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DMLA MEMORANDUM IN OPPOSITION, Assembly Bill No. A08155

The Digital Media Licensing Association (“DMLA”), strongly opposes A.08155, amending New York State’s civil rights law Section 50/51, which for 110 years has protected the first amendment rights of creators and the press to use visual imagery except for the limited purposes of advertising and trade. This amendment grants a **broad and ambiguous** descendible right of publicity to anyone for 40 years after death, regardless of whether the person was domiciled in New York.

About DMLA

DMLA is a trade association representing the interests of entities who license still and motion images to the media, among many other users. Its members represent the interests of thousands of photographers/videographers and the copyrights in millions of images by aggregating images on line and making them searchable and available for licensing. New York is home to many of DMLA’s members, including leading visual image providers such as Getty Images and Shutterstock, and all members, regardless of location or size, serve a crucial role in supplying publishers, media companies and advertisers located within New York with imagery that reflects our world, art and culture.

Harm to Image Licensing Industry, Media and Public

This proposed amendment will cause **real economic and social harm** to the image licensing industry (a multi-billion dollar industry worldwide) and the industries it serves and result in meritless litigation.

- . Amendment unconstitutionally deprives photographers and film owners the right to display and exploit their property and copyright interests in their still and motion images. **Bill does not unambiguously protect the ability to display and offer images for licensing using standard industry licensing terms that requires user to determine if permission is needed.**

Example: Corbis Corporation, an image library was sued two times under the California right of publicity law, for merely displaying images for potential licensing and sale in accordance with industry standard online licensing agreements.. See *Jones v. Corbis Corp.* <https://www.courtlistener.com/opinion/2176763/jones-v-corbis-corp/> and *Alberghetti v Corbis Corp* <https://www.courtlistener.com/opinion/2542614/alberghetti-v-corbis-corp/>.

- Amendment does not ambiguously permit photographers and their representatives to distribute and sell prints in violation of federal copyright law. Current NY law has been interpreted by NY Courts to permit the sale of prints as expressive works with full first amendment protection **without consent of the subject.**

Example Lawsuit filed in California against print on demand company for providing sports images to consumers alleging violation of CA ROP law. *Maloney v. T3Media, Inc., 94*



F.Supp.3d 1128 (2015). The 9th Circuit ultimately found CA ROP law was preempted by federal copyright act where the photograph is the product itself , <http://caselaw.findlaw.com/us-9th-circuit/1855434.html>). Note NY does not have an anti-SLAPP statute to prevent such frivolous suits.

In contrast New York privacy law has been interpreted to permit the sale of prints. (Foster v Svenson) http://www.courts.state.ny.us/reporter/3dseries/2015/2015_03068.htm

- Amendment limits the types of exempt uses to the same outdated 20th Century uses listed in the 1980s California right of publicity statute. The exempt uses exclude all the innovative apps, podcasts and interactive virtual reality platforms which use visual images to educate and inform the public and there is no broad language that protects yet unknown expressive uses.

Concern: New York, as the center of the media industry, has always erred in favor of protecting the First Amendment rights of those who own, license and publish images. To substantially expand the breadth of New York's statutory right of publicity without clear exemptions for all expressive uses will have a crippling and chilling effect on expressive speech.

For the above stated reasons, the members of DMLA strongly oppose 08155 in its current form.

Respectfully,

Nancy E Wolff

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