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Mr. Vans Stevenson
Senior Vice President
Motion Picture Association of America
1600 Eye Street, NW
Washington, DC 20006

Re: Connecticut Committee Bill No. 6818

Dear Vans,

You have asked me to analyze the constitutional implications of Committee Bill No. 6818, which would create a statutory right of publicity in the State of Connecticut. Entitled "An Act Concerning a Right of Publicity," Bill No. 6818 would create an almost unbounded ability by individuals, including, in some cases public officials, to limit unwanted or unflattering media portrayals that depict any aspect of their "personas." As drafted, the bill would significantly restrict well-established First Amendment values.

Among other things, Bill No. 6818 would create a "right of publicity" for any individual that extends to that person's "persona," which includes the "name, voice, distinctive mannerisms and gestures, signature, photograph or likeness . . . or any element thereof." The right would last for that individual's lifetime and for seventy years beyond that person's death. This expansive new right, which would create a cause of action for any act that occurs in Connecticut regardless of the state of residence of the person whose publicity interests were allegedly infringed, would authorize courts to enjoin violations and to order the destruction of all materials found to facilitate the violation.

The broad cause of action that the Connecticut bill would establish is inconsistent with the general principle that rights of publicity must be construed narrowly to avoid conflicts with the First Amendment. Thus, while courts have been willing to approve publicity claims in certain cases where a media portrayal incorporates a person's entire act, or falsely asserts a celebrity endorsement of a product, they have not approved claims where a person's name or picture was used in connection with a matter of public interest, whether in news or entertainment. However, the cases of action that would be created by Bill No. 6818 would ignore such distinctions.

Although the bill purports to exempt "bona fide news or public affairs reporting and programs" from its reach, it does not define what it considers "bona fide" news and would impose liability on some advertisements for news reports. Additionally, it would permit a cause of action by a public official or candidate if that individual's "persona" is used "for a commercial purpose without the consent of the individual." Thus, for example, the bill potentially would give President George W. Bush the ability to sue a filmmaker such as Roger Moore, who used unflattering footage of the President to advertise his documentary film "Fahrenheit 9/11."

Similarly, the bill would eliminate its exemption from liability for theatrical works, musical compositions, film and radio and television programs if an individual's persona is modified in any way to "cause the individual to speak or appear to speak words that the person did not speak" or "appear to place the individual in a place or circumstance in which the individual did not agree to be placed." This broad provision would severely restrict programs, like "Saturday Night Live" or "The Daily Show," that regularly lampoon celebrities and public officials.

Such provisions of Bill No. 6818 fly in the face of the basic requirement that "the right of publicity cannot, consistent with the First Amendment, be a right to control the celebrity's image by censoring disagreeable portrayals." *Comedy III Productions, Inc. v. Gary Saderup, Inc.*, 21 P.3d 797, 807-808 (Cal. 2001). "Once the celebrity thrusts himself or herself forward into the limelight, the First Amendment dictates that the right to comment on, parody, lampoon, and make other expressive uses of the celebrity image must be given broad scope." *Id.* Contrary to this constitutional limit, Bill No. 6818 would penalize transformative uses of an individual's "persona" that are "especially worthy of First Amendment protection" and "less likely to interfere with the economic interest protected by the right of publicity." *ETW Corp. v. Jireh Publishing, Inc.*,

332 F.3d 915, 935 (6th Cir. 2003). Moreover, the remedies the bill provides – including injunctions and the destruction of offending materials – are particularly threatening to First Amendment values. *See Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 578 (1977).

These considerations only scratch the surface of constitutional issues raised by Bill 6818. The bill's expansive definition of "persona" and its conferral of standing on individuals of other states which may have very different (or no) recognized right of publicity, raise complicated problems. Likewise, its creation of a post-mortem right and its seven-decade duration would impose a heavy burden on expression.

Please let me know if you have further questions. I would be happy to expand on any of the points made in this analysis.

Sincerely,

Robert Corn-Revere

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