



new york state legislature's preliminary response to ai: disclosure of "synthetic performers" in advertising and expanded prohibitions on "digital replicas" of deceased performers

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Largely in response to the proliferation of content generated by artificial intelligence, including use of AI to depict deceased individuals, on December 11, 2025, Governor Kathy Hochul signed two bills into law. The first requires disclosure of AI-generated "synthetic performers" when used in advertising (other than in connection with expressive works). The second amends the already existing prohibitions on unauthorized digital replicas of deceased performers to have broader application. Governor Hochul called the laws "common sense" to set a "clear standard that keeps with technology, while protecting artists and consumers long after the credits roll."^[1] The bills' supporters' partnered with SAG-AFTRA to shepherd the bills through the legislature. Each statute becomes the first of its kind in the United States.

Disclosure of Synthetic Performers

Background

The now-passed bill amended General Business Law § 396-b, which had narrowly provided that persons who make certain false statements regarding advertising would be guilty of a misdemeanor. The amendment inserts additional provisions that impose a disclosure requirement of synthetic performers in advertising and provides for civil penalties for a violation. The "Justification" section of the bill states that "[w]ithout notice that the content one is viewing is not real, synthetic performers and manipulated media contribute to a false news narrative and undermine one's ability to accurately distill fact from

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fiction."^[2] The new law will go into effect June 9, 2026.

Key Provisions & Requirements

General Business Law § 396-b now requires that any person that who "produces or creates an advertisement" for any commercial purpose "in any medium or media" must "conspicuously disclose in such advertisement that a synthetic performer is in such advertisement" where the person has actual knowledge of the use of the synthetic performer in the advertisement. Importantly, the statute exempts from the disclosure requirement advertisements and promotional materials for expressive works including but not limited to "motion pictures, television programs, streaming content, documentaries, video games, or other similar audio visual works" where the use of the synthetic performer in the advertisement is "consistent with its use in the expressive work." Violations of the disclosure requirement will result in an initial \$1,000 civil penalty for the first violation followed by \$5,000 for any subsequent violations. The statute does not provide for a private cause of action.

A "synthetic performer" is broadly defined as a "digitally created asset created, reproduced, or modified by computer, using generative artificial intelligence or a software algorithm, that is intended to create the impression that the asset is engaging in an audiovisual and/or visual performance of a human performer who is not recognizable as any identifiable natural performer." The law in turn includes a single, similarly broad, definition for "artificial intelligence," "artificial intelligence technology," and "AI" stating it "includes but is not limited to systems that use machine learning, large language model, natural language processing, and computer vision technologies, including generative artificial intelligence." "Generative artificial intelligence" also has a separate definition, which is again expansive: "a class of artificial intelligence models that are self-supervised and emulate the structure and characteristics of input data to generate derived synthetic content, including, but not limited to, images, videos, audio, text, and other digital content."

The law specifically notes that it does not limit, reduce, or enlarge any rights under Civil Rights Law §§ 50, 50-f, or 51 having to do with rights of privacy and actions arising thereunder or protections arising under 47 U.S.C. § 230 for interactive computer services.

Expanded Prohibitions on Use of Digital Replicas of Deceased Performers

Background

The legislature also separately amended the above-referenced Civil Rights Law § 50-f regarding posthumous rights. This section of the Civil Rights Law, effective since May 2021, had already provided for a private cause of action related to unauthorized uses of the likeness of a "deceased performer" domiciled in New York at the time such person's death when that person was "regularly engaged in acting, singing, dancing, or playing a musical instrument." The statute creates liability for certain unauthorized uses of the deceased performer's likeness. The amendments primarily focused on expanding the circumstances for use of "digital replicas" that will give rise to liability. These amendments were effective as of the date of signing by Governor Hochul on December 11, 2025.^[3]



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Key Amendments & Provisions

The first of the key amendments to Civil Rights Law § 50-f was to expand the definition of "digital replica" found in Section (1)(c) of the statute. Previously, the definition had been much narrower defining "digital replica" as an "original ... electronic performance ... so realistic that a reasonable observer would believe it is a performance being portrayed and no other individual." The definition is now much broader, stating only that the replica must be "highly realistic" and "readily identifiable" as the individual. The full definition now reads: "digital replica' means a newly created, computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that is embodied in a sound recording, image, audiovisual work, including an audiovisual work that does not have any accompanying sounds, or transmission in which: (i) the actual individual did not actually perform or appear; or (ii) the actual individual did perform or appear, but the fundamental character of the performance or appearance has been materially altered." This would seem to cover a much broader set of uses. However, exempted from the digital replica definition is the use of a "sample of one sound recording or audiovisual work into another sound recording or audiovisual work authorized by the copyright holder."

The second of the key amendments was to the circumstances giving rise to liability in Section (2)(b). The law creates liability for use of a digital replica without consent of the person or persons to whom the right of consent, or portion thereof, has been transferred. This language remains unchanged with the amendments. Previously, the law had specified that such uses would only be actionable where the use is "likely to deceive the public into thinking it was authorized" and that using a "conspicuous disclaimer" would cause a use to *not* be considered likely to deceive the public in this way. The amendments removed the likelihood-of-deception requirement and the related disclaimer exemption. Thus, a plaintiff now need only show the digital replica had not been authorized.

Moreover, the old Section (2)(b) had limited the actionable uses to those "in a scripted audiovisual work as a fictional character or for the live performance of a musical work." The amendment expands actionable conduct to use in "an audiovisual work, sound recording, or for the live performance of a musical work, with knowledge that the use was of a digital replica and was not authorized by the applicable right holder[.]"

Civil Rights Law § 50-f continues to allow for recovery of the greater of two thousand dollars or compensatory damages suffered by the injured parties, along with any profits attributable to the unauthorized use and not taken into account in computing compensatory damages, as well as punitive damages.

The statute also continues to exempt from actionable uses:

- parody, satire, commentary, or criticism;
- works of political or newsworthy value including as examples "documentaries, docudramas, or historical or biographical works" even where there is some degree of fictionalization;



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- a representation of the deceased performer as "themselves" including some degree of fictionalization (except in live performances of a musical work);
- de minimis or incidental uses;
- or any advertisements of the foregoing works.

The law also continues to provide that it does not limit or enlarge protections arising under 47 U.S.C. § 230.

Conclusion

The amendments to General Business Law § 396-b and Civil Rights Law § 50-f have created key protections given the rise of AI-generated performers and replicas of deceased individuals. Creators and producers should be aware of the new requirements in order to avoid receiving civil penalties in the case of "synthetic performers" or be subject to a private suit for the expanded prohibitions on digital replicas of deceased performers. Likewise, owners of rights in the likenesses of deceased individuals should similarly take note of the expansion through which they can enforce such rights.

1. <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-protect-consumers-and-boost-ai-transparency-film-industry>
2. <https://www.nysenate.gov/legislation/bills/2025/S8420/amendment/A>
3. <https://www.nysenate.gov/legislation/bills/2025/A8882>