

LUTZKER & LUTZKER — LLP —

Lutzker & Lutzker Newsletter

May 2024

To our clients, colleagues and friends:

For the minority of us that love hot weather, summer temperatures have happily replaced a chilly spring. Daily developments in the IP world are keeping us busy, but hopefully not too busy to appreciate the glorious flowers and trees in Washington DC. Through this periodic newsletter, we continue to keep you informed of relevant and exciting IP and cultural developments.

We hope you have found value in the new feature on our website called "IP Bits & Pieces," brief articles and updates on a wide range of topics, some of which we subsequently look at in greater depth.

We have worked to keep up with the near daily developments in the privacy area, both in the U.S. and abroad, in order to help our clients sort out their obligations. Sixteen states have passed privacy laws ([Maryland's was just signed](#), and Vermont's is awaiting signature by the governor), and many more have legislation in process. While passage is uncertain, a draft bipartisan and bicameral bill, the American Privacy Rights Act, was introduced in the U.S. Congress, with the promise of overriding some of the inconsistencies in the state laws. Meanwhile, EU legislation adds additional requirements for websites visited by residents of the European Economic Area. In an effort to provide some practical guidance, we have posted an [insight on DOs and DON'Ts](#) for drafting website policies and an insight that provides a basic [discussion of the use of website cookies](#) for the non-technical among us.

[We have reported on the settlement](#) that ended the dispute over Dudesy, the AI-assisted podcast that allegedly used a version of the late comedian George Carlin for a special entitled "George Carlin: I'm Glad I'm Dead." The parties behind [Dudesy](#) have agreed to take down the fake George Carlin comedy special on all websites and refrain from using Carlin's image, voice and likeness without permission. We will be watching to see if disputes over AI infringements of the rights of artists and public figures are resolved by similar settlement agreements.

Like everyone else, we have followed the [enactment of a law that could ban TikTok](#) if the app's Chinese parent company, ByteDance, does not divest its U.S. assets. The impetus is again concerns over privacy as lawmakers are worried that under Chinese law the ruling Chinese Communist Party has the power to access the personal data of U.S. TikTok users.

We have also [reported on the new Corporate Transparency Act](#), an effort to deter financial crimes like money laundering and tax fraud, which are frequently committed through shell corporations. The law requires most entities organized under state law to disclose personal stakeholder information to the Treasury Department's criminal enforcement division, the Financial Crimes Enforcement Network ("FinCEN"). The ink

on the law was barely dry when its constitutionality was challenged. Stay tuned...

In recent years there has been a lot of copyright litigation in the music industry involving high profile artists. While there is significant case law addressing claims of copyright infringement of sound recordings and musical compositions, there is uncertainty as to other works in the music video industry, such as choreography, costumes, sets and designs. [Our insight](#) takes a close look at these unresolved issues.

In our continuing discussion of NFTs, we look at the [joint report of the Copyright Office and the Patent and Trademark Office](#), which weighs in on the potential of NFTs to trigger resale royalties for artists, including in the music context, and the challenges involved.

In firm news, the Copyright Royalty Board has released its unanimous *Final Determination* in the 2014-2017 Cable Royalty Allocation Proceeding. L&L's clients (producers of religious programs distributed to commercial stations) were awarded their largest share ever in these royalty proceedings that date back to 1978, averaging nearly 6% of the almost \$1 Billion in compulsory royalties collected from cable systems for the litigated years. In the coming weeks, the *Final Determination* will be reviewed by the Librarian of Congress, who will then publish the ruling in the Federal Register, permitting any of the six active litigants to file an appeal. A related 2014-2017 Cable Royalty Distribution Proceeding will commence later this year.

The [new issue of *The Trademark Lawyer*](#), featured at the annual meeting of the International Trademark Association in Atlanta May 18-22, 2024, includes (page 54) an article by Susan Lutzker entitled "If you think you are insured against trademark and copyright infringement claims, look again."

Please peruse our website for more on these and other current issues. And of course don't hesitate to reach out to us at info@lutzker.com for more information on these developments or advice on your IP questions. And happy almost summer!

New from Lutzker & Lutzker LLP:

IP Bits & Pieces™

Read our newest Bits & Pieces [here](#).

Lutzker & Lutzker LLP:

FAQs

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

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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, artificial intelligence and data privacy. 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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