

LUZKER & LUTZKER — LLP —

Lutzker & Lutzker Newsletter April 2021

To our clients, colleagues and friends:

Spring is thankfully here! Through this periodic newsletter we continue to explore some of the many - even daily - new developments in the realm of IP, privacy law and artificial intelligence.

In the copyright arena, the March 26, 2021 decision of the Second Circuit Court of Appeals in *Andy Warhol Foundation v. Goldsmith* is likely to strengthen the hand of photographers asserting infringement claims against third parties claiming fair use. [Our insight](#) discusses the Court's distinction between derivative works that are within the rights of the copyright owner and those that are truly "transformative," which may qualify for the fair use defense.

We also continue our series of articles about the Copyright Office's multiyear plan to modernize the system for terminating copyright rights. [Our new insight](#) examines the new Final Rules for recording notices of termination. In [a previous insight](#) we provided an overview of the statutory termination right and the complicated termination process. We have also [explored](#) some of the limitations on termination that content creators need to keep in mind.

As a follow up to [our recent insight](#) about the use of facial recognition software to screen applicants for the February California bar exam, we have taken [a deeper dive](#) into the technology behind this software, the laws regulating this technology and the bias and accuracy concerns its use raises.

In the privacy realm, we have [an insight](#) discussing the strengths and weaknesses of the new privacy law enacted in Virginia, the third U.S. state to pass comprehensive consumer privacy legislation.

We also [took a look](#) at a silver lining in the pandemic cloud. The new COVID relief legislation includes emergency funding for the preservation of native languages, focusing attention and resources to combat the alarming rate at which such languages are becoming extinct and, with them, the cultural history and world views they embody.

Finally, in L&L news, Carolyn Martin and Ethan Barr were presenters in a Shared Conversation among educators sponsored by the [Association for Information Media and Equipment \(A.I.M.E.\)](#). Their focus was the need for all parties to understand how to use technology safely and accountably in in-class, remote and hybrid learning environments.

Please continue to stay safe. Of course, don't hesitate to reach out to us at info@lutzker.com with any questions.

Insights from the Firm



Andy Warhol Decision Spells Stronger Rights for Photographers Fighting Infringers

The March 26, 2021 decision of the United States Court of Appeals for the Second Circuit clarifies the distinction between derivative works, the province of copyright owners, and transformative works which may qualify for the fair use defense against infringement. The Court's decision narrows the range of works which will be considered "transformative" to those which, under an objective analysis, embody an entirely different artistic purpose than the source material.

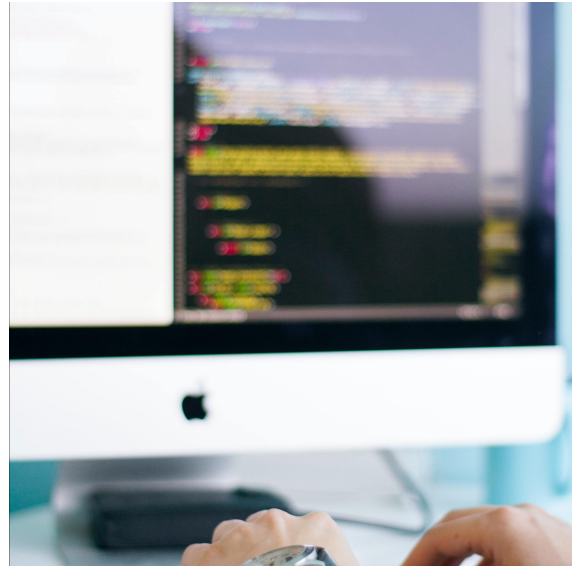
[Read Here >>](#)

U.S. Copyright Office Final Rule-- Recording Notices of Termination

Lutzker & Lutzker wrote to our readers back in June and November 2020 regarding copyright termination rights and limitations and the U.S. Copyright Office's modernization initiative. This Insight article discusses the Copyright Office's final rule and policy based on ten public

comments from organizations and attorneys with interests in the creative industries.

[Read Here >>](#)



Curtailling Bias in Facial Recognition Technology

Facial recognition systems are automated or semi-automated artificial intelligence technologies. These technologies extract an individual's facial features from videos or photos and analyze the data to determine identities. Facial recognition is used frequently in airports, retail stores, banks and by law enforcement. This Insight article explains facial recognition technology, discusses the laws regulating this technology and addresses bias and accuracy concerns.

[Read Here >>](#)

How Strong is Virginia's New Privacy Law?

Virginia recently passed the Consumer Data

Protection Act (CDPA), making it the third U.S. state to pass its own comprehensive consumer privacy law. Although it is not as sweeping as California's state privacy law, it may accelerate the push for other statewide privacy laws, as well as a uniform federal privacy law.

[Read Here >>](#)



Pandemic Silver Lining? Attention and Resources for the Preservation of Dying Languages

Indigenous languages and the perspectives of the world they reflect are rapidly dying out. The newly-enacted COVID-19 relief bill includes funds for the preservation and maintenance of Native American languages. Traditional IP regimes, including copyright law, fall short of protecting these languages and related cultural property, but the recognition and support these funds will provide is an important first step toward preventing extinction.

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New From Lutzker & Lutzker LLP: FAQs

Don't forget to check out the new FAQ feature on our website. The first FAQs focus on [Privacy Law](#) and [Technology and the K-12 Classroom](#).

New topics coming soon!

Connect with us online



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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