HAYNES BOONE

Media and Entertainment Year in Review

2020 - 2021

An Active Year in Anti-SLAPP Developments

"SLAPP" (Strategic Lawsuits Against Public Participation) lawsuits are on the rise, and in response state legislatures over the last decade have been increasingly passing broad protections in the form of anti-SLAPP laws to address this form of judicial harassment. The last year has seen significant developments in the world of anti-SLAPP legislation: from the adoption of a uniform law to stalwart states like New York passing broad legislation that was a decade in the making. At the same time, federal courts are still grappling with the issue of whether, and how, to apply state anti-SLAPP laws in federal court, with a significant circuit split emerging on the issue, leaving litigants with more strategic decisions than ever in filing and defending against lawsuits aimed at retaliating against those who exercise their First Amendment rights.

Legislative Advancements

First, and perhaps the most broad-sweeping development, is the Uniform Law Commission ("ULC")'s passage of a model anti-SLAPP law to help guide state legislatures that are seeking to pass or expand existing laws in this area. After more than two years of analysis and drafting, the ULC — the same group that devised and oversaw the enactment of the Uniform Commercial Code in all 50 states — adopted the Uniform Public Expression Protection Act ("UPEPA") — a model for anti-SLAPP laws nationwide. On July 15, 2020, the ULC overwhelmingly approved UPEPA at its annual meeting, demonstrating the Commission's desire to provide substantive protections for citizens who exercise their First Amendment rights. The model Act includes a broad definition of public participation, automatic stays of discovery early in anti-SLAPP proceedings, interlocutory appeals of rulings on anti-SLAPP motions, and mandatory attorneys' fees upon dismissal of a SLAPP suit. In developing the model bill, the ULC considered the strengths and weaknesses of existing laws in the 32 states that have already passed anti-SLAPP statutes and the need for applicability in federal court to prevent the pervasive forum shopping currently employed.

The amendment to New York's anti-SLAPP statute was a longer time coming. Although New York has had a law on the books for over 25 years, it was limited to actions involving the real estate permitting process and was essentially worthless for the sizeable media and entertainment industry in that state. After a decade-long effort to expand the reach of the anti-SLAPP law, on November 10, 2020, the New York Governor signed into law Assembly Bill No. 599A/Senate Bill No. 52-A, substantially expanding the protection of New York's anti-SLAPP law, Civ. Rts. Law sec. 70-a, 76a. The bill provides protection for any communication in a public forum "in connection with an issue of public interest," or "any other lawful conduct" furthering the right to free speech and petition in connection with an issue of public interest. It also provides that "public interest" shall be construed broadly. The new law includes many of the key elements contained in the ULC Model Act, including a stay of discovery upon the filing of an anti-SLAPP motion and an award of mandatory attorneys' fees when a judge finds the suit has "[no] substantial basis in fact and law." The New York reform has already had a major effect on media cases. Less than two months after the law took effect, the U.S. District Court for the Southern District of New York, applied the new anti-SLAPP law retroactively in *Palin v. New York Times* and required a showing of actual malice for the case to move forward.

The New York bill passed into law was written prior to the passage of UPEPA. Since then, the ULC Model Act has served as the template for legislation in several states, including the recently passed Washington state law, SB 5009 (signed into law on May 12, 2021).

Federal Courts Wrestle with Applicability of Anti-SLAPP Laws

Although there appears to be a trend among state lawmakers in favor of passing broad anti-SLAPP laws, the federal courts are still wrangling with whether these laws provide primarily substantive protections or procedural remedies that conflict with federal rules and cannot be applied in federal court. In fact, the last year has seen a myriad of opposing holdings from circuit and district courts, sometimes even rejecting precedent from the anti-SLAPP laws' forum states.

Circuit Court Rulings Reach Inconsistent Results

On July 15, 2020, the same day the ULC adopted its model anti-SLAPP Act, the Second Circuit held, in a matter of first impression, that the California anti-SLAPP statute did not apply in federal court. The holding in *La Liberte v. Reid* directly contradicts the Ninth Circuit's long-standing holding in *Newsham v. Lockheed*, that the California anti-SLAPP law is primarily substantive and does apply in federal court.

