

— LUTZKER & LUTZKER — LLP —

Lutzker & Lutzker Newsletter June 2021

To our clients, colleagues and friends:

Happy summer to all! We hope you are enjoying some freedoms that come with light at the end of the long tunnel. Through this periodic newsletter we continue to explore the many new developments in the realm of IP, privacy law, cybersecurity and artificial intelligence.

Just in time for the virtual [FilmFest DC](#) (June 4-June 13), we wrote about [copyright issues inherent in the new distribution channels created for live theater and film](#) during the pandemic as a matter of survival. These new channels offer ongoing options to increase and diversify audience engagement while still protecting the rights of the creators.

In the AI arena, we report on [new regulations proposed by the European Union](#) to protect individuals within its jurisdiction from the effects of “high-risk” artificial intelligence systems. Our insight analyzes the potential for similar action in the U.S. We also explored online [proctoring of exams](#), made possible by facial recognition and AI technology, and the storm of criticism that has resulted concerning invasions of privacy and assumptions of cheating.

And, although we usually think of AI as futuristic, it actually has some very [interesting applications to historical research](#), which we have explored.

[Non-fungible tokens \(“NFTs”\)](#) are the craze these days, and we didn’t want to be left behind, so we have delved into this vehicle and analyzed some of the intellectual property issues it raises. Stay tuned for more on this complex subject!

Congress may finally be ready to create a uniform federal standard for consumer data privacy regulations, and we have looked into the [recently-introduced Information Transparency and Personal Data Control Act](#). Our insight examines the proposed law’s effect on business operations. We will continue to follow both federal and state action in the privacy area (see our [earlier insight](#) on Virginia’s new privacy law).

With new cyberattacks in the headlines almost daily, we have reported on [President Biden’s Executive Order](#) overhauling our approach to cybersecurity with the goal of strengthening the nation’s cybersecurity infrastructure. Our insight examines the impact of the new regulations on software vendors.

Much has been written on the Epic v. Apple antitrust litigation, but we decided to look at the [trade secret issues in the case](#). Our insight provides some cautions about sloppy e-filing and some advice for the protection of trade secrets in the context of any litigation.

Finally, in L&L news, from June 7 to 11, 2021, we participated in the 2021 [Select USA Virtual Investment Summit](#). As you probably already know, Arnie is president of [INBLF](#), International Network of Boutique and Independent Law Firms. For years INBLF has been a Summit sponsor, and this year for the first time the network was a sponsor of SelectUSA Tech, a dedicated track for entrepreneurs with high-level tech projects who are ready to do business in the U.S. Arnie worked closely with Summit staff to make the Tech “pitch” sessions a huge success. In connection with the Summit, Arnie and Susan co-authored, with two INBLF colleagues, the Intellectual Property chapter

in the new SelectUSA [Investor Guide](#).

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



Film, Theatre, and Copyright Post-Pandemic

Live theater and film have had to reimagine their distribution methods in light of the COVID -19 pandemic. While the principal goals have been to support the creative artists and their loyal audiences, the protection of valuable copyrights have also been front and center. Technology provides both opportunities and challenges for the creative community to achieve both goals. Here we will explore some of the creative ways institutions, from local theater companies to international film festivals, have risen to meet the challenges of 2020-2021. More importantly, we'll look at the post-pandemic options to increase and diversify audience engagement while preserving creative rights.

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EU Proposes Artificial Intelligence Regulations: What Does This Mean for the U.S.?

The European Union recently proposed a set of regulations to protect individuals within its jurisdiction from the effects of “high-risk” artificial intelligence systems, initiating debate regarding its broad scope and potential application in the U.S.

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AI in the Living Room: The Problem with Online Exam Proctors

The use of facial recognition and AI technology to proctor online exams has garnered substantial criticism regarding invasions of privacy and assumptions of cheating leading to unwarranted discipline, recently spurring protests and even litigation from university students.

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Artificial Intelligence and Historical Research: Unlocking Ancient Secrets

Artificial intelligence is not only revolutionizing our 21st century lives, but it is transforming historical research – analyzing the handwriting of Biblical scribes, deciphering lost languages and allowing the examination of documents too damaged to be read by the human eye or to be physically handled. Most of these technologies pose tremendous advantages for researchers and scholars, but some uses of AI risk distorting history.

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NFTs: A 2021 Internet Craze or a Fundamental Shift in How We Think of Digital Property and Copyright Law?

Since March 2021, non-fungible tokens (NFTs) have entered the lexicon in publications and conversations. Here we discuss NFTs and explore the intellectual property issues they raise.

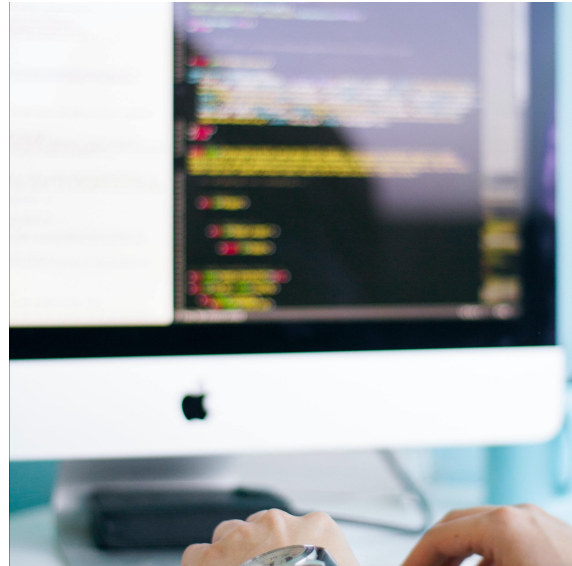
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The Information Transparency and

Personal Data Control Act

The Information Transparency and Personal Data Control Act (“ITPDCA”) is a newly proposed Congressional bill that seeks to create a uniform federal standard for consumer data privacy regulations. If passed, this federal bill would preempt the state-specific patchwork of data privacy laws that companies must navigate to ensure compliance across the United States. Notably, the ITPDCA does not include a private right of action for individuals or language regarding artificial intelligence technologies.

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Cybersecurity: New Executive Order Promises to Overhaul the Entire Industry

From the SolarWinds debacle to the Colonial Pipeline hack, cybersecurity has been making news headlines. Now, nearly ten years after then-Secretary of Defense Leon Panetta predicted the U.S. would face a “cyber-Pearl Harbor,” the Federal Government has finally acted. The new Executive Order has the potential to strengthen the nation’s cyber infrastructure, but it also creates many new and complex regulatory hurdles for software vendors to navigate.

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An Epic Trade Secret Mistake? Why Third Parties to Litigation May be at Risk of Losing Trade Secret Protections

E-filing has revolutionized the court system, making it easier and faster to file documents to the court record. However, it is now also easier for lawyers to make inadvertent mistakes with potentially serious consequences. The high-profile trial of Epic Games and Apple showed that even the most astute law firms can mistakenly publicize third parties' trade secrets by inadvertently filing unredacted documents. E-filing mistakes of this kind could lead to the third parties losing trade secret protections for the leaked information.



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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



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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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