

LUZKER & LUZKER — LLP —

Lutzker & Lutzker Newsletter February 2022

To our clients, colleagues and friends:

Despite the rocky start to 2022 thanks to Omicron, we have high hopes for this new year! Through this periodic newsletter we continue to explore the many new developments in the realms of IP, privacy law, cybersecurity and artificial intelligence.

We are delighted to report that our law clerk, [Ethan Barr](#), who joined the firm full-time in September following his graduation from George Washington University Law School, was admitted to the DC Bar in December. Ethan holds a Master's of Education from Boston University and worked as a school administrator prior to law school. His background in K-12 education has already been essential to our practice involving technology and privacy in the classroom, which have taken on increased importance due to the pandemic. Ethan is also a musician and enjoys delving into complex music copyright issues. We know you will enjoy working with Ethan.

In June 2021, the National Collegiate Athletic Association (“NCAA”) waived a longstanding rule that prevented student athletes from profiting from their name, image and likeness, opening the floodgates for student athletes to advertise and promote products or services, as well as profit from their own likeness. [Our insight](#) and [update](#) discuss the impact on college athletes and the future of the NCAA. Our initial insight caught the attention of a writer for The College Fix, who interviewed and quoted Carolyn Martin and Ethan Barr in an [article](#) about a University of Oklahoma quarterback who was offered \$1 million to transfer to Eastern Michigan University. Carolyn and Ethan explained why such an offer would likely violate both NCAA rules and Michigan law.

On the trademark front, we wrote about [scams targeting trademark owners](#) by third parties seeking to pass themselves off as the USPTO. The scams have increased in frequency and sophistication, leading to measures by the USPTO to warn the public, protect its own name and logo and assist the federal government in criminal enforcement.

We also [explained the rules announced by the USPTO](#) requiring identity verification when filing trademark applications. But those rules, which raised significant privacy concerns, [are now under review](#) following a public outcry when the IRS announced that it would use the same facial recognition software program – ID.me – for taxpayer verification.

With ransomware on the rise and hackers interrupting key industries, companies face enormous risks when conducting transactions online. Numerous federal agencies have developed resources and published guides to help private entities navigate these risks, but the sheer amount of information can be overwhelming. [We created a “who to call” guide](#) to the various federal players that we hope will be helpful.

We dove into the world of DAOs – decentralized autonomous organizations – in our [insight on the \\$3 million purchase by Spice DAO](#) of a rare edition of a film bible containing a never-made adaptation of the sci-fi classic book Dune. Did they misunderstand that they were buying only the rights to the physical book, or was it a brilliant marketing ploy? Stay tuned for our reports on the copyright infringement claims the DAO will inevitably face when they attempt to exploit their purchase.

We [updated our earlier insight](#) on the campaign to free the Australian indigenous flag when the Government purchased the rights to the flag to make it available to all Australians. While this action pleased many, it is not without its critics.

With the Olympics taking place in Beijing amidst enormous controversy over China's human rights violations, we [focused on the loss of Uyghur intangible culture](#) and the irony that a UNESCO listing of their traditional meshrap has contributed to the loss.

Finally, we [noted the 50th anniversary](#) of the extension of federal copyright protection to sound recordings and subsequent legislation ([the CLASSICS Act](#)), which extended protection to pre-1972 sound recordings. The nuances of the copyright scheme can be very confusing, so please don't hesitate to reach out to us at info@lutzker.com for advice on this or any of your other IP questions.

Insights from the Firm



NCAA Rule Change Paves the Way for Student Athlete Endorsement Deals

On January 20, 2022, the National Collegiate Athletic Association ratified a new version of its constitution, which includes guidance on its recent rule that permits student athletes to profit from their name, image and likeness. A patchwork of state laws and rules from individual

institutions creates legal complexities going forward. Our insights explore the impact on

forward. Our insights explore the impact on college athletes and the future of the NCAA.