The Second Circuit relied heavily on the Eleventh Circuit's recent holding in *Carbone v. CNN*, in which the Court found that the "probability of prevailing on the merits" standard (found in both the California and Georgia anti-SLAPP statutes) was higher than that required under Federal Rules of Civil Procedure 12 and 56. Accordingly, the California anti-SLAPP law could not be applied in federal court.

On July 31, 2020, approximately two weeks later, in *Clifford v. Trump*, the Ninth Circuit concluded the Texas anti-SLAPP statute applied in federal court, in this instance breaking ranks with Fifth Circuit precedent in *Klocke v. Watson*. Though the Court recognized the Fifth Circuit's recent ruling, it found that

> [T]he reasoning of the Fifth Circuit's opinion cannot be reconciled with our circuit's anti-SLAPP precedent, *compare Newsham*, 190 F.3d at 972 ("[T]here is no indication that [Federal Rules of Civil Procedure] 8, 12, and 56 were intended to 'occupy the field' with respect to pretrial procedures aimed at weeding out meritless claims."), *with Klocke*, 936 F.3d at 247 ("Rules 8, 12, and 56 provide a comprehensive framework governing pretrial dismissal and judgment.")

> The last year has seen significant developments in the world of anti-SLAPP legislation: from the adoption of a uniform law to stalwart states like New York passing broad legislation that was a decade in the making.

Clifford v. Trump, 818 Fed. Appx. 746, 2020 WL 4384081, *2 (9th Cir. July 31, 2020). Both decisions deepened the divide and increased the confusion over whether state anti-SLAPP laws apply in diversity actions in federal court.

District Court Decisions add to the Confusion

On August 5, 2020, a federal district court in Iowa (in the Eighth Circuit) decided *Nunes v. Lizza*, a lawsuit involving defamation claims against a Hearst reporter filed by California Congressman Devin Nunes, holding that the California anti-SLAPP law did not apply in federal court diversity cases. In prior years, courts in that circuit had split on the legal issue of whether state anti-SLAPP laws applied in federal court. *Compare Harrington v. Hall County Bd. of Supervisors*, 2016 WL 1274534 (D. Neb. Mar. 31, 2016) (finding a statute providing for attorney's fees and costs substantive and thus permitting the filing of a motion for attorney's fees under Nebraska's anti-SLAPP statute) *with Unity Healthcare, Inc. v. County of Hennepin*, 308 F.R.D. 537 (D. Minn. 2015) ("Minnesota's anti-SLAPP law is inapplicable in this case because it conflicts with Federal Rule of Civil Procedure 56."), *appeal dismissed*, 2016 WL 11339506 (8th Cir. 2016).

A day later, on August 6, 2020, in *Bongino v. The Daily Beast Co., LLC,* a SLAPP lawsuit alleging defamation and trade libel filed by "an outspoken supporter of President Donald Trump" against a media company that had reported on the termination of his NRATV

show, a federal district court in Florida granted the defendant's motion to dismiss and awarded fees under the Florida anti-SLAPP law. The court held that the Florida statute's right to prevailing party fees was "a garden variety fee shifting provision," which was substantive and enforceable in federal court, notwithstanding the prior Eleventh Circuit decision (*Carbone v. CNN*) that rejected Georgia's anti-SLAPP law, which it said had required a substantive, evidentiary determination of the plaintiff's "probability" of prevailing that conflicted with remedies available under the federal civil rules.

The Supreme Court Continues to Avoid Wading into the Discussion

With all of this disagreement—and the "murky" waters of *Erie* underlying the entire mess—one might assume that the Supreme Court would resolve the issue. To the contrary, the Supreme Court has consistently refused to take cases involving state anti-SLAPP laws. *See, e.g., Yagman v. Edmondson*, 723 Fed. App'x 463 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 823 (2019); *Planned Parenthood Federation of America, Inc. v. Center for Medical Progress*, 897 F.3d 1224 (9th Cir. 2018), *cert denied,* 139 S. Ct. 1446 (2019). As recently as February 2021, the Supreme Court again refused, denying review in the *Clifford v. Trump* case (141 S.Ct. 1374 (2021)) which presented the conflict between the Ninth Circuit and the Fifth Circuit's holdings on the applicability of the Texas anti-SLAPP law in federal court.

