

STATE OF NEW YORK

8391

2025-2026 Regular Sessions

IN SENATE

June 6, 2025

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil rights law, in relation to the right of publicity

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 1, 2, 3, 6, 9 and 10 of section 50-f of the civil rights law, subdivisions 1, 2, 3, 6 and 9 as added by chapter 304 of the laws of 2020 and subparagraph (v) of paragraph d of subdivision 2 and subdivision 10 as added by chapter 709 of the laws of 2022, are amended to read as follows:

1. For purposes of this section:

a. "deceased performer" means a deceased ~~[natural person]~~ personality domiciled in this state at the time of death who, for gain or livelihood, was regularly engaged in acting, singing, dancing, or playing a musical instrument.

b. "deceased personality" means any deceased natural person domiciled in this state at the time of death whose name, voice, signature, photograph, or likeness has commercial value at the time of ~~[his or her]~~ such natural person's death, or because of ~~[his or her]~~ such natural person's death, whether or not during the lifetime of that natural person the person used ~~[his or her]~~ such natural person's name, voice, signature, photograph, or likeness on or in products, merchandise, or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services.

c. "digital replica" means a newly created, ~~[original,~~ computer-generated, highly realistic electronic ~~[performance by an individual in a separate and newly created, original expressive sound recording or audiovisual work in which the individual did not actually perform, that is so realistic that a reasonable observer would believe it is a performance by the individual being portrayed and no other individual]~~ repre-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets ~~[-]~~ is old law to be omitted.

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1 sentation that is readily identifiable as the voice or visual likeness
2 of an individual that is embodied in a sound recording, image, audiovis-
3 ual work, including an audiovisual work that does not have any accompa-
4 nying sounds, or transmission in which: (i) the actual individual did
5 not actually perform or appear; or (ii) the actual individual did
6 perform or appear, but the fundamental character of the performance or
7 appearance has been materially altered. A digital replica does not
8 include the electronic reproduction, [~~computer generated or other~~
9 ~~digital remastering of an expressive sound recording or audiovisual work~~
10 ~~consisting of an individual's original or recorded performance, nor the~~
11 ~~making or duplication of another recording that consists entirely of the~~
12 ~~independent fixation of other sounds, even if such sounds imitate or~~
13 ~~simulate the voice of the individual] use of a sample of one sound
14 recording or audiovisual work into another, remixing, mastering, or
15 digital remastering of a sound recording or audiovisual work authorized
16 by the copyright holder.~~

17 d. "sound recordings" are works that result from the fixation of a
18 series of musical, spoken, or other sounds, but not including the sounds
19 accompanying a motion picture or other audiovisual work, regardless of
20 the nature of the material objects, such as disks, tapes, or other
21 phonorecords, in which they are embodied.

22 2. a. Any person who uses a deceased personality's name, voice, signa-
23 ture, photograph, or likeness, in any manner, on or in products,
24 merchandise, or goods, or for purposes of advertising or selling, or
25 soliciting purchases of, products, merchandise, goods, or services,
26 without prior consent from the person or persons specified in subdivi-
27 sion four of this section, shall be liable for any damages sustained by
28 the person or persons injured as a result thereof.

29 b. Any person who uses a deceased performer's digital replica in [~~a~~
30 ~~scripted audiovisual work as a fictional character or for the live~~
31 ~~performance of a musical work] an audiovisual work, sound recording, or
32 for the live performance of a musical work, with knowledge that the use
33 was of a digital replica and was not authorized by the applicable right
34 holder, shall be liable for any damages sustained by the person or
35 persons injured as a result thereof if the use occurs without prior
36 consent from the person or persons in subdivision four of this section[~~,~~
37 ~~if the use is likely to deceive the public into thinking it was author-~~
38 ~~ized by the person or persons specified in subdivision four of this~~
39 ~~section. A use shall not be considered likely to deceive the public into~~
40 ~~thinking it was authorized by the person or persons specified in subdivi-~~
41 ~~vision four of this section if the person making such use provides a~~
42 ~~conspicuous disclaimer in the credits of the scripted audiovisual work,~~
43 ~~and in any related advertisement in which the digital replica appears,~~
44 ~~stating that the use of the digital replica has not been authorized by~~
45 ~~the person or persons specified in subdivision four of this section].~~~~

46 c. In any action brought under this section:

47 i. the person who violated the section shall be liable to the injured
48 party or parties in an amount equal to the greater of two thousand
49 dollars or the compensatory damages suffered by the injured party or
50 parties, as a result of the unauthorized use, and any profits from the
51 unauthorized use that are attributable to such use and are not taken
52 into account in computing the compensatory damages.

53 ii. in establishing profits under this subdivision, the injured party
54 or parties shall be required to present proof only of the gross revenue
55 attributable to the unauthorized use, and the person who violated this

1 section is required to prove [~~his or her~~] such person's deductible
2 expenses.

3 iii. punitive damages may also be awarded to the injured party or
4 parties.

