118TH CONGRESS
1ST SESSION
H. R. 3106

To prohibit the disclosure of intimate digital depictions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
MAY 5, 2023

Mr. Morelle (for himself and Ms. Ross) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL
To prohibit the disclosure of intimate digital depictions, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Preventing Deepfakes
of Intimate Images Act”.

SEC. 2. INTIMATE DIGITAL DEPICTIONS.
The Violence Against Women Act Reauthorization
Act of 2022 is amended by inserting after section 1309
the following:
SEC. 1309A. DISCLOSURE OF INTIMATE DIGITAL DEPICTIONS.

“(a) DEFINITIONS.—In this section:

“(1) CONSENT.—The term ‘consent’ has the meaning given such term in section 1309.

“(2) DEPICTED INDIVIDUAL.—The term ‘depicted individual’ means an individual who, as a result of digitization or by means of digital manipulation, appears in whole or in part in an intimate digital depiction and who is identifiable by virtue of the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature, or from information displayed in connection with the digital depiction.

“(3) DIGITAL DEPICTION.—The term ‘digital depiction’ means a realistic visual depiction, as that term is defined in section 2256(5) of title 18, United States Code, of an individual that has been created or altered using digital manipulation.

“(4) DISCLOSE.—The term ‘disclose’ has the meaning given such term in section 1309.

“(5) INTIMATE DIGITAL DEPICTION.—The term ‘intimate digital depiction’ means a digital depiction of an individual that has been created or altered using digital manipulation and that depicts—
“(A) the uncovered genitals, pubic area, anus, or postpubescent female nipple of an identifiable individual;

“(B) the display or transfer of bodily sexual fluids—

“(i) onto any part of the body of an identifiable individual; or

“(ii) from the body of an identifiable individual; or

“(C) an identifiable individual engaging in sexually explicit conduct.

“(6) SEXUALLY EXPLICIT CONDUCT.—The term ‘sexually explicit conduct’ has the meaning given the term in subparagraphs (A) and (B) of section 2256(2) of title 18, United States Code.

“(b) RIGHT OF ACTION.—

“(1) IN GENERAL.—Except as provided in subsection (e), an individual who is the subject of an intimate digital depiction that is disclosed, in or affecting interstate or foreign commerce or using any means or facility of interstate or foreign commerce, without the consent of the individual, where such disclosure was made by a person who knows that, or recklessly disregards whether, the individual has not consented to such disclosure, may bring a civil ac-
tion against that person in an appropriate district
court of the United States for relief as set forth in
subsection (d).

“(2) RIGHTS ON BEHALF OF CERTAIN INDIVIDUALS.—In the case of an individual who have not at-
tained 18 years of age or are incompetent, incapacitated, or deceased, the legal guardian of the indi-
vidual or representative of the individual’s estate, another family member, or any other person ap-
pointed as suitable by the court, may assume the in-
dividual’s rights under this section, but in no event
shall the defendant be named as such representative
or guardian.

“(c) CONSENT.—For purposes of an action under
subsection (b)—

“(1) an individual’s consent to the creation of
the intimate digital depiction shall not establish that
the person consented to its disclosure; and

“(2) consent shall be deemed validly given only
if—

“(A) it is set forth in an agreement written
in plain language signed knowingly and volun-
tarily by the depicted individual; and

“(B) it includes a general description of
the intimate digital depiction and, if applicable,
the audiovisual work into which it will be incorporated.

“(d) RELIEF.—

“(1) IN GENERAL.—

“(A) DAMAGES.—In a civil action filed under this section, an individual may recover any of the following:

“(i) An amount equal to the monetary gain made by the defendant from the creation, development, or disclosure of the intimate digital depiction.

“(ii) Either of the following:

“(I) The actual damages sustained by the individual as a result of the intimate digital depiction, including damages for emotional distress.

“(II) Liquidated damages in the amount of $150,000.

“(iii) Punitive damages.

“(iv) The cost of the action, including reasonable attorney’s fees and other litigation costs reasonably incurred.

“(B) EQUITABLE RELIEF.—In a civil action filed under this section, a court may, in addition to any other relief available at law, order
equitable relief, including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease display or disclosure of the intimate digital depiction.

“(2) PRESERVATION OF ANONYMITY.—In ordering relief under this subsection, the court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym.