Conclusion

Given the increasing need for protection of one's ability to speak out about matters of public concern, it is not surprising that so many states are engaged in efforts to try to pass and/or expand their anti-SLAPP laws. Now that the Uniform Law Commission has passed the Uniform Public Expression Protection Act, those states considering the issue may benefit from a strong template approved by this nationwide group of legal scholars when drafting future legislation. With regard to diversity cases in federal court, because of the unpredictability as to whether the substantive protections of state anti-SLAPP laws apply, one can expect forum shopping to abound until the U.S. Supreme Court resolves the issue or a federal law is enacted.

Dichotomy in Transparency as a Result of COVID-19

In March of 2020, when the spread of the COVID-19 virus led governments throughout the United States to impose emergency orders restricting all aspects of life, the effect on government transparency was swift and dramatic. Freedom of Information Act ("FOIA") requests were essentially ignored, with government offices closed and some agencies telling requestors that response times might be delayed indefinitely. Public bodies such as city councils and school boards, no longer able (or willing) to meet in person, moved to various forms of remote meeting procedures. And courts, after an initial period of inactivity, moved pretrial proceedings, and in a few cases, even trials, to video conferencing platforms such as Zoom.

By the summer of 2021, many emergency orders and restrictions had been rescinded, and a slow return to "normalcy" was underway. For government, and for journalists who cover government, the challenge going forward will be to balance the best aspects of remote working and remote meeting, without sacrificing fundamental principles of transparency.

Access to Public Records

In May of 2020, the Department of Justice ("DOJ") Office of Information Policy ("OIP"), the DOJ unit devoted to encouraging federal agency compliance with FOIA, issued guidance to federal agencies relating to FOIA administration which, although acknowledging the pandemic's impact on existing FOIA processes, emphasized that "agencies' legal obligations under FOIA continue."

However, because many federal agencies were not telework-ready when the pandemic began, or for other reasons, many requestors have faced significant delays since the onset of the pandemic in receiving responses to FOIA requests. In fact, the Office of Government Information Services ("OGIS") reported that by October 2020, 47% of federal agencies' FOIA websites alerted requestors to delays and other issues in responding to FOIA requests due to the pandemic, with delay being especially prevalent in agencies receiving high volumes of requests.

At the state level, some legislatures have passed legislation aimed at preventing government agencies from relying on the pandemic to shirk their open-records responsibilities. For example, in 2021, the Texas Legislature enacted legislation aimed at narrowing the "catastrophe" exception to the Texas Public Information Act ("TPIA"), on which many Texas governmental bodies relied to suspend, sometimes indefinitely, responding to public information requests during COVID-19.

The TPIA requires that a governmental body produce requested public information "promptly." In 2019, the Legislature amended the TPIA to allow a governmental body to suspend the statute's requirements when affected by a "catastrophe," broadly defined as "a condition or occurrence that interferes with the ability of the governmental body to comply" with the TPIA, including an epidemic. In March 2020, after receiving dozens of inquiries about the catastrophe-suspension procedure related to COVID-19, the Office of the Attorney General of Texas ("OAG") issued guidance stating that a catastrophe suspension is appropriate when a governmental

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body is open for business but determines that a catastrophe has interfered with its ability to comply with TPIA. To make matters worse for requestors, the OAG also advised state and local agencies that the catastrophe notice is not necessary for "skeleton crew days" on which the governmental body is not open for business: in that situation, the deadlines for TPIA compliance do not even begin to run until the governmental body reopens for business. Soon thereafter, hundreds of governmental bodies submitted "catastrophe notices" to the OAG claiming the exception, and also claimed to be operating on a "skeleton crew" basis because the governmental body's offices were closed, thereby delaying, in some cases indefinitely, responding to public information requests.

