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Two Newly Enacted New York Laws Will Regulate Certain AI-Generated Images

Executive Summary

- **What’s new:** New York has enacted two laws that will impact the use of AI-generated human images. The first requires a conspicuous disclosure where synthetic performers are used in advertising, and the second expands the right of publicity for deceased personalities to encompass the use of digital replicas for commercial purposes.
- **Why it matters:** The new laws will make the public more aware of when AI is being used to generate images, and will provide protection against the unauthorized use of digital replicas of the deceased. Violations can result in fines and damages.
- **What to do next:** Businesses that advertise in New York will want to review their practices, including those of any third parties that create ads for them, to ensure compliance with the new disclosure requirements. Those using, or considering the use of, digital replicas of the deceased will want to make sure they obtain the requisite consents.

Use of Synthetic Performers in Advertising

Scope and Applicability

An amendment to General Business Law (S. 8420) applies to any person or entity that produces or creates advertising content. If such advertisements feature a “synthetic performer” — defined as a digitally created asset using generative AI or software algorithms intended to create the impression of a human performer not recognizable as any identifiable natural person — the advertiser must conspicuously disclose the use of a synthetic performer, provided the advertiser has actual knowledge of its inclusion. The law does not specify the form (*i.e.*, language, placement, size) of the required disclosure.

Disclosure Requirements and Penalties

Failure to comply with the disclosure requirement results in a civil penalty of \$1,000 “for a first violation and \$5,000 for subsequent violations.”

Exemptions and Limitations

The law provides several exemptions:

- **Expressive works.** Advertisements and promotional materials for expressive works (*e.g.*, movies, television programs and video games) are exempt, provided the use of synthetic performers in the advertisement is consistent with their use in the work itself.

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- **Audio advertisements.** The law does not apply to audio-only advertisements.
- **Language translation.** The use of AI solely for language translation of a human performer does not trigger the disclosure requirement, as such performance rights are already governed by separate right of publicity laws.
- **Media liability.** The law does not apply to media outlets or platforms (e.g., newspapers, magazines, television networks, streaming services, billboards) that publish or disseminate advertisements that violate the disclosure requirement. The law also does not affect the protections conferred by Section 230 for interactive computer services regarding third-party content.

Looking Ahead

The law goes into effect 180 days after enactment.¹ But, given the long lead time to create advertising content, advertisers and businesses operating in New York should promptly review their advertising content and production processes to identify the use of synthetic performers and implement appropriate disclosure mechanisms. Advertisers will also want to confirm that any third party advertising or creative agencies they are using are disclosing the use of any synthetic performers and including the appropriate disclosures. Compliance will be essential to avoid civil penalties and ensure transparency in AI-generated advertising content.

Right of Publicity Protections for Deceased Personalities

Overview of the Amendment

Scope and Applicability

The new measure (S. 8882), which amends New York's Civil Rights Law, applies to "deceased personalities" — defined as deceased natural persons domiciled in New York at the time of death whose name, voice, signature, photograph or likeness had commercial value at death or gained such value because of their death. The law also covers "deceased performers," specifically those who were regularly engaged in acting, singing, dancing or playing a musical instrument for gain or livelihood.

The amendment also introduces a revised definition of "digital replica," which now encompasses computer-generated, electronic representations that are readily identifiable as the voice or visual

likeness of an individual in sound recordings, images, audiovisual works, or transmissions where the actual individual did not perform or where the performance has been materially altered. The law excludes certain authorized uses, such as remixing or digital remastering by the copyright holder.

Liability for Unauthorized Use

Any person who uses a deceased personality's name, voice, signature, photograph or likeness for commercial purposes without prior consent from the specified rights holders is liable for damages. The law extends liability to unauthorized use of a deceased performer's digital replica in audiovisual works, sound recordings or live musical performances, provided the user knew the use was unauthorized. Whether a use is for a commercial purpose is a question of fact as to whether the use is directly connected to advertising or product placement requiring consent.

Damages include the greater of \$2,000 or actual compensatory damages, plus attributable profits and potential punitive damages.

Exceptions and Exemptions

The law is directed to commercial use, and therefore provides several exceptions, including:

- Use in literary, artistic or newsworthy works, including parody, satire, commentary, criticism and entertainment programs.
- Use in documentaries, docudramas, historical or biographical works, and certain representations of deceased performers, except in live musical performances.
- Use in news, public affairs or sports programs, or political campaigns.

Limitations on Liability for Media

Media companies are not liable for publishing or disseminating unauthorized uses unless they had actual knowledge of the violation.

Looking Ahead

The amendment is effective immediately. Entities involved in the creation, distribution, or commercialization of content featuring deceased personalities should promptly assess their practices to ensure compliance with the updated law, particularly regarding digital replicas and consent requirements.

¹ The law was signed by Governor Hochul on December 11, 2025, which should mean an effective date of June 9, 2026.

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Potential Federal Challenge

Both New York laws could possibly face federal opposition following President Trump's December 11, 2025, executive order, which seeks to ensure there is a unified, minimally burdensome national AI regulatory framework. See our December 15, 2025, client alert "[White House Launches National Framework Seeking to Preempt State AI Regulation](#)." Although the executive order

directs the Department of Justice to challenge laws that are contrary to the executive order's goals, the administration may consider the protection of name, image and likeness rights, or a requirement to disclose the use of a synthetic performer in advertising, to fall outside the scope of the executive order mandate.

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