



## New York State Broadcasters Association, Inc. Memo in Opposition to Right of Publicity Bill

### A. 8155-B

On behalf of the New York State Broadcasters Association, Inc. we must respectfully express our opposition to A. 8155-B. We opposed earlier versions of this legislation. Unfortunately, the new version of the bill contains many of the same flaws. The legislation will cause irreparable harm to our 450 member radio and television stations that serve communities throughout the Empire State, as well as the major broadcast networks. We have numerous concerns, but will highlight a few below.

### **NEW YORK BECOMES THE WORLD WIDE EPICENTER OF RIGHT OF PRIVACY LAWSUITS THEREBY CHILLING SPEECH**

An estate representing any deceased person anywhere in the world will have the ability to litigate against a New York broadcast station or network. Unlike other states, and current law, there is no requirement that the person bringing the lawsuit has to be domiciled in New York at the time of death. So long as the estate registers the name with the New York Secretary of State, it will have the right to litigate even though the deceased individual never set foot in New York. New York State becomes the world wide epicenter for post mortem right of publicity lawsuits.

New York is celebrated as the media capital of the world and the center of free speech for the entire country. It derives significant revenue from its media industries. This will no longer be the case if this bill is enacted. It will expose all New York media to lawsuits from around the globe.

***When they pass away, the estates of Kim Jong-un or Vladimir Putin will be able to register in New York, and threaten to sue any New York media outlet that uses their name, picture, voice, signature, portrait or digital reproduction without the estate's permission.***

Because the potential pool of plaintiffs may include thousands of estates from around the world, the chilling effect on free speech is massive.

## **THE BILL FUNDAMENTALLY ALTERS THE RIGHT OF PRIVACY IN NEW YORK**

The right of privacy in New York is governed by §50 and §51 of the NY Civil rights laws. The new version of the bill fundamentally changes New York law creating a right of privacy and a new right of publicity for the living. It also creates a new *post mortem* right of publicity. These profound changes in the law alter more than a century of legal precedent. THE LANGUAGE OF THIS BILL HAS NOT BEEN VETTED. There has never been a hearing on the language of this new bill. Legal experts such as Prof. Jennifer Rothman have raised serious problems with this most recent version. <https://www.rightofpublicityroadmap.com/news-commentary/new-york-right-publicity-bill-resurrected-again>

## **THE NEW “DIGITAL REPLICA” PROVISIONS THREATEN VIDEO AND AUDIO ENTERTAINMENT**

The legislation creates a new category of liability where an entity uses a “digital replica” of a living or deceased person without written consent. Digital replica is defined broadly and includes an individual likeness or voice that realistically depicts the likeness or voice of the individual being portrayed. The term “likeness” is not defined and is extremely broad. Moreover, liability for using a digital replica is not limited to where it is used for advertising or purpose of trade. To the contrary, the provision is intended to create liability when used for entertainment purposes. This fundamentally changes existing law and expands potential liability by orders of magnitude.

The bill creates new liability where a “digital replica” of a voice is used in a performance of musical work. This appears to create new liability for broadcasting digitally recorded, and digitally re-mastered music now heard on broadcast stations and other music platforms. Even in cases where broadcasters have obtained the necessary copyright licenses to broadcast music, every song played on the radio or any digital platform would now require the written consent from the performer. The failure to obtain such consent may result in a “collateral” attack on current licensing agreements under state law. Creating such a performance right is in direct conflict with Federal Copyright law.

Similar concerns exist for video content. Potential litigants from around the world could threaten to sue media entities in New York. For example, television biographies about athletes, political figures, musicians and actors would be off limits without written permission, under the provisions of the amended bill. Any fictional or non-fictional account of anyone could be subject to a civil action under the proposed amendments.

## **NEW YORK’S BROADCASTERS SHOULD BE NOTIFIED BEFORE LITIGATION BEGINS**

The legislation plays legal “gotcha” with local media companies in New York that pay taxes and provide employment throughout the state. The bill creates a pool of potential plaintiffs that is world-wide. It is impossible for a local media company to review every advertisement and program to see if they contain the name, likeness, portrait or voice of some person whose name is on a list compiled by the NY Secretary of State. Since the list is open to the entire world, it is likely to contain tens of thousands of names. Searching such a list for every program that is broadcast is an impossible burden. This is especially true for the hundreds of small radio and television stations across the state.

Radio and television broadcasters across New York take pride in serving their local communities. When there is a blizzard or a flood, we are there providing life-saving information. We are responsible for billions of dollars in economic activity and provide for employment for thousands of New Yorkers. We should not have to do business under a constant litigation threat from estates representing individuals that have never set foot in New York.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. J. Donovan", written over the typed name.

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