



## DMLA MEMORANDUM IN OPPOSITION TO A.8155-B

The Digital Media Licensing Association (“DMLA”), 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** 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 members of DMLA for the act of displaying and offering content depicting individuals for licensing and creates liability if third parties use content in a manner not lawful, over which no company has control, but exempts individual photographers<sup>1</sup> (but not filmmakers or other visual artists) who rely upon the distribution and licensing of their content by those aggregators and licensors for licensing revenue, from the same liability. DMLA members 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.

### 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. The content licensing industry represented by DMLA members 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. The Bill lacks any comprehension of the business of content licensing and 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 inconsistency 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. DMLA members 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 DMLA members require the same immunity as photographers for content licensed online.

Members of DMLA, such as Getty Images, and Shutterstock, among others, 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. They offer newsworthy content for licensing from worldwide sources including the Associated Press, AFP, BBC and Reuters; distribute sports content from all the leagues and provide content depicting

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<sup>1</sup>The term Photographer is not defined in the Bill and may exclude many photographers who conduct business under corporations, and excludes all other film and visual artists. Many DMLA members are photographers and videographers whose corporations are in the business of online licensing either directly or through other distributors. These businesses are all at risk under this Bill.

current events almost simultaneously as the events unfold to news outlets such as the New York Times, Huffington Post, The New York Post, BuzzFeed, Vice to name just a few. Publishers, cable companies, broadcasters, documentary film makers, television production companies, the movie industry and others all rely on DMLA members 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 DMLA members' content, 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 and 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.

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 the members of DMLA as well as the media industry out of New York.

### **About DMLA**

DMLA is the leading trade association representing the interests of entities and individual creators who license still and motion images to publishers, the media, and advertisers and others. 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 New York publishers, media companies, documentary filmmakers and advertisers with imagery that reflects our world, art and culture.