

LUZKER & LUTZKER — LLP —

Lutzker & Lutzker Newsletter August 2022

To our clients, colleagues and friends:

We hope everyone is enjoying the summer. There may be some lazy, hazy days, but not in the realms of IP, privacy law, cybersecurity and artificial intelligence, where new developments continue at a dizzying pace. Through this periodic newsletter, we endeavor to keep you informed of the most relevant and exciting ones.

First, some updates to topics we have previously reported on:

- As of June 16, 2022 the [Copyright Claims Board](#) is open for business. This new forum for smaller copyright disputes was created by the Copyright Alternative in Small-Claims Enforcement Act of 2020 (the “CASE Act”). Because works that were not timely registered are eligible for statutory damages and attorneys’ fees, unlike in federal court litigation, infringement claims that were previously not practical to bring can be enforced.
- On June 21, 2022 U.S. Customs and Border Protection began formally enforcing the [2021 Uyghur Forced Labor Prevention Act \(UFLPA\)](#) by applying UFLPA’s rebuttable presumption that any goods produced or manufactured wholly or in part from the Xinjiang Uyghur Autonomous region in northwestern China were produced with forced labor and are thus prohibited from importation into the United States. We continue to follow developments affecting this persecuted minority
- After much back and forth, the United States Patent and Trademark Office (“USPTO”) has now announced that effective August 6, 2022 [identity verification will be mandatory for USPTO.gov account holders to file trademark applications](#) through the Trademark Electronic Application System and TEAS international. Some privacy protections are built into the new regime.

[The rapid expansion of NFT products](#) continues. But some staggering investor losses this year point to the need to protect these investments against risks including, among other things, the loss or theft of a password to a digital wallet or mobile app, corruption of links to digital files and hacking of smart contracts. Our insight examines the turbulence of the current insurance market and offers some practical suggestions for risk management.

We ventured into the metaverse with an [insight about what brand owners should do to protect their rights to digital goods](#). Because this area of law is so new, drawing parallels between the real world and proposed virtual worlds is key in applying existing IP law to the metaverse. Fashion brands have become early adopters of the metaverse and may be early litigants as well with pending lawsuits involving Hermes and Nike. Developing a digital strategy will become increasingly important to brand owners.

In related news, on June 21, 2022 [Carolyn Martin participated in a Strafford CLE program entitled “NFT and Intellectual Property Intersection: Licensing, Monitoring, Enforcement Strategies.”](#)

Carolyn and the other presenters provided a comprehensive overview of IP issues in the NFT environment with a particular focus on the fashion industry. She also highlighted the importance of *The Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, currently pending before the

U.S. Supreme Court. Unless decided on narrow grounds, the Court's decision is expected to have major consequences for the use of the fair use defense in the NFT world as well as in more traditional copyright matters. [Carolyn was also quoted in an excellent article in Bloomberg Law](#) - As Virtual Try-On Fashion Technology Grows, So Do Legal Risks, by Jake Holland, Privacy and Data Security Reporter.

[Major museums on both sides of the Atlantic have removed, or have pledged to remove, the Sackler name from their facilities and programs.](#) This experience has led some museums to include in their donor agreements "morals clauses," providing a right to terminate the use of the donor's name in the event the museum wants to disassociate itself from the donor due to issues of reputation.

At the request of Senators Patrick Leahy, D-Vt., and Thom Tillis, R-N.C., two members of the Senate's intellectual property subcommittee, the USPTO and the Copyright Office have announced that they are launching a [joint study of NFTs](#) and their impact on intellectual property rights.

We have posted the [first of a new series of insights](#) addressing important issues for photographers and those who want to use online images. This first insight looks at the issue of transformative use of images, at issue in the Andy Warhol case referenced above. The insight also explores the issue in the context of tattoos, reposts and embedding. Stay tuned for subsequent insights.

Please note that we have added new [FAQs on the TEACH Act](#) to our website. With back-to-school just around the corner and remote instruction in some form here to stay, we hope these will be of use to educators. We have also revamped our [News page](#) – in addition to current news items, you can now access all of our periodic newsletters.

Finally, SelectUSA has released a second edition of its Investor Guide, which includes a [chapter on intellectual property co-authored by Arnie and Susan Lutzker](#) with INBLF colleagues.

Please don't hesitate to reach out to us at info@lutzker.com for more information on these developments or advice on your IP questions.

Enjoy the summer!