Despite submitting "catastrophe notices" and "skeleton crew" responses to TPIA requests, many of those same agencies remained fully staffed, and agency employees, although working remotely instead of from a government building, continued to have electronic access to public government information. In response, the Texas Legislature passed S.B. 1225, effective September 1, 2021, which will allow the TPIA's obligations to be suspended only once per "catastrophe" with a maximum period of suspension of 14 consecutive calendar days. Critically for the new remote-working environment, the bill provides that to meet the exception, the catastrophe must "directly" interfere with the agency's ability to comply with the TPIA and does not include a period where the office is closed but staff is working remotely and can access responsive information electronically. In addition, the revised law requires agencies to make a "good faith effort" to respond to public information requests when working remotely.

Public Meetings

The first wave of emergency orders typically allowed, and in some cases required, governing bodies of local governmental agencies to meet remotely. Initially, in states where remote proceedings were permitted but not required, some local governments attempted to continue traditional in-person meetings, but many of those public bodies soon transitioned to remote meetings.

As time passed, however, many public bodies moved to various forms of "hybrid" meetings. While the details of hybrid meetings varied widely, typically some number of the members of the governing body, but not all, would meet in person at a fixed location such as a city hall. Other members of the governing body would attend remotely, usually by a video conferencing platform that allows the audience to see the remotely attending members. In the typical hybrid meeting, members of the public may attend either in person or remotely by logging into the video conferencing platform.

For journalists, the remote meeting procedure makes it easier to cover a meeting, at least if "covering" a meeting simply means observing what happens in the public setting. But as every experienced journalist knows, covering a meeting is not just a matter of watching what happens in the public session—it is also having one-on-one conversations with public officials, sometimes scheduled (as is necessary with a Zoom meeting) but often serendipitously, in a hallway or elevator after the meeting or at a break. The convenience of remote meetings should never be allowed to overcome the obligation of a public official, and especially of an elected public official, to be accessible to journalists.

Judicial Proceedings

For courts, COVID-19 initially brought business to a halt as trials were continued and hearings postponed in the hope that COVID-19's interruption of public life would be brief. Soon, however, the judicial

system, like every other aspect of society, realized the pandemic would not be short lived and that adaptation to the circumstances would be necessary.

Because judicial proceedings often bring many people together in one place at one time, the judicial branch of government faced challenges not seen by the legislative and executive branches. As Texas Supreme Court Chief Justice Nathan L. Hecht observed in his 2021 State of the Judiciary address, "Texas has 3,220 judges in 1,192 court locations, visited every day by some 325,000 people—1% of the population—most of whom don't come by choice." Courts were required to find a way to allow the system to function without, as Hecht put it, "forcing people seeking justice to risk their health to get it."

The solution, of course, has been the "Zoom hearing" and even the occasional "Zoom trial" (which may be literally on Zoom, or other video conferencing platforms such as WebEx). By March of 2021, when Hecht delivered his State of the Judiciary report, Texas courts had conducted more than 1 million Zoom hearings, with more than 3.5 million participants, and had conducted 35 virtual jury trials. While most of those trials were admittedly in simple civil cases involving modest amounts in controversy or minor criminal cases in which the Defendant faced punishment of only a monetary fine, with no risk of incarceration, the notion of a "Zoom jury trial" in any case was incomprehensible before March of 2020.

It is critical, however, that a Zoom trial not be a secret trial. In criminal cases, that is a constitutional issue, as the defendant has a Sixth Amendment right to a public trial and the press and public have a First Amendment right to attend criminal proceedings. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980). While the United States Supreme Court has never specifically held that the press and public have a First Amendment right to attend civil trials and proceedings, numerous lower federal courts have found such a right, and many states have state constitutional or statutory provisions requiring public access to civil proceedings.

Texas addressed this issue from the beginning. In its first emergency order allowing remote proceedings to occur even without a participant's consent, Texas required courts to conduct those remote proceedings "with reasonable notice and access to the participants and the public." Different Texas courts handled that obligation in different ways—some created a YouTube channel, many simply made the Zoom link available to anyone who asked for it, and some judges conducted remote proceedings while physically in their courtroom, allowing members of the public to attend by coming to the Court House (as before) and observing the proceeding on the same screen used by the judge.

