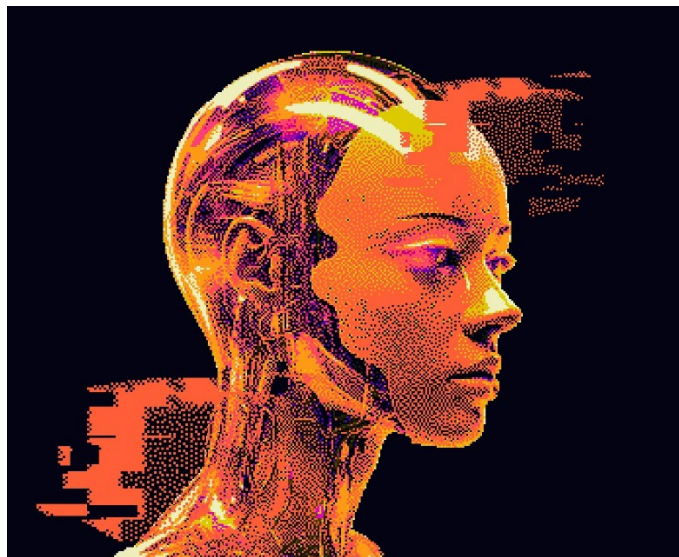


Advertising Law Alert

New York Regulates AI-Generated and Posthumous Images

01.29.2026 By [Kyle-Beth Hilfer](#)

New York State has enacted laws (a) affecting the use of AI images by the advertising industry and (b) updating requirements for the use of actual or digital images of deceased individuals. However, a Presidential Executive Order makes it unclear whether federal law will preempt these state laws in the future.



Synthetic Performer Act Requiring Disclosure.

In what may be the first-of-its-kind legislation in the United States, New York's Governor Kathy Hochul signed [S.8420A](#) on December 11, 2025. This Act amends Section 396-b of the New York General Business Law and **goes into effect on June 9, 2026.**

This Act requires disclosures regarding synthetic performers in advertisements regardless of medium. If the person who produced or created the advertisement knows of the existence of a synthetic performer, the advertisement must include a conspicuous disclosure of the presence of the synthetic performer.

Importantly, this Act covers advertisements for commercial purposes only. It includes exemptions for advertisements for expressive works, such as motion pictures, television programs, streaming content, documentaries and video games, provided that the advertisement is consistent with the expressive work. This Act also does not apply to audio advertisements or the use of AI solely in the language translation of a human performer.

A knowing violation carries a civil penalty of \$1,000 for the first violation and \$5,000 for any subsequent violation. Nonetheless, the creator can avoid the penalty if a person with actual knowledge has received written notification that the advertisement contains a synthetic performer and the notice gives no more than five days, or as soon as technically or practically feasible, to cease distribution or to insert the required disclosure.

This Act does not specify how the disclosures should be made. Advertisers will have to determine how to make conspicuous disclosures, applying existing legal standards. Consequently, disclosures may need to be different in different mediums and presentations.

Deceased Performer or Personality Act Requiring Consent

On December 11, 2025, New York's Governor also signed [S.8391](#), **effective on the date of signing**. This Act updated New York's right of publicity law applicable to deceased individuals who lived in New York State at the time of their death by amending Section 50-f of the New York Civil Rights Law.

This update protects the deceased person's voice and visual likeness from being simulated in a computer-generated, highly realistic electronic representation. If the electronic representation is readily identifiable as the deceased person, the advertiser must obtain consent from heirs, executors, or assignees for the use of the deceased person's voice or likeness.

Violation of this Act may result in civil liability in an amount equal to the greater of \$2,000 or actual compensatory damages suffered by the injured party as a result of the unauthorized use. Additionally, there may be an award of profits that are not part of the compensatory damages, and an award of punitive damages.

There are various exemptions, including advertisements for expressive, political, newsworthy, or documentary works.

Fashion Worker's Act Requiring Consent

The new statutes described above are built on previous legislation that Governor Hochul had signed to protect models in connection with artificial intelligence. On December 21, 2024, the Governor signed [NY Labor Law § 1034 \(2024\)](#) entitled the "New York State Fashion Workers Act." This Act provided new protections for models. The **effective date for this Act was June 19, 2025**, except that model management companies or groups who do business in New York State had to **register with the New York State Department of Labor by December 21, 2025** and post the Certificate of Registration.

This statute required, in part, that the use of AI-generated digital replicas or enhancements of a model's face, body, or voice have clear written consent independent from any representation

agreement. This consent must detail the scope, purpose, rate of pay, and length of time the replica will be used.

If this Act is violated, the model has the right to file a civil action in court, or a complaint with the New York State Department of Labor. Civil damages might include actual damages for any loss the model suffered because of the violation, attorneys' fees and costs, and possible liquidated damages of up to 300% of the actual damages.

This Act contains an exemption for routine photographic edits like color correction, minor retouching, or other standard post-production modifications.

Executive Order on National Policy for AI

While there has been much change within New York State, it is unclear whether these state statutes will eventually face preemption on the federal level. On **December 16, 2025**, President Donald J. Trump signed an Executive Order entitled "[Ensuring a National Policy Framework for Artificial Intelligence](#)."

This Executive Order asserts, in part, "It is the policy of the United States to sustain and enhance the United States' global AI dominance through a minimally burdensome national policy framework for AI."

This Order requires the Attorney General to establish an AI Litigation Task Force to challenge state AI laws inconsistent with this policy. It also orders the Secretary of Commerce to issue a Policy Notice providing that states deemed to have onerous AI laws are ineligible for certain federal funding.

It is not clear what effect, if any, this Executive Order will have on New York State's AI laws.

Actions to Take

Advertisers, brands, agencies, and model managers should not assume that President Trump's Executive Order will lead to the preemption of New York State laws.

Here are some immediate steps to take:

- **Review existing advertising and promotional materials** involving AI-generated images and voices for disclosure compliance.
- **Update relevant talent agreements** to include required consents for the use of AI-generated images and voices. This consent may require additional consideration, and brands should be prepared that some talent may simply say "No."
- **Update internal guidelines and practices** to assure compliance with New York's new disclosure and consent requirements, and assign compliance responsibilities to employees. Remember these statutes require consent if you use AI-generated images and voices of performers, personalities, or models. If a deceased performer lived in New York when that performer passed away, you now need the estate's permission to use a realistic AI version of that person's voice or likeness in advertisements and other media.

- **Make sure that outside agencies and producers** are aware of these requirements and are complying with them. If needed, amend contracts with these contractors to provide adequate warranties and indemnities. Remember that a brand is responsible for the actions of its agencies/producers. While the synthetic performer disclosure requirement applies to people with knowledge, it is unlikely that a brand can turn a blind eye to what its vendors are doing.

For further information, please contact [Kyle-Beth Hilfer](#) or your CLL attorney.

These summaries should not be relied on in specific instances without the advice of your lawyer.

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Kyle-Beth Hilfer has over thirty years' experience providing legal counsel to advertising, marketing, promotions, intellectual property, and new media clients. Leveraging her deep understanding of branding, Kyle-Beth ensures regulatory compliance for her clients' advertising and marketing campaigns. She also helps clients create, monetize, and protect their trademark and copyright portfolios in a global marketplace.