[Read Here >>](#)

Trademark Owners: Beware of Scams

Owners of U.S. trademark applications and registrations need to be aware of trademark scams by third parties seeking to pass themselves off as the USPTO. The scams have increased in frequency and sophistication, leading to measures by the USPTO to warn the public, protect its own name and logo and assist the federal government in criminal enforcement.

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2022 Brings New Requirements Via ID.me for Filing Trademark Applications with the United States Patent and Trademark Office

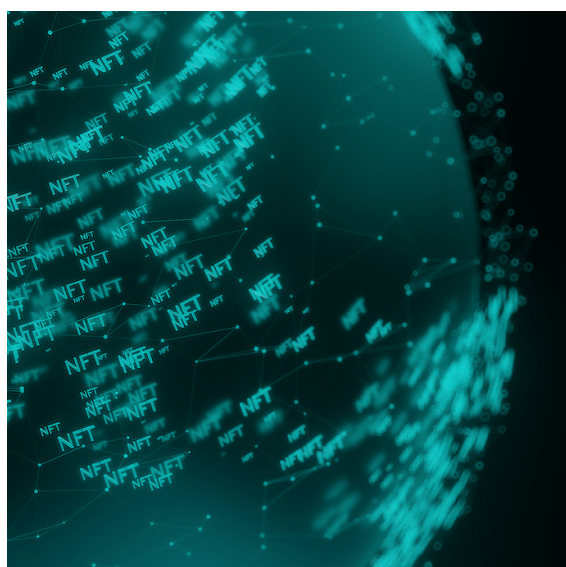
USPTO rules requiring identity verification when filing trademark applications, scheduled to become effective in April 2022, are now under review by the agency following a public outcry when the IRS announced that it would use the same facial recognition software program – ID.me – for taxpayer verification.

[Read Here >>](#)

A Cybersecurity Guide: Who Do You Call in the U.S. Government?

With ransomware on the rise and hackers interrupting key industries, companies face enormous risks when conducting transactions online. To help private industries strengthen their cybersecurity knowledge, various federal agencies have developed resources and published guides. The sheer amount of guidance can prove to be overwhelming. To help, Lutzker & Lutzker has put together a guide to the various agencies that offer cybersecurity advice.

[Read Here >>](#)



An Expensive Copyright Mistake?

The cryptocurrency group Spice DAO paid \$3 million for a rare edition of a film bible containing a never-made adaptation of the sci-fi classic book Dune. Did they misunderstand that they were buying only the rights to the physical book, or was it a brilliant marketing ploy? In any event, their plans to make an animated series inspired by the book and issue NFTs will likely run into copyright infringement claims. A fair use defense

similar to those raised in a different medium in the Andy Warhol case, currently the subject of a

the Andy Warhol case, currently the subject of a cert petition before the Supreme Court may come into play.

[Read Here >>](#)

Free the Australian Indigenous Flag: Addendum

This insight updates our October 2020 insight about the controversy over the copyright to the Australian Indigenous flag and the limitations of Australian law to resolve the issues. The Australian government intervened and purchased the rights to the flag to make it available to all Australians.

[Read Here >>](#)



Stamping Out Uyghur Culture: The Winter Olympics Shine a Light on Misappropriation of Traditions

In an ironic twist, the inclusion of the Uyghur meshrap on UNESCO's List of Intangible Cultural Heritage in need of Urgent Safeguarding has led to its appropriation for propaganda purposes by China, thus threatening its preservation as an essential part of Uyghur intangible cultural heritage. Protests against the Beijing Olympics have once again focused attention on the plight of this persecuted minority.

[Read Here >>](#)

50-Year Anniversary of Federal Copyright Protection for Sound Recordings

Federal copyright protection did not exist for sound recordings until February 15, 1972, the 50-year anniversary of which is in 2022.

[Read Here >>](#)



Lutzker & Lutzker LLP: FAQs

Don't forget to check out the new FAQ feature on our website, focusing on [Privacy Law](#), [Technology and the K-12 Classroom](#), [Copyright Law](#), [Trademark Law](#), [NFTs](#) and [Patent FAQs](#).

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LUTZKER & LUTZKER — LLP —

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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