For a journalist covering a trial or other judicial proceeding, the benefits and drawbacks of a remote proceeding are similar to those of a remote public meeting. The ability to observe a trial or hearing without incurring the time and expense involved in going to a Court House is a benefit. But attending a virtual hearing requires one to know in advance that the hearing will occur and make the necessary arrangements. The old practice of a reporter walking through the Court House "to see what's going on" is impossible. As is the case with public meetings, the ability to speak informally and extemporaneously to lawyers and other trial participants is lost. And while there appears to be a consensus that a criminal defendant has a Sixth Amendment right to a public in-person trial, it remains to be seen if courts will recognize a First Amendment right for the public to attend trials in person or will conclude that the public's right of access can be satisfied with a Zoom link.

The Supreme Court Continues to Take On Important Copyright Issues: A Look Back and a Look Forward

Google v. Oracle: When is Copying a Fair Use?

At long last, after more than a decade of litigation and a deferral from the 2019-2020 term as a result of the COVID-19 pandemic, the United States Supreme Court finally concluded the multi-billion-dollar copyright dispute between Google LLC and Oracle America, Inc. Although this was the only copyright issue decided by the Supreme Court in the 2020-2021 term, the decision was one of the most significant in recent copyright law history.

The dispute between technology giants arose from Google's unlicensed use of Oracle's Application Programming Interfaces ("API") in early versions of its Android smartphone platform. Programmers have used Oracle's APIs to gain access to thousands of prewritten computing tasks through the use of simple commands for decades. Thus, when Google set out to develop a software platform for smartphones, Oracle's APIs were desirable—if Google could utilize Oracle's well-known commands, then programmers could avoid having to write their own code from scratch to accomplish the same computing functions. Ultimately, Google copied enough of Oracle's code to accomplish just that—by integrating approximately 11,500 lines of Oracle's declaring code, programmers could input Oracle's commands to access Google's proprietary computing functions.

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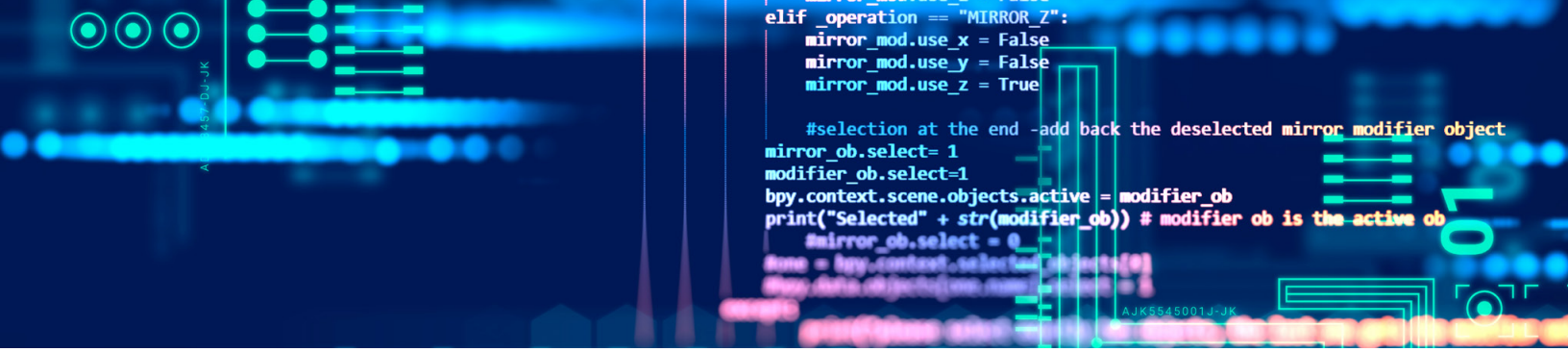
Oracle sued Google, claiming that Google's copying infringed both its copyrights and patents. The case involved two key issues: (i) whether Oracle's APIs were subject to copyright protection; and (ii) whether Google's use of the APIs was a fair use. The Court dodged the copyrightability question, which had the potential to send shockwaves throughout the industry, and instead focused its analysis on the notoriously flexible, fact-specific fair use defense. The test considers: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work."

