

New York legislation requires disclosure on AI-generated performers in advertising and strengthens post-mortem publicity rights

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On December 11, 2025, New York Governor Kathy Hochul signed S.8420-A/A.8887-B into law, establishing disclosure requirements for advertisements that include AI-generated synthetic performers. The legislation requires individuals who produce or create advertisements to disclose the use of synthetic performers in publications and advertising materials and will take effect on June 9, 2026.

This legislation applies to any usage of synthetic performers in advertisements distributed to New York audiences, regardless of whether the advertiser is located outside of the state.

The law establishes new disclosure requirements for advertising, making New York the first state in the nation to require advertisers to clearly identify when an advertisement includes an AI-generated synthetic performer.

Governor Hochul also signed S.8391/A.8882, which expands New York's Civil Rights Law § 50-f post-mortem right of publicity. Under this legislation, heirs or executors must provide consent before a deceased individual's name, image, or likeness may be used for commercial purposes, including the commercial use of a vocal or visual digital replica. This legislation became effective immediately upon enactment on December 11, 2025. It should be noted that this legislation is taking effect following a December 11, 2025, Executive Order from the White House seeking to discourage and review state-level legislation regulating artificial intelligence matters.

Disclosure of synthetic performers

Artificial intelligence is increasingly used across social media platforms and digital advertising to promote products and

drive consumer engagement. While these technological advances support greater creativity, efficiency, and innovation, they also raise concerns about consumer deception, particularly when audiences cannot easily distinguish between real individuals and AI-generated content.

In response to these concerns, New York enacted Legislation S.8420-A/A.8887-B, amending § 296-b of the New York General Business Law. The legislation introduces definitions for “*artificial intelligence*” and “*generative artificial intelligence*” and defines a “*synthetic performer*” as a digital asset that is created, reproduced, or modified by computer using generative AI or a software algorithm and that is intended to give the impression of an audio, audiovisual, and/or visual performance by a human performer.

Building on these definitions, the law establishes new disclosure requirements for advertising, making New York the first state in the nation to require advertisers to clearly identify when an advertisement includes an AI-generated synthetic performer. These disclosures are intended to protect consumers and promote transparency by ensuring that viewers understand whether the media they are consuming features authentic human performers or AI-generated people.

This legislation reflects a broader industry trend toward transparency in AI-generated media. Major platforms such as TikTok, Instagram, and YouTube have already implemented or proposed their own disclosure requirements, signaling increased scrutiny of synthetic content across the digital ecosystem.

Exemptions

The disclosure requirements do not apply to:

- Advertisements or promotional materials for expressive works, including motion pictures, television programs, streaming content, documentaries, video games, or similar audiovisual works, provided the synthetic performer is used in the same manner as in the underlying work.
- Audio-only advertisements.

- Advertisements in which artificial intelligence is used solely to translate the language of a human performer.

In addition, the statute does not impose liability on media outlets or advertising platforms, such as newspapers, magazines, television networks, streaming services, cable systems, billboards, or transit advertisers, for publishing or disseminating advertisements that do not comply with these requirements.

Expansion of post-mortem right of publicity

As evolving technologies enable new and more immersive forms of digital interaction, creators have used deceased performers' names, images, and likenesses for commercial purposes. While such uses may expand market reach, the commercial exploitation of a deceased performer's name, voice, image, or likeness without the consent of heirs or other authorized rightsholders raises significant legal, ethical, and authenticity concerns under New York's right of publicity framework.

The right of publicity protects an individual's ability to control the commercial use of their name, image, voice, likeness, and other indicia of identity. Under New York law, this right survives death and generally requires the consent of a deceased individual's heirs or authorized representatives for any commercial use of the individual's identity.

The commercial exploitation of a deceased performer's name, voice, image, or likeness without the consent of heirs or other authorized rightsholders raises significant legal, ethical, and authenticity concerns under New York's right of publicity framework.

Pursuant to New York Civil Rights Law § 50-f, the post-mortem right of publicity is intended to prevent the unauthorized commercial use and exploitation of a deceased performer's or deceased personality's identity.

A "deceased performer" is defined as a deceased personality who, during life, was regularly engaged in acting, singing, dancing, or playing a musical instrument. A "deceased personality" is defined as a deceased natural person who was domiciled in New York at the time of death and whose name,

voice, signature, photograph, or likeness has commercial value.

The enactment of Legislation S.8391/A.8882 further amends and strengthens Civil Rights Law § 50-f by expanding the definition of a "digital replica." Under the prior statute, a "digital replica" was defined as a newly created, original, computer-generated electronic performance by an individual, embodied in an original sound recording or audiovisual work in which the individual did not perform, but that is so realistic that a reasonable observer would believe it to be a performance by that individual.

The statute now defines a digital replica as a "highly realistic and readily identifiable representation of an individual's voice or visual likeness embodied in a sound recording, image, audiovisual work (including silent audiovisual works), or transmission, where the individual did not actually perform or appear, or where the individual's performance or appearance has been materially altered."

This expanded definition is intended to safeguard the legacies of deceased individuals and address the trend of deep-fakes and digital cloning technologies.

Exemptions

The statute provides that consent is not required for the following categories of use:

- Expressive works, including plays, books, magazines, newspapers, music, works of art, and other literary or visual works.
- Entertainment content, whether fictional or nonfictional, such as films, television programs, radio programs, and other audio or audiovisual works, as well as advertisements promoting those works.
- Newsworthy and public interest uses, including news reporting, public affairs programming, political content, sports coverage, commentary, criticism, parody, and satire.
- Documentary, historical, biographical, docudrama, or similar works, even if they include some degree of fictionalization.
- Incidental or de minimis uses that are minor or peripheral.
- Political campaigns and related materials, regardless of format or medium.

These legislative developments underscore New York's effort to regulate the commercial use of artificial intelligence and safeguard the legacies of deceased individuals. Advertisers, companies, and publishers should carefully evaluate their related policies and practices to ensure compliance with the state's disclosure obligations and its postmortem right of publicity requirements.

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