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Memorandum of Opposition A. 8155-b

The New York based MPA – The Association of Magazine Media (MPA) strongly opposes A. 8155-b that would establish a troubling and unnecessary right of publicity in New York. The legislation threatens the rights of creators, producers, and distributors of First Amendment protected material. This legislation would negatively impact the media industry and our readers, including MPA member publishing companies – the majority of which are headquartered in New York.

As the national trade association for the consumer magazine industry, MPA represents approximately 100 domestic magazine media companies with more than 900 national publications that span an enormous range of genres across print and digital media. The U.S. magazine media industry plays a prominent role in culture, society and the economy by fulfilling readers' desires for timely information and entertainment that appeal to a broad spectrum of personal interests. Our members connect more than 90 percent of all U.S. adults to the print and digital magazine titles they trust and value most. MPA has a long history of defending free speech and the First Amendment.

A. 8155-b Will Have a Chilling Effect on Free Speech

The new amendments are lengthy and require extensive legal analysis. An immediate concern with A. 8155-b is the overbroad coverage. For example, the bill would establish a descendible right of publicity to all individuals for 40 years after death, regardless of whether they are domiciled in New York, or are even a citizen of the United States. With no limits on jurisdiction, other than the work was available in New York, this legislation would essentially extend an open invitation to anyone in the world to pursue costly litigation in order to silence speech. New York would become a magnet for litigation, flooding an already overburdened court system.

Such a broad definition would have a chilling effect on First Amendment protected speech, risking New York's rich and diverse cultural resources and exposing the state's legal system to potential abuse. The establishment of a right of publicity in New York, particularly one that is so astoundingly broad in scope, is unnecessary and contradicts the state's long history of protecting free speech in law and principle.

New York is the Heart of the Media Industry

New York is the heart of the media industry and is home to a vast array of media, advertising and technology companies that A. 8155-b could negatively and irreparably impact. The magazine media industry in New York State has an estimated **22,000** employees who earn an estimated **\$3.5 billion** in annual wages. Additionally, the magazine industry generates an estimated **\$14.3 billion** in advertising revenue and an estimated **\$5 billion** in circulation revenue. A. 8155-b is particularly concerning for media companies, like magazine publishers, that are predominately headquartered in New York State, and will be the most vulnerable to lawsuits by non-New Yorkers litigating right of publicity claims. It is unfathomable that the Legislature would consider legislation that stands to



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inflict severe financial hardship on an industry with such significant economic contributions in the state.

Current Law Has Sufficed For a Century

New York has 100 years of case law that govern publicity rights, and plaintiffs have a long history of bringing and receiving financial awards for legitimate claims. This legislation is a solution in search of a problem. While the chilling effect on publishers of this vastly broadened statute is clear, the countervailing interest of deceased persons (including non-domiciliary persons) is absent. Who are the performers or artists or others who are disincentivized from creating a persona or developing a talent because their heirs will not be able to inherit their right of publicity? Before enacting legislation that would have a dramatic impact upon one of the historical pillars of New York's economy – the publishing industry, the Legislature should more carefully consider the cost-effectiveness of this bill.

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For the reasons outlined above, we urge the New York Legislature to oppose this harmful legislation. New York has historically been at the forefront of protecting the First Amendment and free speech and should remain so. A. 8155-b stands in direct contradiction to that historically strong position while causing great economic risk to the media industry and their employees.

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