

LUZKER & LUZKER — LLP —

Lutzker & Lutzker Newsletter July 2020

To our clients, colleagues and friends:

We hope this finds you safe and well. We at Lutzker & Lutzker continue to serve our clients as we always have, but still – and for the foreseeable future - from our remote locations. This is the third of our periodic newsletters in which we discuss important new developments that may affect your

business.

Hardly a day goes by when we are not bombarded by articles about social media and political speech and the new executive and legislative attempts to remove the immunity that online service providers currently have under Section 230 of the Communications Decency Act. In our blog post we analyze the shifting sands of social media moderation of user content and the underlying legal issues that will need to be addressed.

A newly filed lawsuit by publishers challenging the Internet Archive's National Emergency Library prompted us to update [our prior blog](#) on this copyright dispute. We have also explored the online manipulation of copyrighted images by third parties for their own commercial use. Absent an express contractual agreement with the photographer, third-party entrepreneurs are at risk for copyright infringement and may not be able to protect the new elements they have created.

Much more has been going on in the IP arena as well. See our blog on the Copyright Office's proposed rulemaking on the modernization of copyright termination notices. These proposals, if enacted, are designed to make it easier for some authors to capture the economic success of works experienced after they negotiated licenses, sometimes from an uneven bargaining position. The statutory requirements for termination of a copyright license are quite technical, and legal advice for how to effectively exploit this powerful right is important.

As summer camps have overwhelmingly pivoted to completely virtual activities, they have had to revise their IP, privacy and other policies to reflect the new environment. We have highlighted some of these issues in our blog on online summer camps.

Please stay tuned to our website for a further deep dive into the IP and privacy issues that educators will need to address as they contemplate the opening of school in the fall, which will certainly include a heavy online component.

As we were completing this newsletter, the Supreme Court rendered its decision in *United States Patent and Trademark Office v. Booking.com B.V.* The Court held, 8-1, with Justice Breyer dissenting, that a generic word followed by dot-com can serve as a trademark if consumers think of the term as a brand name. An analysis of the decision and its implications will follow on our website. See [our earlier blog](#) about the oral argument in the case, the Supreme Court's first by telephone conference call.

Don't hesitate to reach out to us at info@lutzker.com with any questions and please stay safe.

Blog Posts from the Firm

What's Wrong with This Picture: Using Copyrighted Photos Online

Third parties who manipulate copyrighted photos online for their own commercial purposes may be liable to the photographer for copyright infringement. If the “new” work is transformative, fair use may provide a defense. Having express contractual permission from the copyright owner is the best protection.

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Copyright Office Proposes Rules to Modernize Recordation of Termination Notices

The Copyright Office has requested public comment on proposed rules that would make it easier for authors or their heirs to regain control over rights previously transferred to a third party. The statutory right to terminate a license was enacted to correct imbalances in bargaining power between authors and grantees and to allow authors to reap the benefits of later economic success of their works. The requirements for terminating a license are complicated, including how to calculate the five-year window during which the right can be exercised.

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Social Media and Political Speech: The President's Executive Order

The immunity provided to social media giants under Section 230 of the Communications Decency Act, when they intervene and moderate user content, has come under attack following Twitter's recent addition of fact-checking and warning labels to a number of President Trump's tweets. This article discusses the nature of Section 230 immunity and the possible outcomes of attempts to abolish the immunity by executive order or legislative proposals.



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Internet Archive's Open Library and Copyright Law: Addendum

This blog updates our May 2020 blog on the Internet Archive and its COVID-19 National Emergency Library project as well as the copyright laws impacted by this effort.

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Summer Camp IP and Other Policies Require Revisions with Move to Online Space

In this COVID-19 era, virtual summer camps need to re-examine their risk management programs and adapt their privacy policies, copyright policies, codes of conduct and management plans to reflect the different liability risks involved in online camp activities.

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Arnold Lutzker and Susan Lutzker founded Lutzker & Lutzker LLP in 1998 to provide high-quality, cost-effective legal services to businesses, creative professionals and their lawyers in the creation, strategic

exploitation and defense of intellectual property assets.

Drawing on their experiences in law, business and the arts, our firm's lawyers have stayed on the leading edge of digital-era issues, including online content, social media, mobile applications, cybersecurity and data privacy requirements. We advise corporate counsel on challenging intellectual property matters and also help more than 300 clients protect and manage their traditional copyright and trademark portfolios.

Questions: please email us at info@lutzker.com



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