Insights from the Firm



The Copyright Alternative in Small-Claims Enforcement Act of 2020 (CASE Act): Second Addendum: Open for Business

By [Susan Lutzker](#)

This post is an update. Read the original post [here](#) and the first addendum [here](#).

[Read Here >>](#)

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

By [Susan Lutzker](#)

New attention is being focused on the plight of the persecuted Uyghur minority living in the Xinjiang Uyghur Autonomous region in northwestern China with the commencement of formal enforcement of the 2021 Uyghur Forced Labor Prevention Act (UFLPA). Commencing June 21, 2022, U.S. Customs and Border Protection began enforcing UFLPA's rebuttable



presumption that any goods produced or manufactured wholly or in part from this region were produced with forced labor and are thus prohibited from importation into the United States.

[Read Here >>](#)



2022 Brings New Requirements Via ID.me for Filing Trademark Applications with the United States Patent & Trademark Office: Fourth Addendum

By [Carolyn Wimbly Martin](#)

This post is an update. Read the original post [here](#), the first addendum [here](#), the second addendum [here](#) and the third addendum [here](#).

[Read Here >>](#)

How Can You Protect Your NFTs?

By [Susan Lutzker](#)

Recent staggering losses by NFT collectors have focused attention on the challenges of protecting these assets in the absence of traditional insurance coverage. While insurers scramble to develop new products, NFT investors need to

“self insure” by taking the initiative to safeguard their assets.

[Read Here >>](#)



Trademarks in the Metaverse

By [Carolyn Wimbly Martin](#) & [Charlotte Cuccia](#)

As the metaverse and NFT-crypto craze dominate social discourse, brands should be asking themselves what role intellectual property plays in licensing and selling digital goods. Because this area of law is so new, drawing parallels between the real world and proposed virtual worlds is key in applying existing IP law to the metaverse. Fashion brands have become early adopters of the metaverse and may be early litigants as well with pending lawsuits involving Hermes and Nike. Companies and individuals should register their digital goods, subscribe to trademark watch services, review contracts and licensing agreements, and engage when necessary in enforcement actions. They should also adopt a digital goods strategy, whether that involves NFTs, cryptocurrency or collaborations in the metaverse.

[Read Here >>](#)

Museums and Questions of Donor Morality: The Sackler Case

By [Susan Lutzker](#)

The Sackler family name is being removed from museums on both sides of the Atlantic due to the family's ownership of Purdue Pharma, the maker of OxyContin, blamed for fueling the U.S. opioid epidemic. The Sackler experience has brought to the fore issues of ethical philanthropy and how museums disassociate themselves from donors whose reputations are inconsistent with current moral standards. Activism by artists has been a major factor in the removal of the Sackler name.

[Read Here >>](#)



A Joint Study by the USPTO and the Copyright Office on NFTs and Intellectual Property

By [Carolyn Wimbly Martin](#)

At the request of Senators Patrick Leahy, D-Vt., and Thom Tillis, R-N.C., two members of the Senate's intellectual property subcommittee, the U.S. Patent and Trademark Office ("USPTO") and the Copyright Office have announced that they are launching a joint study of NFTs and their impact on intellectual property rights.

[Read Here >>](#)

Copyright and Photography: An Overview of Ongoing Cases

By [Carolyn Wimbly Martin](#) & [Charlotte Cuccia](#)

Photographers have been at the center of several recent, high-profile copyright disputes, particularly highlighting the blurred line between transformative and derivative works. Although many of these cases have settled, the Supreme Court's decision to grant certiorari in *Warhol v. Goldsmith* may further distinguish these two concepts and impact how photographers can best protect their works. Other noteworthy cases look at transformative use in the context of tattoos, social media reposts and embedding. This is the first insight in a series addressing how photographers can exploit and protect their rights.



[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](#), [Patent FAQs](#), and the [TEACH Act](#).

Connect with us online





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



© 2022 Lutzker & Lutzker LLP All Rights Reserved.

This update is for general information purposes only and is not intended to provide legal advice. You should consult an attorney for advice regarding your specific situation. We invite you to contact us, but please be aware that contacting us does not create an attorney-client relationship between you and Lutzker & Lutzker LLP. The creation of such a relationship occurs only after client clearance procedures have been followed, including assurance that representing you will not create a conflict of interest. Therefore, you should not send us any confidential information since, prior to establishing an attorney-client relationship, the information may not be a privileged communication.

No longer wish to receive these emails from us? You can unsubscribe from this list.