonable due diligence was
not able to find a person who would have been
a defendant in a civil action under paragraph
(1) by—

(i) if practicable, sending a notice of
the alleged violation and intent to proceed
under this paragraph to the producer of
the record;

(ii) publishing notice of the action as
the court may direct promptly after filing
the action; and
(iii) complying with such other due
diligence measures the Attorney General
promulgates through regulation.

(b) SERVICE OF PROCESS.—The actions under sub-
section (a)(2)(B)(ii) shall constitute service of process.

(c) JURISDICTION.—In an in rem action under this
section, an advanced false personation record shall be
deemed to have its situs in the judicial district in which
the person falsely depicted as engaging in material activity
resides.

(d) REMEDIES.—The remedies in an in rem action
under this paragraph shall be limited to a court order de-
claring there to be a substantial likelihood that the mate-
rial activity depicted in such advanced technological false
personation record is false and lacking the watermarks
and disclosures required under section 1041 of title 18,
United States Code, as added by section 2 of this Act,
and as appropriate at the discretion of the court, the for-
feiture by the producer of such advanced technological
false personation record of profits directly derived from
the production and distribution of such content.

(e) ESTOPPEL AND ADDITIONAL REMEDIES.—A
court order under subsection (d) may not be used for pur-
poses of estoppel in subsequent litigation should the living
person or related entity bringing suit file additional ac-
tions under other provisions of law. The in rem action established under this Act shall be in addition to any other civil action or remedy otherwise applicable and any other jurisdiction that otherwise exists, whether in rem or in personam.

(f) Fee Waiver.—The Federal judiciary shall waive all filing fees for actual living persons pursuing private relief under this section, if such litigant provides a sworn certification that the primary purpose of such filing is reputational restoration.

(g) Regulations.—The Attorney General may promulgate regulations governing proceedings under this section, or otherwise limiting the applicability of this section as such is determined necessary.

SEC. 5. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH AUDIOVISUAL AND BIOMETRIC IDENTITY AUTHENTICATION.

(a) Offense.—Section 1028 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “or a false identification document” and inserting “a false identification document, or a false audiovisual identification record”;
(B) in paragraph (4), by striking “or a false identification document,” and inserting “a false identification document, or a false audiovisual identification record,”; and

(C) in paragraph (5), by striking “or a false identification document” and inserting “a false identification document, false audiovisual identification record”;

(2) in subsection (b)(1), by striking “or a false identification document” and inserting “a false identification document, or a false audiovisual identification record”;

(3) in subsection (c)(3)(A), by inserting after “a document” the following: “or a false audiovisual identification record”; and

(4) in subsection (d)—

(A) in paragraph (1), insert after “letters,” the following: “biometric indicators”;

(B) in paragraph (7), insert after “other unique physical representation” the following: “including facial dimensions or characteristics, or visual imagery or content which appears to authentically depict any speech or conduct of a person who did not in fact engage in such speech or conduct”;
(C) in paragraph (11), strike “and” at the
end;

(D) in paragraph (12)(B), strike the pe-
period at the end and insert “; and”; and

(E) by adding at the end the following:

“(13) The term ‘false audiovisual identification
record means’ any ‘deep fake’ which is an ‘advanced
technological false personation record’, as such
terms are defined in section 1041, used or attempted
to be used by a person for the purpose of conducting
actual activities while assuming the identity of an-
other person without such other person’s consent,
that—

“(A) seeks to further any unlawful activity
that constitutes a violation of Federal law, or
that constitutes a felony under any applicable
State, territorial, or local law;

“(B) depicts obscenity or sexually explicit
conduct, considering the extent to which the
record appeals to the prurient interest, is pat-
ently offensive, and lack serious literary, artist-
tic, political, or scientific value;

“(C) depicts fighting words, which by their
very utterance, inflict injury or tend to incite an
immediate breach of the peace;
“(D) constitutes a call to imminent lawless action, and is likely, whether on its own or collectively in connection with related records, to incite or produce such action; and

“(E) depicts or constitutes other activities or speech that the Attorney General determines by regulation pose a credible threat to the national interests of the United States, which, as of the date of such regulation, have been determined by a Federal court to constitute an unprotected class of speech under the first amendment.”.