The 6-2 majority (with Justice Barrett not participating), found for Google on each of these factors, as follows:

- **Purpose and Character of the Use:** The touchstone of this factor is, generally, whether the copier's use "adds something new" or "transforms" the use of the copyrighted material. Although the Court concluded that Google's use of the declaring code served the same function as Oracle's (i.e., to enable programmers to integrate methods from the APIs into their own programs), the Court nevertheless found this factor weighs in Google's favor. Specifically, the Court concluded that Google's use was "transformative" because it: (1) sought to create new products and (2) enabled programmers to access a new collection of computing tasks in a different computing environment (smartphones as opposed to computers).



- **Nature of the Work:** Here, the Court emphasized that the value of Oracle's declaring code—which Google copied—is not derived from creativity, but rather from the number of programmers who learn to use it. Because copyright law seeks to protect creative expression, the Court concluded declaring code is farther from the core of copyright law's protection.
- **Amount and Substantiality of the Portion Used:** The majority found this factor in favor of fair use because Google only copied a small *quantitative* amount of the APIs (approximately 11,500 lines of 2.8 million), which was not otherwise "substantial" because the taking was not intended to usurp creativity, but rather to promote it.
- **Effect on the Market:** Finally, the Court was unpersuaded that Oracle's nine-billion-dollar damages claim rendered the market effects in Oracle's favor. The Court stressed again that the value of Oracle's software is derived from the time programmers have invested to learn it, which copyright law does not protect. Thus, the Court declined to attribute Google's Android market success to the value of Oracle's copyright. Moreover, the Court concluded that Oracle benefitted from Google's expansion of Oracle's software into the smartphone market. Taken together, the Court concluded all factors weighed in favor of fair use.

Among other things, the dissent opined that the majority's novel application of the "transformative" analysis eviscerates copyright. Traditionally, courts have rejected a fair use defense where the copier merely creates a new product without altering the original with "new expression, meaning, or message." Justice Thomas, joined by Justice Alito, found Google's copying to be a far cry from that standard.

In fairness, the fair use test has long been a convoluted, inconsistently-applied, and murky area of copyright law. Unfortunately, the Court's opinion failed to add much-needed clarity or certainty to its application. On the one hand, by only considering the fair use defense, the Court potentially limited the direct impact of its decision to the dispute at hand and software disputes like it. But, on the other hand, the Court's broad application of the fair use test—and particularly the "transformative" analysis—indicates a deviation from precedent. Although the Court expressly stated it was *not* redefining fair use, the decision is still likely to spark greater and novel reliance on the defense in the software industry and beyond, including in the digital media industry.

Unicolors v. H&M: When is a Copyright Claim Dead on Arrival Due to Registration Errors?

Despite the lack of clarity to come out of the 2020-2021 term, the upcoming year promises to resolve a different question in the industry: whether an intent-to-defraud is necessary to invalidate a copyright registration obtained through an application with inaccurate information. Under Section 411(b) of the Copyright Act, even if a certificate of registration contains inaccurate information, it may be used to enforce a copyright *unless* "the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration." 17 U.S.C. § 411(b). Traditionally, the Ninth Circuit, among others, has declined to invalidate registrations unless the inaccuracy was a result of bad faith. However, recently, it changed tack and rejected such a requirement, arguably creating a circuit split on the issue.

On June 1, 2021, the Supreme Court granted certiorari to resolve this issue in the matter of *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.* during the 2021-2022 term. Regardless of the outcome, the Court's decision will answer an important question for registrants and illuminate when their copyright registrations are vulnerable to invalidation on the basis of application errors. Because a registration certificate (or denial of one) is now required to pursue a U.S. copyright claim, the outcome has potential to impact media companies both when defending and pursuing copyright litigation.

RECENT SPEAKING ENGAGEMENTS

Haynes and Boone Trademark Webinar Series
Advertising Law Basics for In-House Attorneys
Speakers: Joe Lawlor and Tiffany Ferris
June 23, 2021

New Jersey State Bar Association Annual Meeting
Media Law: It is Time for NJ to "Slap Back"
Speaker: Laura Prather
May 19, 2021

Haynes and Boone COVID-19 Webinar Series
Trademark Modernization Act
Panelists: Joseph Matal and David Bell
April 27, 2021

Haynes and Boone Trademark Webinar Series
Abandoned Scandalous Marks - What Happens Now
Speakers: Theresa Conduah and Annie Allison
March 11, 2021

