

GETTY IMAGES MEMORANDUM IN OPPOSITION TO A.8155-B

Getty Images strongly opposes A.8155-B (the “Bill”) amending New York State’s civil rights law Section 50/51, which for more than 110 years has protected the rights of creators, content aggregators, the media and ultimately the public to freely communicate using content depicting persons except for the limited purposes of advertising and trade. This Bill for the first time grants a **broad and ambiguous** descensible right of publicity to anyone, both-living or dead, for 40 years after death, **regardless of whether the person was domiciled in New York**. Worse, the Bill specifically targets content aggregators and licensors, such as Getty Images, and creates liability if third parties use content in a manner not lawful, over which no company has control, but exempts individual photographers who rely upon the distribution and licensing of their content by those aggregators and licensors for licensing revenue, from the same liability. Content licensors and aggregators, like Getty Images, require the same exemption to avoid meritless and expensive litigation. As New York is the heart of the creative, media and publishing industries, such substantial changes to longstanding laws and industry practice should be carefully considered by the legislature to avoid serious economic, social and constitutional consequences. We urge you to vote **NO** on final passage. To do otherwise is reckless and presents significant constitutional, creative, economic, and multi-jurisdictional harm.

About Getty Images

Getty Images, with more than 400 employees in New York, is one of the most trusted and esteemed sources of visual content in the world. With over 200 million assets available through its industry-leading sites www.gettyimages.com and www.istock.com, Getty Images serves creative, business and media customers in almost 200 countries and is the first place people turn to discover, purchase and share powerful content from the world’s best photographers and videographers. Getty Images displays on its websites and offers for license the works of over 200,000 individual contributors (more than 10,000 from New York alone and many for whom platforms like Getty Images’ provide a sole source of income) and hundreds of Image Partners (other content aggregators), many of whom are themselves New York-based business, to provide comprehensive coverage of more than 130,000 news, sport and entertainment events, impactful creative imagery to communicate any commercial concept and the world’s deepest digital archive of historic photography. Among the NY corporations who are themselves content creators and whose content Getty Images distributes are Bloomberg News, CBS Photo Archive, the New York Post, the NY Daily News, LP, Condé Nast, Time, Inc., Major League Baseball Properties, Inc., Major League Soccer and NBA Entertainment. More than 48,000 New York businesses rely upon Getty Images to provide them with visual content. Getty Images customers include New York-based media companies, including some for whom we also distribute content, such as Condé Nast, Hearst, NBC, Fox News, ABC News, HBO, Viacom, NY Times, Wall Street Journal, NewsCorp, McGraw-Hill, BuzzFeed, Wenner Media, Refinery 29, Vice Media and Group Nine Media. It also includes New York-based advertising agencies such as MDC Partners, Omnicom Group, Interpublic Group of Companies (IPG) and Droga5. Getty Images also supplies content to professional sports leagues based in New York, including MLB, NBA and NHL. The New York brands Tiffany & Co., Harry Winston, Stuart Weitzman, Michael Kors and Ralph Lauren also source content from Getty Images. In addition, New York’s Chase Bank and Citigroup are also long-standing Getty Images customers. Every single one of these customers and partners, as well as photographers, will be subject to litigation and liability for the mere display of content, themselves or through Getty Images.

Harm to Content Licensing Industry, Media and Public

This proposed Bill will cause real economic and social harm to not only Getty Images but the entire content licensing industry (a multi-billion dollar industry worldwide) and the industries it serves. This Bill will result in meritless, expensive litigation and have a chilling effect on the creation, licensing and distribution of important visual and multimedia content. The content licensing industry must be able to **unambiguously display and offer content in a digital environment for licensing, using industry standard online licensing terms that will not result in litigation against the image licensor if an end user violates the license terms and uses an image in a manner not authorized**. This risk is real and not hypothetical. Claims have been brought in California under its ROP laws. Worse, the Bill specifically provides a clear exemption for individual photographers from third party misuse of content but starkly offers **no exemptions** for companies (even those distributing those same photographers’ content on the photographer’s behalf) for the same third-party misuse under the proposed Bill. Nor does the Bill provide any exemptions for Getty Images’ customer base to advertise any books, movies or television that they create that may depict individuals – making it impossible to create expressive works about athletes, political figures, musicians and actors. Further, the Bill permits photographers to display content, but does not permit “persons” to display in connection with transferring rights. This effectively means that the vast majority of photographers will be left with no platform upon which customers can access,

research, license or use the photographers' works because their distributors don't enjoy that same exemption. Getty Images has invested millions of dollars creating easy to use digital platforms to allow customers, including the media industry, to search for and license content using online licensing terms which benefit the thousands of individual creators whose work is licensed via these platforms. Similarly, its customers, photographers, and contributors have invested millions in the creation of systems that allow them to provide, ingest, display and access content as quickly and efficiently as possible. No one can control the activity of third parties in this digital environment, and Getty Images requires the same immunity as photographers for content licensed online. This Bill would result in immediate and irreparable harm not only to Getty Images and its 400 NY employees, but to the hundreds of thousands of photographers who rely upon it to provide a living, to the content aggregators who employ thousands of New Yorkers and who likewise rely on Getty Images to ensure the widest distribution of their content, and to the millions of customers in NY and globally who have no other outlet from whom to obtain the relevant content they need to meet the demands of their consumers.

Bill Will Only Increase Litigation and Chill Free Speech

This Bill effectively eviscerates an entire industry and the efficient transfer of and access to visual content, and will meaningfully undermine the free flow of ideas, expression and speech leaving citizens without access to the most relevant and important content to them. This Bill as drafted is flawed with ambiguity and uncertainty in its ill-conceived language. This seven-page Bill is fraught with errors too numerous to elaborate on. The only certainty is the litigation that will follow if it is enacted and the harm to New York businesses, individual creators globally and the public. As just one example, the Bill provides for both a right of privacy **and** a right of publicity for living persons without explanation on how to interpret this overlapping right. It flagrantly disregards 100 years of NY right of publicity law and introduces a post-mortem right, providing no guidance to courts on enforcement or interpretation against this body of law or in the context of global rights as most countries outside the US do not recognize a right of publicity. It creates a freely transferable property right where anyone in the world can merely come to New York to censor programs about them, without any other connection to the state. Most disturbingly, documentaries, television and motion picture biographies, articles, and commentary about athletes, political figures, musicians and actors would be off limits without prior written permission – the ultimate form of censorship. Further, the Bill restricts expressive works with a broad restriction on the use of digital replicas, for living and deceased actors, athletes and musicians which encompasses many digital images. This means that the use of archival images (Getty Images has more than 80 million available to its customers, many of which are not available elsewhere) would not be available to researchers, authors, historians and publishers for easy search, access, download and licensing, thus depriving photographers and their estates of meaningful revenue and the public access to enlightened and informed storytelling. And as only one more example of the fundamentally flawed drafting, the Bill introduces the concept of a use for “pornography”, with no definition of that term, and without the constitutional protections for speech.

To substantially expand the breadth of New York's statutory right of privacy without clear exemptions for all expressive uses including the display and licensing of content for such uses will have a crippling and chilling effect on expressive speech. **This Bill will result in fewer New York jobs, less income to New York residents and less revenue for the State. It would drive Getty Images and the media industry out of New York.**