

SECTION 1. SHORT TITLE.

This Act may be cited as the “AI Accountability for Publishers Act”

SEC. 2. DEFINITIONS.

In this Act:

(1) APPROPRIATE, USE, COLLECT, PROCESS, SELL, OR OTHERWISE EXPLOIT.—The term “appropriate, use, collect, process, sell, or otherwise exploit” and its variants mean—

(A) the training of a generative artificial intelligence system that is sold, rented, licensed, or otherwise used by the provider of the generative artificial intelligence system; or

(B) the creation of a summary or other output, by a generative artificial intelligence system, using any covered content, including content that imitates, substitutes, replicates, or is substantially derived from the covered content.

(2) ARTIFICIAL INTELLIGENCE.—The term “artificial intelligence” has the meaning given that term in section 5002 of the National Artificial Intelligence Initiative Act of 2020 (15 U.S.C. 9401).

(3) ARTIFICIAL INTELLIGENCE SYSTEM.—The term “artificial intelligence system” means any data system, software, hardware, application, tool, model, algorithm, or utility that operates, in whole or in part, using artificial intelligence.

(4) BOT.—The term “bot” means a software program, including a web crawler, user agent, site search or retrieval applications, or other automated method of retrieving, fetching, indexing, or data mining content or data from a third-party source.

(5) COVERED CONTENT.—The term “covered content” means any information, data, or material, regardless of form or format, that identifies, relates to, describes, is generated by a person and is protected under Title 17 of the U.S. Code.

(6) DIGITAL PROPERTY.—The term “digital property” means any public-facing Internet Web site, page, or application; digital application, including a social network or publication; mobile Web site or application; video property; or video player.

(7) EXPRESS, PRIOR CONSENT.—The term “express, prior consent” means (i) a clear, affirmative act, made in advance of any appropriation, use, collection, processing, sale, or other exploitation of such person’s covered content, indicating a freely given, informed, and unambiguous consent to the specific appropriation, use, collection, processing, sale, or other exploitation of such person’s covered content; or (ii) the person who deploys a bot to exploit the covered content of a digital property accepts and complies with any licensing or access terms

provided or made available by such digital property governing the appropriation, use, collection, processing, sale, or other exploitation of such digital property's covered content (e.g., XML-based licensing terms embedded in such digital property's publicly-accessible file or equivalent protocol governing automated access, such as robots.txt). For the avoidance of doubt, a general grant of access or license rights to a digital property made pursuant to a digital property's terms of service (or similar contract) that does not specifically provide the unambiguous consent described in the foregoing subclause (i) shall not be deemed "express, prior consent" as used in this Act.

(8) GENERATIVE ARTIFICIAL INTELLIGENCE SYSTEM.—The term "generative artificial intelligence system" means an artificial intelligence system that is capable of generating text, video, images, audio, or other media based on prompts or other forms of data provided by a person.

(9) PERSON.—The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or other entity, including any government entity or unincorporated association of persons.

SEC. 3. Unjust Enrichment for the Unauthorized Use of Bots and Misuse of Covered Content.

(a) In General—Any person who, in affecting interstate or foreign commerce, deploys or controls a bot, or engages or otherwise causes a third party to deploy a bot, to exploit the covered content of a digital property, without express, prior consent, shall be unjustly enriched and be liable, if the interaction results in—

- (1) the creation, training, fine-tuning or operation of a generative artificial intelligence system;
- (2) the creation of a summary or other substitutive output of the covered content using a generative artificial intelligence system; or
- (3) the unauthorized use of covered content in violation of the digital property's terms of service or use.

(b) Federal Cause of Action—A person may bring a civil action in a district court of the United States against the controller or deployer of a bot, or a person that engages or otherwise causes a third party to deploy a bot, for a violation of Section 3(a) to obtain—

- (1) an amount equal to the greater of—
 - a. restitution of the reasonable value of the covered content or
 - b. lost profits of the plaintiff, including but not limited to those from the diversion of web traffic from the applicable digital property(ies);

- (2) disgorgement of any profits from the appropriation, use, collection, processing, sale, or any other exploitation of the covered content of the person as described in Section 3(a)
 - (3) injunctive relief; and
 - (4) reasonable attorney's fees and costs.
- (c) Treble Damages for Misrepresentation and Noncompliance in Automated Web Interactions— The deployer of a bot, or a person that engages or otherwise causes a third party to deploy a bot, in violation of Section 3(a) shall be liable to the owner of the covered content for treble damages if such person, whether willfully or negligently—
- (1) fails to accurately disclose the identity, nature, purpose, and operational scope of its bots to the digital property;
 - (2) conflates the function of a search bot with that of a scraping bot, or vice versa; or
 - (3) fails to comply with the directives and/or preference signals set forth in the digital property's publicly-accessible file or equivalent protocol governing automated access (e.g., robots.txt).
- (d) Affirmative Defense of Consent— It shall be an affirmative defense to a civil action under subsection (a) brought by or on behalf of a person whose covered content was appropriated, used, collected, processed, sold, or otherwise exploited if the defendant demonstrates express, prior consent for such appropriation, use, collection, processing, sale, or other exploitation of the covered content.
- (e) Invalid Ground for Consent—Consent to the appropriation, use, collection, processing, sale, or other exploitation of covered content shall not be deemed valid if such consent was obtained—
- (1) through coercion or deception;
 - (2) through a general terms of service or terms of use; or
 - (3) as a condition of using a product or service through which the appropriation, use, collection, processing, sale, or other exploitation of the covered content exceeds what is reasonably necessary to provide that product or service.

SEC. 4 – GENERAL PROVISIONS AND EXEMPTIONS

- (a) This Act shall supersede Title 17, U.S. Code §107, and shall preempt any state laws regarding intellectual property ownership.

- (b) Non-commercial academic research shall be exempt from liability under this Act if (i) the covered content is anonymized; and (ii) no monetization occurs.
- (c) Arbitration clauses that prevent any civil actions asserted under this Act shall be deemed unenforceable.
- (d) Individual users of an AI product or service using it in a manner consistent with the terms of use of that product or service shall not be liable for a violation of this Act.

SEC. 5 – EFFECTIVE DATE

This Act shall take effect 180 days after enactment.