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Dear Senators and Assembly Members:

I am a Professor of Law at St. John's University, and the Director of the St. John's Intellectual Property Law Center. I am writing to express concern over recent developments regarding Assembly Bill A08155-A and the analogous Senate Bill S05857-A, which would amend the Civil Rights Law to do away with New York's long-standing privacy tort and replace it with a poorly framed right of publicity. In short, the current version of these bills will do significant harm to New York's economy and to New Yorkers. I encourage the Senate and Assembly to pause and take input from intellectual property experts and other stakeholders on ways to improve the bills, and I offer the resources of the St. John's Intellectual Property Law Center to facilitate that effort.

As originally drafted, A08155/S05857 was a significant expansion of the tort claims available in New York, creating an alienable right of publicity that survives the death of the person claiming it. It is not clear that this expansion of private tort claims against those who engage in expression concerning well-known individuals is warranted, as such claims often serve to chill protected expression and increase costs and burdens on the content industries that are a significant contributor to the economy of our State. Moreover, the scope of the right created in A08155/S05857 is troubling, for reasons that have been brought to your attention in the [June 8, 2017 letter of Professor Jennifer Rothman](#), the nation's foremost authority on the right of publicity. Even if this were not the case, the June 14, 2017 amendments to the bill make it a far worse deal for New Yorkers and for our State's economy.

The amendments to the bill text posted this past Wednesday, June 14, significantly increase the dangers of A08155-A/S05857-A to New York's content industries, and to the public at large. In particular, new Section 51-2(d), on Page 6 lines 11-17 of the current version of the bill, would subject a "commercial use" that "replicates the professional performance or activities rendered by an individual" to the bill's new tort claims, "where the replication is inextricably intertwined with the right of publicity of such individual." At worst, this language contradicts Sections 51-2(a)-(b) of the bill and eviscerates any protections for use of an individual's likeness in news reporting, commentary, criticism, or expressive works—almost all of which are at least arguably "commercial." It could subject anyone who posts an image of an individual on social media, pokes fun at an individual in a comedy sketch, or criticizes an individual in an editorial, to a costly lawsuit by the disgruntled target of the activity. At best, this language will generate years of costly litigation against

firms and individuals that are vitally important to New York's economy and our democracy—including journalists, publishers, artists, filmmakers, broadcasters, and activists. The mere threat of such litigation may significantly deter such individuals and businesses from engaging in their important work (or from engaging in that work here in New York). The Legislature should not subject the citizens and businesses of New York to the risks of such vexatious litigation.

The Senate and Assembly appear to be heeding poor advice on the text of A08155-A/S05857-A, and rushing headlong into legislative action that will increase uncertainty and litigation and decrease the ability of New York's vibrant content industry and of the public at large to engage in protected and vitally important expression on matters of public interest. I encourage Senators and Assembly Members to bring this bill back to committee where a more measured approach can be taken. Indeed, I would be happy to offer the St. John's Intellectual Property Law Center as a forum for collecting diverse views and expertise on New York's privacy torts and the right of publicity, in the hopes of addressing whatever concerns legislators have with the current text of Section 50 of the Civil Rights Law. In particular, to the extent that the current activity around A08155-A/S05857-A is a response to the recent Third Department ruling in *Porco v. Lifetime Entertainment Services, LLC*, 2017 NY Slip Op 01421, I would be happy to work with legislators and stakeholders on a narrower and more appropriate legislative response to any perceived error in that opinion.

Sincerely,



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