

LUZKER & LUTZKER — LLP —

Lutzker & Lutzker Newsletter November 2020

To our clients, colleagues and friends:

Much has happened in the world since our last newsletter, and there are many signs of hope even as an inevitably hard winter approaches. In the realm of legal developments in IP and privacy law, there is also much to explore, which we continue to do through

this periodic newsletter.

As reported last month, we have launched an FAQ feature on our website that we hope will provide some helpful answers to pressing legal issues. This month we have added to our initial FAQs on Technology and the K-12 Classroom a set of [questions and answers focusing on the complex patchwork of federal and state privacy laws](#) and the precarious balance between technological advances and personal privacy.

We continue our deep dive into privacy issues with [our blog on California's Proposition 24](#), adopted by CA voters on November 3, which strengthens the nation's most rigorous state privacy law, the California Consumer Privacy Act. The blog surveys existing and proposed privacy legislation at the state and federal levels.

In the copyright arena, we have a [new addendum](#) on the infringement lawsuit by publishers against the Internet Archive. We previously reported that the Internet Archive had prematurely ended its National Emergency Library but speculated that the lawsuit would proceed as to its pre-COVID-19 practices. This is in fact the case, and our new blog explains why. We also continue our exploration of copyright termination rights with a [blog offering practical advice for content creators](#), who may not be aware of significant limitations on these rights.

In July we reported on the Supreme Court's decision in the Booking.com case, and we update this subject with a [blog](#) on the new Examination Guide issued by the U.S. Patent and Trademark Office to address the review of applications for generic.com terms.

Although the November 3 election is (mainly) over, the ability of artists to control the [use of copyrighted music at live political events](#) will continue to be an important and complicated topic. We will monitor and report on both the lawsuit by songwriter Neil Young against the Trump campaign for its use of two of his songs and the review by the U.S. Department of Justice of the 1941 antitrust consent decrees entered into in an effort to ensure fair access to performance rights of musical works owned by ASCAP and BMI.

As Thanksgiving approaches, we are mindful of how grateful we are for the support of our family, friends, clients and colleagues. Please continue to stay safe. Of course, don't hesitate to reach out to us at info@lutzker.com with any questions.

New From Lutzker & Lutzker LLP: FAQs

Since launching an FAQ feature on our website to provide additional relevant content on pressing issues, we have expanded our FAQs to now include questions related to privacy law, which you can find at the link below.

More FAQ topics coming soon.

[Click Here](#)

Blog Posts from the Firm



Notes and Votes: Use of Copyrighted Music at Political Events

The Trump campaign's use of copyrighted music without permission during live campaign events ignites a conversation about whether infringement claims will prevail. Despite other possible legal avenues for redress, copyright law remains the most viable option.

[Read Here >>](#)

Raising the Bar for Internet Privacy:

California's Proposition 24

On November 3, Californians voted in favor of Proposition 24, the California Privacy Rights and Enforcement Act of 2020 (CPRA), which would expand the privacy protections enacted under the 2018 legislation, the California Consumer Privacy Act (CCPA). Like its progenitor, Proposition 24 is limited in scope to California businesses and consumers but will likely dictate internet privacy law for the entire United States. Because companies like Facebook, Twitter and Google reach many Golden State residents, California law directly affects how big tech companies interact with their consumers across the nation and beyond. But comprehensive federal privacy law may be on the horizon. What shape it takes is anybody's guess.

[Read Here >>](#)



Words of Caution for Content Creators: Limitations on the Copyright Termination Right

The copyright termination right provided by the Copyright Act is a powerful, but limited, tool for content creators that allows termination of a prior copyright grant to third parties regardless of any conflicting contractual provisions. Here we discuss a few of those limitations on statutory termination and explain some of the ways in which creators can unknowingly jeopardize their termination rights.

[Read Here >>](#)

USPTO Issues Guidance on Trademark Registration of "Generic.com" Terms

Despite the Supreme Court's decision in the *booking.com* case, the new USPTO Examination Guide, issued in response to the decision, makes it clear that obtaining registration for generic.com terms will still be difficult, and applicants will need to meet a high evidentiary bar.

[Read Here >>](#)

Internet Archive's Open Library and Copyright Law: Second Addendum

This blog updates Lutzker & Lutzker's May and June 2020 blogs on the Internet Archive and its digital lending library, as well as its now-shuttered COVID-19 National Emergency Library and the copyright issues raised by the ongoing litigation with book publishers.

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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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