28th Annual Fordham IPLJ Symposium: Free Speech in the Modern Age
Hitting Back: SLAPP Suits & Anti-SLAPP Statutes
Panelist: Laura Prather
March 8, 2021

MLRC Anti-SLAPP and International Committees Joint Meeting
Anti-SLAPP Legal Issues in the U.S., U.K. and Europe
Speaker: Laura Prather
January 25, 2021

ABA's Government and Public Sector Lawyers Division
Public Sector Employees and First Amendment Issues
Panelist: Laura Prather
January 12, 2021

RECOGNITIONS

Haynes and Boone Lawyers Prominently Featured in 2021 *Chambers USA*

Laura Prather – First Amendment Litigation (USA - Nationwide)

Haynes and Boone Defeats $1.2 Million Libel Judgment Based on Yelp Review

Haynes and Boone Prominently Featured in 2021 'Best Law Firms' Listing

- National Tier 3 rankings: Litigation - First Amendment, Sports Law
- Metropolitan Tier 1: Litigation - First Amendment (Dallas/Fort Worth)
- Metropolitan Tier 2: Litigation - First Amendment (Austin), Sports Law (Houston)

Haynes and Boone Lawyers Recognized in *D Magazine*'s 2021 'Best Lawyers Under 40' List

Stephanie Sivinski

***National Law Journal* Names Laura Lee Prather Among First Amendment Trailblazers for 2020**

Haynes and Boone Lawyers Recognized in 2020 *Texas Super Lawyers* Directory

- Laura Prather – Media and Advertising
- Thomas Williams – Business Litigation

Stephanie Sivinski Named one of Texas' Top Lawyers Under the Age of 40

Laura Prather Featured as Free Speech Champion in *Austin Business Journal*'s 2020 Profiles in Power

Haynes and Boone Recognized in 2021 *Best Lawyers in America Guide*

- Laura Prather: Litigation - First Amendment
- Thomas Williams: Commercial Litigation, Litigation - First Amendment, Litigation - Intellectual Property
- Catherine Robb: Litigation - First Amendment

Erin Hennessy, Laura Prather Among Shortlist Finalists for 2020 Euromoney Americas Women in Business Law Awards

PUBLICATIONS

[Jason Bloom, Annie Allison and Abbey Gauger in *Law360*: 'Texas Ruling Shows Weight of State Immunity in IP Claims']
July 8, 2021 | Jason Bloom, Annie Allison, and Abbey Gauger

[A Balancing of 'Incomparable Interests:' The *Pickering* Test and First Amendment Rights of Government Employees]
May 3, 2021 | Laura Prather

[Copyright Case of the Century Decided: Supreme Court Rules in Google's Favor in $9 Billion Software Dispute]
May 3, 2021 | Jason Bloom, Lee Johnston, and Abbey Gauger

[What Are Standard Essential Patents and Why Do I Need to Know About Them?]
May 3, 2021 | Raghav Bajaj

[Darwin Bruce in *The Licensing Law Journal*: Evolving Trends in the Production and Distribution of Streaming Media]
April 30, 2021 | Darwin Bruce

[Supreme Court Sides with Facebook and Limits Federal Robocall Ban]
April 2, 2021 | Thad Behrens, Emily Westridge Black, Mark Erickson, Andrea Levenson, and Billy Marsh

[Jason Bloom in Media Law Resource Center Newsletter: 'Lessons from the Nicki Minaj Copyright Judgment']
February 9, 2021 | Jason Bloom

[After Months of Deadlock, Congress Extends Lifeline for the Arts and Entertainment Industry through the Shuttered Venue Operators Grant Program]
December 30, 2020 | James Markus, Brent Beckert, and Daniel Wei

[Significant Changes to U.S. Trademark and Copyright Law Included in Latest Coronavirus Relief Legislation]
December 28, 2020 | David Bell, Jason Bloom, and Joseph Matal

[Facebook to More Quickly Remove Misleading Ads through New Partnership with the NAD]
December 4, 2020 | Tiffany Ferris and Joe Lawlor

["Bad to the Bone" - The Libel-Proof Plaintiff Doctrine]
November 30, 2020 | Lee Johnston and Kelli Bills