(b) Rule of Construction.—The amendments made by subsection (a) may not be interpreted as imposing any limitations on the applicability of section 1028 of title 18, United States Code, to any item which was covered by such section prior to the date of enactment of this Act.

SEC. 6. FALSE PERSONATION.

(a) In General.—Chapter 43 of title 18 of the United States Code is amended by adding at the end a new section as follows:

“§ 918. Deep fake false personation generally

“Section 911 through 917 of this chapter (relating to false personation of citizens of the United States, offi-
cers, or employees of the United States, authorities making arrests or searches, creditors of the United States, foreign diplomats, consults, or officers, 4–H Club members or agents, and Red Cross members or agents) shall be interpreted to include those who produce, or substantially knowingly contribute to the production and unlawful use of, ‘deep fakes’ which constitute an ‘advanced technological false personation record’, as such terms are defined by section 2 of the Defending Each and Every Person from False Appearances by Keeping Exploitation Subject to Accountability Act of 2019 and subject to parallel exceptions to those enumerated in section 2(j) of such Act, of such classes of persons covered by this chapter.”.

(b) Clerical Amendment.—The table of sections for chapter 43 of title 18, United States Code, is amended by adding at the end the following:

“918. Deep fake false personation generally.”.

SEC. 7. DETECTION OF DEEP FAKEs.

(a) Establishment of Task Force.—The Secretary of Homeland Security, in coordination with the heads of other relevant Federal elements, shall establish a task force within the Science and Technology Directorate, hereinafter referred to as the Deep Fakes Task Force, to—
(1) advance efforts of the United States Government to combat the national security implications of deep fakes;

(2) as appropriate, research and develop technologies to detect, or otherwise counter and combat, deep fakes and other advanced image manipulation methods and distinguish such deep fakes or related forgeries from legitimate audiovisual recordings or visual depictions of actual events;

(3) provide support, both administrative and scientific, to other Federal elements researching such technologies;

(4) encourage efforts of the United States Government to adopt such technology; and

(5) facilitate discussion and appropriate cooperation between the United States Government and relevant private sector technology enterprises or other nongovernmental entities, including academic and research institutions, regarding the identification of deep fakes or other advanced image manipulation methods.

(b) Private Sector Collaboration.—In the event the United States Government develops technology to reliably detect deep fakes and distinguish such from legitimate audiovisual recordings or visual depictions of ac-
tual events, the President shall, unless he determines such is contrary to the national interests of the United States, endeavor to make such technology available to appropriate United States private sector internet platforms, including social networks.

(c) **Annual Report.**—Not later than one year after the date of the enactment of this Act and annually thereafter for a period of five years, the Secretary of Homeland Security shall submit an unclassified report, which may however contain a classified annex, to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate describing—

(1) the activities of the Task Force;

(2) as appropriate, technological progress related to the detection of deep fakes;

(3) new developments related to the national security threat posed by deep fakes or related image manipulation technologies, which shall include a description of any efforts of the Russian Federation and the People’s Republic of China, and such other states or groups as the Attorney General determines appropriate, to distribute unlawful deep fakes in the United States or other democracies; and
(4) related efforts of the United States to combat and counter deep fakes or related image manipulation technologies.

(d) DEFINITION.—The term “deep fake” shall have the meaning given such term in section 1041 of title 18, United States Code, as added by section 2 of this Act.

SEC. 8. CONGRESSIONAL NOTIFICATION.

The Secretary of Homeland Security, on no less than an annual basis, shall provide the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate with a classified written notification and, upon request, a briefing regarding any known attempts of foreign states to use deep fake technology to influence or otherwise interfere in an official proceeding within the United States, including an election.

SEC. 9. EFFECTIVE DATE.

This Act shall enter into effect on the date that is one year after the date of enactment of this Act.