

Shutterstock, Inc.

Empire State Building
350 Fifth Avenue, 21st Floor
New York, NY 10118
1-866-663-3954 (US)
1-646-419-4452 (Int'l)

SHUTTERSTOCK, INC. MEMORANDUM IN OPPOSITION TO A 08155-B

Shutterstock, Inc. (“Shutterstock”), strongly opposes A.08155-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** descendible 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 licensors such as Shutterstock for the act of displaying and offering content depicting individuals for licensing, and further 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, like Shutterstock, require the same exemptions to license content in a digital environment 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 on this Bill or any similar bill. To do otherwise is reckless and presents significant constitutional, creative, economic, and multi-jurisdictional harm.

About Shutterstock

Founded in 2003 and headquartered in New York City, Shutterstock is a global marketplace for licensed imagery. Shutterstock’s marketplace helps businesses around the world license the photos, vectors, illustrations, video and music that they need for their communications. Shutterstock’s New York headquarters is the base for more than 500 employees, who support content creators and customers in relation to the more than 190 million creative assets available through the Shutterstock websites, including www.shutterstock.com. Shutterstock displays on its websites and offers for licensing content submitted by more than 400,000 contributors worldwide, many of those of whom are based in the United States, and specifically New York. Shutterstock has nearly 1.8 million active customers in 150 countries, including media, editorial, marketing, creative, production, and communications professionals. More than 30,000 of these customers are New York businesses that rely upon Shutterstock to provide them with visual content; a representative sample of such companies include the New York Times, Bloomberg, Business Insider, Forbes, Conde Nast, Hearst, Time, Inc., Viacom, Morgan Stanley, and Bloomingdales. Every single one of these customers and partners (among thousands of others), as well as photographers, will be subject to litigation and liability for the mere display of content, themselves or through Shutterstock.

Harm to Content Licensing Industry, Media and Public

This proposed Bill will cause real economic and social harm to the 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. We are also deeply concerned that the shortsightedness of the Bill will result in unintended but detrimental effects to freedom of speech, due to the crucial role visual content plays in promoting speech. The content licensing industry represented by Shutterstock 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 for the display or licensing of content or 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 against members based on right of publicity laws that do not offer clear exceptions for the display and licensing of content. This Bill does not sufficiently account for the fundamental premises upon which the business of content licensing functions. For example, the Bill specifically provides a clear exemption for individual photographers and permits them to display work for licensing and a safe harbor from third party misuse of content but starkly offers **no exemptions** for companies to display the same content for licensing or any safe harbor from the same third-party misuse. This completely disregards the role of content licensing agencies, which represent the vast majority of photographers and content creators in this digital age, robbing content creators from a means by which to license and disseminate their valuable content. This inconsistency specifically deprives the vast number of editorial, news and event photographers, who cannot obtain written consent when covering news, sports and events, of a digital platform upon which customers can access or license their works because their distributors do not enjoy that same exemptions. Content licensors, like Shutterstock, have invested millions of dollars creating easy to use digital platforms to allow the media industry to search for and license creator's content on a 24/7 basis using online licensing terms. This directly benefits the thousands of individual creators whose work is licensed via these platforms. No one can control the activity of third parties in this digital environment, and content licensors such as Shutterstock require the same immunity as photographers for content licensed online.

Shutterstock, among other content licensing agencies,, have offices in New York and collectively employ thousands of New Yorkers, and represent the creative works of many thousands of New York photographers, videographers and musicians. Shutterstock offers newsworthy content for licensing from worldwide sources, distribute sports content, and provide content depicting current events almost simultaneously as the events unfold to numerous news outlets. Publishers, cable companies, broadcasters, documentary film makers, television production companies, the movie industry and others all rely on content licensors such as Shutterstock for access to thousands of clips, stills and other content that are incorporated in their expressive products, whether it is to inform, entertain or educate. This Bill effectively challenges the legality of an entire industry and without access to content licensing platforms, the flow of engaging and informative visual and audiovisual content will dry-up and the public will be deprived of a visually rich culture.

Bill Will Only Increase Litigation and Chill Free Speech

This Bill as drafted is flawed due to a myopic understanding of the content licensing industry, and thus fraught with numerous errors. Its ambiguous and ill-conceived language will only encourage unnecessary litigation if it is enacted, which creators and media companies can ill afford and cause real economic harm to New York businesses, and 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 or how it affects the prior 100 years of NY right of publicity law. It introduces a post-mortem right, without limitation on domicile, making New York a forum for person in countries outside the US that 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, merely if the work was available in the state. Most disturbingly, it would limit television and motion picture biographies about athletes, political figures, musicians and actors without written permission. 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. The unfortunate outcome of this Bill would be a codification of censorship, a flagrant contradiction to the very freedoms the First Amendment was designed to protect.

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 Shutterstock and the media industry out of New York.**