5 d. For purposes of this subdivision:

6 i. it shall not be a violation of paragraph a of this subdivision if
7 the work is a play, book, magazine, newspaper, or other literary work;
8 musical work or composition; work of art or other visual work; work of
9 political, public interest, educational or newsworthy value, including
10 comment, criticism, parody or satire; audio or audiovisual work, radio
11 or television program, if it is fictional or nonfictional entertainment;
12 or an advertisement or commercial announcement for any of the foregoing
13 works.

14 ii. it shall not be a violation of paragraph b of this subdivision if
15 the work is of parody, satire, commentary, or criticism; works of poli-
16 tical or newsworthy value, or similar works, such as documentaries,
17 docudramas, or historical or biographical works, [~~regardless of the~~]
18 including some degree of fictionalization; a representation of a
19 deceased performer as [~~himself or herself~~] themselves, [~~regardless of the~~]
20 including some degree of fictionalization, except in a live performance
21 of a musical work; de minimis or incidental; or an advertisement or
22 commercial announcement for any of the foregoing works.

23 iii. it shall not be a violation of this section if the use of a name,
24 voice, signature, photograph, or likeness occurs in connection with any
25 news, public affairs, or sports program or account, regardless of
26 format, medium or means of transmission, or any political campaign.

27 iv. it shall not be a violation of this section if the use is of a
28 name, voice, signature, photograph, or likeness in a commercial medium
29 solely because the material containing the use is commercially sponsored
30 or contains paid advertising or product placement, or includes within it
31 a use in connection with a product, article of merchandise, good, or
32 service. Rather, it shall be a question of fact whether or not the use
33 of the deceased personality's name, voice, signature, photograph, or
34 likeness was so directly connected with the commercial sponsorship or
35 with the paid advertising or product placement as to constitute a use
36 for which consent is required under this subdivision.

37 v. works identified pursuant to this paragraph shall not violate this
38 section, regardless of the medium or means of transmission.

39 e. In relation to a violation of paragraph a of this subdivision, if a
40 work that is protected under paragraph d of this subdivision includes
41 within it a use in connection with a product, article of merchandise,
42 good, or service, this use shall not be exempt under paragraph d of this
43 subdivision, notwithstanding the unprotected use's inclusion in a work
44 otherwise exempt under paragraph d of this subdivision, if the claimant
45 proves that this use is so directly connected with a product, article of
46 merchandise, good, or service as to constitute an act of advertising,
47 selling, or soliciting purchases of that product, article of merchan-
48 dise, good, or service by the deceased personality without prior consent
49 for the use under paragraph a of this subdivision from the person or
50 persons specified in subdivision four of this section.

51 3. The rights recognized under this section are property rights, free-
52 ly transferable or descendible, in whole or in part, by contract,
53 license, gift, or by means of any trust or any other testamentary
54 instrument. In the absence of an express transfer in a testamentary
55 instrument of the deceased personality's rights in [~~his or her~~] such
56 deceased personality's name, voice, signature, photograph, or likeness,

1 a provision in the testamentary instrument that provides for the dispo-
2 sition of the residue of the deceased personality's assets shall be
3 effective to transfer the rights recognized under this section in
4 accordance with the terms of that provision. The rights established by
5 this section shall also be freely transferable or descendible by
6 contract, license, gift, trust, or any other testamentary instrument by
7 any subsequent owner of the deceased personality's rights as recognized
8 by this section. Nothing in this section shall be construed to render
9 invalid or unenforceable any contract entered into by a deceased person-
10 ality during [~~his or her~~] such deceased personality's lifetime by which
11 the deceased personality assigned the rights, in whole or in part, to
12 use [~~his or her~~] such deceased personality's name, voice, signature,
13 photograph, or likeness.

14 6. If any deceased personality does not transfer [~~his or her~~] such
15 deceased personality's rights under this section by contract, or by
16 means of a trust or testamentary instrument, and there are no surviving
17 persons as described in subdivision five of this section, then the
18 rights set forth in subdivision two of this section shall terminate.

19 9. Nothing in this section shall apply to the owners or employees of
20 any medium used for advertising, including, but not limited to, newspa-
21 pers, magazines, radio and television networks and stations, streaming
22 services, cable television systems, billboards, and transit advertise-
23 ments, by whom any advertisement or solicitation in violation of this
24 section is published or disseminated, unless it is established that the
25 owners or employees had actual knowledge by prior notification of the
26 unauthorized use of the deceased performer's digital replica or deceased
27 personality's name, voice, signature, photograph, or likeness as prohib-
28 ited by this section.

29 10. Nothing in this section shall apply to a person that offers a
30 service that displays, offers for sale or license, sells or licenses a
31 work of art or other visual work, or audiovisual work, to a user,
32 provided the terms of such sale or license do not authorize such user to
33 engage in acts that constitute a violation of this section, unless it is
34 established that the person received a notice from the successor in
35 interest of the deceased performer's digital replica rights based on a
36 good faith belief that the display, offer for sale or license of the
37 digital replica on the service is not authorized by the applicable right
38 holder or the law, and the person has not removed the work containing
39 the digital replica as soon as is technically and practically feasible.

40 § 2. This act shall take effect immediately.