“(e) EXCEPTIONS.—An identifiable individual may not bring an action for relief under this section relating to—

“(1) a disclosure made in good faith—

“(A) to or by a law enforcement officer or agency in the course of reporting or investigating—

“(i) unlawful activity; or

“(ii) unsolicited or unwelcome conduct; or

“(B) as part of a legal proceeding;

“(2) a matter of legitimate public concern or public interest, except that it shall not be considered a matter of legitimate public interest or public concern solely because the depicted individual is a public figure; or
“(3) a disclosure reasonably intended to assist the identifiable individual.

“(f) IN CAMERA.—A court may authorize an in camera proceeding under this section.

“(g) DISCLAIMERS.—It shall not be a defense to an action under this section that there is a disclaimer stating that the intimate digital depiction of the depicted individual was unauthorized or that the depicted individual did not participate in the creation or development of the material.

“(h) LIMITATIONS.—For purposes of this section, a provider of an interactive computer service shall not be held liable on account of—

“(1) any action voluntarily taken in good faith to restrict access to or availability of intimate digital depictions; or

“(2) any action taken to enable or make available to information content providers or other persons the technical means to restrict access to intimate digital depictions.”.

SEC. 3. CRIMINAL ACTION.

(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended by inserting after section 2252C the following:
§ 2252D. Intimate digital depictions

(a) OFFENSE.—Whoever, in or affecting interstate or foreign commerce, discloses or threatens to disclose an intimate digital depiction—

“(1) with the intent to harass, annoy, threaten, alarm, or cause substantial harm to the finances or reputation of the depicted individual; or

“(2) with actual knowledge that, or reckless disregard for whether, such disclosure or threatened disclosure will cause physical, emotional, reputational, or economic harm to the depicted individual,

shall be punished as provided under subsection (b).

(b) PENALTY.—Any person who commits an offense under subsection (a) shall be—

“(1) fined under this title, imprisoned for not more than 2 years, or both; or

“(2) fined under this title, imprisoned for not more than 10 years, or both, in the case of a violation in which the creation, reproduction, or distribution of the intimate digital depiction could be reasonably expected to—

“(A) affect the conduct of any administrative, legislative, or judicial proceeding of a Federal, State, local, or Tribal government agency,
including the administration of an election or
the conduct of foreign relations; or

“(B) facilitate violence.

“(c) DISCLAIMERS.—It shall not be a defense to an
action under this section that there is a disclaimer stating
that the intimate digital depiction of the depicted indi-
vidual was unauthorized or that the depicted individual
did not participate in the creation or development of the
material.

“(d) LIMITATIONS.—For purposes of this section, a
provider of an interactive computer service shall not be
held liable on account of—

“(1) any action voluntarily taken in good faith
to restrict access to or availability of intimate digital
depictions; or

“(2) any action taken to enable or make avail-
able to information content providers or other per-
sons the technical means to restrict access to inti-
mate digital depictions.

“(e) DEFINITIONS.—In this section:

“(1) CONSENT.—The term ‘consent’ has the
meaning given such term in section 1309 of the Vio-
ence Against Women Act Reauthorization Act of
2022.
“(2) Depicted Individual.—The term ‘depicted individual’ means an individual who, as a result of digitization or by means of digital manipulation, appears in whole or in part in an intimate digital depiction and who is identifiable by virtue of the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature, or from information displayed in connection with the digital depiction.

“(3) Digital Depiction.—The term ‘digital depiction’ means a realistic visual depiction, as that term is defined in section 2256(5), of an individual that has been created or altered using digital manipulation.

“(4) Disclose.—The term ‘disclose’ has the meaning given such term in section 1309 of the Violence Against Women Act Reauthorization Act of 2022.

“(5) Intimate Digital Depiction.—The term ‘intimate digital depiction’ means a digital depiction of an individual that has been created or altered using digital manipulation and that depicts—

“(A) the uncovered genitals, pubic area, anus, or postpubescent female nipple of an identifiable individual;
“(B) the display or transfer of bodily sexual fluids—

“(i) onto any part of the body of an identifiable individual; or

“(ii) from the body of an identifiable individual; or

“(C) an identifiable individual engaging in sexually explicit conduct.

“(6) SEXUALLY EXPLICIT CONDUCT.—The term ‘sexually explicit conduct’ has the meaning given the term in subparagraphs (A) and (B) of section 2256(2).”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 110 of title 18, United States Code is amended by inserting after the item relating to section 2252C the following new item:

“2252D. Intimate digital depictions.”.