

SYRACUSE UNIVERSITY
COLLEGE OF LAW



June 11, 2018

Senator John DeFrancisco (R), Syracuse
Albany , NY

Dear Senator DeFrancisco:

As a professor of law at Syracuse University College of Law, specializing in the field of intellectual property and technology commercialization, I am concerned with A08155B, which introduces amendments to N.Y. Civ. Rts. S. 50/51. While privacy rights are important for a healthy marketplace, expansion of such rights can lead to uncertainty and disturb a market balance for media companies, publishers, and private and public figures. I urge the State Assembly to carefully consider the amendments and its major deficiencies.

My principal concerns are with the following issues:

- Creation of a new property right designated as a “right of publicity” that would exist alongside the “right of privacy.” The new right of publicity would be a fully transferable property right, and would continue to exist 40 years past the individual’s death.
- Exemptions for an array of expressive works; however, those exemptions would apply only to the right of publicity (not to the right of privacy).
- Creation of new rights governing the use of “digital replicas” of actors, musical performers, and athletes. We believe the wording of these provisions is extremely problematic and could inhibit storytelling about actors, musical performers, and athletes.
- Creation of a new right intended to address the issue of “deepfakes” (porn videos where mainstream celebrities’ faces are digitally placed on the faces of porn actors without the celebrities’ consent). The provision governs uses in “pornographic work[s],” but the bill does not define that term, which we don’t believe has any accepted legal meaning. Also, there are no exceptions/limitations in the bill that would carve out news reporting, commentary, analysis, etc.
- The bill has no domicile requirement, which means that individuals from all over the world could bring lawsuits in NY, so long as some infringing act occurs in the state.

New York State offers a vibrant environment for creativity, media, journalism, and the arts. The proposed amendments will introduce uncertainty into this environment in unpredictable and potentially undesirable ways. Please do not hesitate to contact me at sghosh01@syr.edu if there are any further questions.

Respectfully,

Shubha Ghosh, Crandall Melvin Professor of Law
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