[Nevermind: Who Really Owns Nirvana's Iconic Smiley Face Design?]
November 30, 2020 | Annie Allison and Erin Hennessy

[David Bell and Mike McArthur in *Intellectual Property Magazine*: Name Drop]
October 5, 2020 | David Bell and Mike McArthur

[Laura Prather in *Law360*: Anti-SLAPP Circuit Split Makes State Protections Uncertain]
August 28, 2020 | Laura Prather

[Jason Bloom, Lee Johnston, Joseph Lawlor in *Intellectual Property & Technology Law Journal*: Copyright Office Finds Aspects of the DMCA 'Unbalanced' in Favor of Online Service Providers]
August 18, 2020 | Jason Bloom, Lee Johnston, and Joe Lawlor

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HB MEDIA MINUTE PODCAST

[A Review of the Texas Supreme Court's Key Media, Defamation, and TCPA Decisions from the 2020-21 Term]
July 19, 2021 | Ben Mesches

[Domain Name Cybersquatting and Trademark Based Options for Brand Owners – The ACPA, UDRP, and URS]
July 6, 2021 | Jeff Becker

[Avoiding Liability for Using A Person's Image in Your Creative Work]
June 17, 2021 | Chrissy Long

[Federal Courts of Appeals Paring Down Transformative Use: Two Recent Copyright Fair Use Decisions (Not Named *Google v. Oracle*)]
June 3, 2021 | Stephanie Sivinski

[What Media Companies Need to Know About the GDPR and CCPA]
May 17, 2021 | Gavin George

[A Balancing of "Incomparable Interests": The *Pickering* Test & First Amendment Rights of Government Employees]
April 20, 2021 | Laura Prather and Alicia Pitts

[Bonus Episode: An Update to "Entertainment, and Titles, and Trademarks, Oh My!" The Tricky Business of Title Clearance for Entertainment Properties]
April 12, 2021 | Erin Hennessy and Annie Allison

[What Are Standard Essential Patents and Why Do I Need to Know About Them?]
March 30, 2021 | Raghav Bajaj

["Entertainment, and Titles, and Trademarks, Oh My!" The Tricky Business of Title Clearance for Entertainment Properties]
March 23, 2021 | Erin Hennessy and Annie Allison

[Evolving Trends in the Production and Distribution of Streaming Media]
February 12, 2021 | Darwin Bruce

[Significant Changes to U.S. Trademark and Copyright Law Included in Latest Coronavirus Relief Legislation]
January 21, 2021 | Joseph Matal

[TikTok Influencers and Cross-Platform #AdLaw Concerns]
December 16, 2020 | Joe Lawlor

[How to Avoid Liability for Posting Photos and Other Online Content]
November 30, 2020 | Jason Bloom

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[Restrictions on Open Government and Public Information During COVID-19]
November 11, 2020 | Thomas Williams

[Anti-SLAPP Legislation and Litigation - Key Developments]
October 2, 2020 | Laura Prather

Streaming Media Industry Group

Our Streaming Media Industry Group is a cross-disciplinary team of attorneys representing clients in the streaming media space. Haynes and Boone works with a wealth of clients in the streaming media industry from major media franchises and television networks to online gaming and sports.

In the streaming media space, we have conducted trademark counseling, prosecution, and enforcement; *inter partes* review (IPR), technology transactions, including drafting and negotiating use and licensing agreements; patent prosecution; copyright (including the Digital Millennium Copyright Act); merchandising counseling; and advising on advertising and branding issues.

We provide a broad spectrum of counseling and litigation services related to media and First Amendment law (including anti-SLAPP statutes), Communications Decency Act, negligence, fraud, breach of contract, libel, defamation, royalties, and FTC investigations.

We also provide a full complement of services for domestic and international media and entertainment transactions, including private equity and capital markets transactions as well as commercial finance and corporate governance matters for clients operating within the industry. Mergers, acquisitions, and joint ventures are also a key part of the firm's capabilities in assisting clients in their strategic planning. We have broad experience in handling industry specific transactions such as live event productions; television, video, and user-generated content transactions; television and motion picture production and distribution; transactions involving intellectual property; and digital media transactions.

Learn more on our industry page, Streaming Media.

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