

SXSW 2023 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 10-19 that provided updates on the law, offered continuing education for attorneys, and explored current and future legal trends. Highlights from some of the law-related sessions follow.



Entrepreneurship in the Music Industry

Los Angeles-based rapper Blxst, recently named Billboard's Rookie of the Year, stopped by SXSW to talk about his entertainment company EVGLE, a one-stop shop for records, publishing, graphic design, and more at a panel titled "How Music, Entrepreneurship & Independence Intersect." Along with him were his manager, Victor Burnett, and lawyer, Karl Fowlkes. Fowlkes talked about some of the company's philosophies and objectives, such as getting buy-in from employees and partners who want to build something special. People don't see music companies as start-ups, but EVGLE is, having started off with a smaller budget with the goal of creating a culture people believe in, he said. Part of that involves partnering with companies with a product the team actually uses or partnering with a label that ensures artists like Blxst and his team EVGLE space to work and creative control. Part of decision-making with EVGLE, such as weighing whether to sign with a label or remain independent, involves Fowlkes' legal strategy, which he calls LOMO—length, obligation, money, and ownership. "It's important for an artist and the team to understand their bottom line when working in the industry," he said.

The Real World of Music Licensing and Money

At the panel titled "The Real World of Music Licensing and Money," panelists Jeff Brabec, senior vice president of business and legal affairs of BMG, and entertainment law attorney Todd Brabec gave clear and straightforward answers about licensing music for different media—movies, television shows, and video games. The panelists, twins who are co-authors of *Music, Money and Success: the Insider's Guide to Making Money in the Music Business*, shared intricate details about how music can be licensed for movies, such as the difference between a song being used in the end credits and other parts of the film; fees for theme songs for TV shows; why asking for a description of the scene matters; and the fees associated with music-based video games.



Generative AI: Where Creative and Tech Innovation Meet

At a panel discussion titled "Generative AI: Where Creative and Tech Innovation Meet," panelists Megan Schoen, chief product officer of Shutterstock; Sarah Hoffman, vice president, AI and machine learning research at Fidelity Investments; Jake Kwon, AI consulting team lead at LG AI Research; and Frederic Warner, of United Nations ITU, discussed the use of AI in business and its implications. The panelists discussed how they use AI tools with work-related tasks and also raised concerns surrounding AI, including the need for more diversity in AI tools' query results. Schoen detailed a recent conversation she had with an eventgoer during SXSW. "I was having a conversation with someone at our booth because they had someone come over and do a generative query, and the results were not diverse and representative. And the question was, 'Why is this not diverse? If I query for a CEO sitting at a conference table, why am I getting all white men?'"

Own Your Data: Empowering Our Digital Future

For many people optimistic about the future of technology, the recent innovations of the Metaverse, NFTs, and the prospect of digital ownership can be exciting. However, issues are starting to arise from these innovations regarding the privacy of people's personal information. Brittany Kaiser, co-founder of the Own Your Data Foundation, spoke at the session titled "Own Your Data: Empowering Our Digital Future," where she discussed the legal and technology solutions to those problems. During the session, she explained that with privacy protection, digital trust consists of five components: transparency, consent, accountability, ownership, and sustainability. With each element, she explained the current issue and a possible solution. She went on to discuss digital literacy. "Until we get to the federal level, corporations are still going to make the decisions about how our data is used in [the United States], which is why digital literacy is so important," Kaiser said. "We still need to know how to protect ourselves because we still have quite a way to go."

AI and Criminal Justice

At the panel titled “Will AI Revolutionize or Wreck Criminal Justice,” moderator Nita Farahany, a law and philosophy professor at Duke University, and Preet Bharara, a partner in WilmerHale and former U.S. attorney for the Southern District of New York, described some of the ways in which AI is currently used in the pursuit of justice. Tools can help a judge decide whether to set bail or to make recommendations on the likelihood of repeat offense to inform sentencing or parole decisions. Functional magnetic resonance imaging is used to assess brain activity during a lie. EEG interrogations look for automatic responses in the brain before a person is consciously aware, and is used to find signals of recognition in people who were at a crime scene, for example, and may have committed the crime. However, the panelists noted some of the limitations of this technology and some of the ways it can be problematic. For example, AI assessing the likelihood of a repeat offense could be informed by over policing and discriminatory cultural norms, they said. And the idea that a brain can be probed for memory is based on the idea, falsely, that the brain can accurately produce memories. Memory is not foolproof and trying to get it from other means isn’t either, Farahany said. Additionally, AI can eliminate some bias but in not focusing on the person in question, compassion and mercy can be sacrificed, Bharara said. The overall tone of the panel was one of trepidation—Farahany and Bharara were split on the pros of even designing transparent AI models that allow systems to be easily audited for bias and ultimately refined—it could even backfire, causing AI models to recommend even more biased decisions.

Music Licensing Beyond Web2

Whereas 20 years ago, peer-to-peer programs allowed users to download music for free, leaving artists uncompensated, Web3, with blockchains and token-based economies, has decentralized tech in a way that is more enabling for artists, said moderator Vickie Nauman, of music tech consulting and advisory firm CrossBorderWorks, during the panel “Music Licensing Beyond Web2.” Tribes Studio Chief Growth Officer Jess Furman cited Web3 social graph Lens Protocol as an example of that, where a user’s profile is an NFT, ensuring their—not the platform’s—ownership of the content they post. Panelists pointed to other positives about Web3, such as Register One, a free global blockchain royalty database that allows users to add their music to a blockchain, track copyrights and revenue, and get paid. The advent of Web3 does present new challenges to laws centered on compensation for content, Furman said. In the streaming world, music labels get 50%-58% and publishers get 12%-15%, which isn’t acceptable in Web3. “We don’t really know what is fair and we don’t have laws and norms yet,” Furman said. “But there’s a group of us that are all doing deals. We’re basically trying to mitigate this by striking individual deals that have different kinds of revenue shares available to them.



The Metaverse Mindset for Web3, AI and the Future of Business

At a panel titled “The Metaverse Mindset for Web3, AI and the Future of Business,” Sandy Carter, senior vice president of Unstoppable Domains, highlighted the advancements of the Metaverse, Web3, and AI. She began with the definition of the Metaverse—a digital world where people can live, work, interact, play, and have a social presence from anywhere and at any time. She said that the “Metaverse mindset” consists of five different ideas: forward-looking; engaging, immersive experiences; people are the center of the Metaverse; digital identity as a human right; and AI as a partner. During the panel, Carter explained what a digital identity is and why people protecting a digital identity is a human right.

What International Musicians Need to Know About U.S. Visas

During the panel “U.S. Musicians’ Visas: Strategies & Issues,” music and arts immigration attorneys Matthew Covey and Will Spitz laid out the situations where international artists need or don’t need to obtain work visas to perform in the U.S. For example, if an artist is coming to America to record pursuant to a contract with a non-U.S. entity, no work visa is required, they said. However, if an artist is signed to a U.S. label, then a visa is needed. Still, since traveling to record music is essentially traveling to make money, the two suggested people always take a conservative approach when planning to record in the states. If a label has offices in the U.S. and abroad, it’s best to have a non-U.S. office write an artist an invitation letter for a B1 work visa, specifying things such as the necessity and duration of the visit, they said. **TBJ**