

SXSW 2018 THE The intersection of law and technology.

South by Southwest, the annual music, film, and technology conference that takes over Austin each year, featured panels on March 9-18 that provided updates on the law, offered continuing legal education for attorneys, and explored current and potential future legal trends. Highlights from some of the law-related sessions follow. For more coverage, go to texasbar.com/sxsw2018.



Life Rights for Non-Fiction Films

When filmmakers need to capture beyond what we know about a public figure, they typically seek out life rights to a subject's story. These legal agreements grant full access to a subject—including artwork, journals, recordings, and anything else that can give extensive insight into the person beyond tabloid fodder and already-covered major events. But there are pros and cons, as experts at the panel “To Get or Not to Get: Life Rights & Non-Fiction Films” attested. On one hand, the agreements not only grant full access to a subject, but also typically include a waiver of claim that ensures the subject won't sue the filmmaker if he or she doesn't like what is depicted. On the other, the mere discussion of life rights can be off-putting and scare the subject from participating in production, which is troubling when filmmakers are building trusting relationships with a person or estate, said panelist and entertainment lawyer Dean Cheley.



Race, Privacy, and Facial Recognition Tech

Can racial bias and privacy concerns be corrected in face recognition technology? Those were the big questions at the panel “Face Recognition: Please Search Responsibly.” The technology is becoming more commonplace—to secure iPhones and help law enforcement identify criminals and suspects—which is why the panelists said it is increasingly important to address these ethical issues. Panelist Arun Ross, the director of the Integrated Pattern Recognition and Biometrics Lab at Michigan State University, said the artificial technology behind face recognition relies on the data used to train it, meaning data should reflect diversity to make the technology identify more accurately people of color. Clare Garvie, a privacy lawyer and associate of the Center on Privacy & Technology at Georgetown Law, said that as more companies, including those in retail, use the technology, people fear what else it may be used for. Entities using it should be clear about its use, she said.



Patent Law

Changes to patent law in the past five years have helped to reduce the number of frivolous lawsuits filed, but big problems remain, according to panelists at “Persistence of Patent Trolls in Tech.” Some of the positive steps in patent litigation include the Leahy-Smith America Invents Act; Supreme Court decisions in *Octane Fitness v. Icon Health & Fitness*, *Highmark v. Allcare Health Management*, *Alice Corporation v. CLS Bank International*, and *TC Heartland v. Kraft Food Groups Brand*; and the Supreme Court's abrogation of Rule 84 of the Federal Rules of Civil Procedure, resulting in the elimination of Form 18, said the panelists. Proposed improvements, according to the panelists, include a “loser pays” system; cheaper court costs, such as going through inter partes review, or IPR; and possibly a compulsory licensing act, where large companies are forced to share their large patent catalogues.



Morality Clauses

With scandals involving moral and criminal behavior spreading across Hollywood, morals clauses are making a more frequent appearance in performers' contracts. Dallas attorney Sally Helppie, a film producer and entertainment attorney with Vincent Serafino Geary Waddell Jenevein, and Austin entertainment attorney Amy E. Mitchell said morals clauses are often points of contention between producers and talent. “Being able to identify the conduct specifically that you want prohibited, based on the specific client needs, should really be your goal,” Mitchell said. When it comes to breaches of morals clauses, producers will want sole discretion in that determination, while talent will seek “reasonable judgment” from a panel of two or more people, Helppie said.



Artificial Intelligence

With the growing presence of artificial intelligence, or AI, in daily life—self-driving cars, facial recognition, and smart personal assistants like Alexa and Siri—there are questions forming about what rules should be followed. “The makers of software need to be held clearly liable when that software causes specific harms,” said Andrew Burt, chief privacy officer and legal engineer at Immuta, an information governance platform, during “Regulating AI: How to Control the Unexplained.” At “AI Creativity in Art, Neuroscience, and the Law,” panelists examined the point at which responsibility shifts from designer to AI. Alexander Reben, an artist at Stochastic Labs, suggested “choice” could be a determining factor. “That it’s a non-random and unpredictable decision. That is, it’s not a decision of me—the programmer—by proxy of the robot.” Sarah Schwettmann, a computational neuroscientist at the Massachusetts Institute of Technology, cautioned against this approach. “Talking about randomness is tough because at some level there was a model there . . . somebody either wrote the code or the model was trained on a set of examples, and it could iterate on those examples and intentionally produce something.”

Music in the Digital Age

Amid the rapidly evolving ecosystem of digital music, the current law governing its use remains firmly established in *Lenz v. Universal Music Corp.* During “Pirates’ Rights: Streaming and Digital Album Release,” panelist Wade Leak, senior vice president and deputy general counsel to Sony Music Entertainment, said *Lenz* “literally tells the content owner that before you issue that takedown, you have to do some type of fair use analysis.” Fair use has created a situation where record companies are constantly playing a catch-up game with new content “leaking” out to the internet. In “Licensing Music for Social Media: A Perfect Storm,” panelist Tracy Gardner, senior vice president of digital strategy and global business development for Warner Music Group, suggested embracing the technology. “We realize that these platforms are moving so quickly. If we were to try to hold them back, then we’re losing out.” Panelists at both sessions are keeping an eye on the Music Modernization Act, introduced to the House in December 2017 and Senate in January 2018.



Legal Issues With Cryptocurrency

Bitcoin and other cryptocurrencies are generating a lot of money with millions—and perhaps billions—of dollars being invested in initial coin offerings, or ICOs. However, all that glitters is not gold, as criminal and class-action lawsuits are arising from these ICOs. “Cyberspace Barons: Creators of ICOs and Ransomware” panelist Kathryn Haun, a lecturer at Stanford University and board member at Coinbase, said Alexander Vinnik, alleged operator of BTC-e, has been charged with money laundering—\$4 billion worth of bitcoin—and theft—about 450,000 bitcoins stolen from Mt. Gox. Civil suits have also appeared, “alleging everything from the unregistered sale of securities to fraud . . . material misrepresentation, unfair competition, and false advertising,” said Alan Cohn, of counsel to Steptoe & Johnson. Some guidance is needed by the Securities and Exchange Commission, said Vinny Lingham, chief executive officer and co-founder of Civic, during the panel “Bitcoin and the New World of Programmable Money.” “What we really want is clarity, and when we get clarity, then we can play by the rules,” Lingham said. “Right now people are stretching the rules to the extreme because of that lack of clarity.”

The GDPR and a New Digital Economy

Depending on the source, the footprint you leave online, whether it’s the websites you visit or the emails you send, is essentially private and shouldn’t get in the hands of advertisers or anyone else. But to others, that history is merely business—data that can be used by companies to tailor ads to users. Panelists of “A Game-Changing Shift in Control of Personal Data” explained that who has the say in how data is used might swing in favor of the public. Ahead of the European Union’s General Data Protection Regulation, or GDPR, which becomes enforceable in May, the panelists anticipate a new digital economy where users, upon visiting websites, can make companies “have to check yes to them.” Nicky Hickman, founder and CEO of the U.K.-based Inglis Jane, said the regulation, which requires businesses to safeguard user information, has potential to “end the online feudal system,” but how enforceable it will be remains to be seen.” **TBJ**

