

Federal Court Preliminarily Enjoins California Law that Prohibits Reporting Actors' Ages

March 9, 2017 Natasha Breaux

PRACTICES Appellate, Media and Entertainment Litigation

IMDb.com, Inc. v. Becerra, No. 3:16-cv-6535-VC (N.D. Cal.)

California Assembly Bill 1687 (“AB 1687”), which went into effect on January 1, 2017, requires certain entertainment websites to remove a paid subscriber’s date of birth or age information upon request.¹ This law applies to IMDb, the world’s largest online database of information about the entertainment industry. IMDb filed suit against the California Attorney General (the “AG”) in the United States District Court for the Northern District of California, contending, among other things, that the law violates the First Amendment’s free speech clause. On February 22, the court granted IMDb’s motion for preliminary injunction, thereby enjoining enforcement of the law while the lawsuit is pending.

The California Legislature passed AB 1687 at the behest of the Screen Actors Guild – American Federation of Television and Radio Artists, which claimed the law will help combat age discrimination by employers against actors and other professionals in the entertainment industry. Allegedly, employers in the entertainment industry find out actors’ and others professionals’ ages from IMDb and then use that information to discriminate when hiring. The Screen Actors Guild intervened in the federal lawsuit, arguing that it is constitutional for the government to regulate such discrimination-facilitating conduct.

The AG defended AB 1687 by claiming that it only regulates economic contractual relationships between IMDb and its subscribers—not speech—and therefore First Amendment protection is not available. Even if it does regulate speech, the AG claimed that such speech is commercial speech and therefore afforded lesser First Amendment protection. That lesser standard is satisfied, according to the AG, because the law aids in preventing age discrimination and is no more extensive than necessary. AARP and AARP Foundation filed an *amicus* brief supporting the AG’s and Screen Actors Guild’s positions.

In its motion for preliminary injunction, IMDb pointed out that it has two sites: a paid subscription-based site tailored for use in hiring entertainment professionals, and a free public site. Subscribers control whether to list their age information on the subscription-based site. However, the public posts information on the public site, much like Wikipedia. IMDb claimed AB 1687 targets non-commercial speech because it targets factual information unconnected to a business transaction, particularly as to the public site. Because the law regulates non-commercial, content-based (age) speech, IMDb contended strict scrutiny of the law applies. According to IMDb, the law fails strict scrutiny because it is not narrowly tailored to combat age discrimination.

Haynes Boone filed an *amicus* brief in support of a preliminary injunction on behalf of Dean Erwin Chemerinsky at University of California, Irvine School of Law, Eugene Volokh of UCLA Law School, and seven other First Amendment scholars, as well as the First Amendment Lawyers Association and the Reporters Committee for Freedom of the Press. These amici explained that the Supreme Court has repeatedly held it is unconstitutional to suppress the reporting of truthful information

already in the public record. Amici further explained that unless AB 1687 is struck down, there will be virtually no limit to the government’s ability to suppress the reporting of truthful information by other sources, including the print media. Electronic Frontier Foundation, the First Amendment Coalition, the Media Law Resource Center, the Wikimedia Foundation, and the Center For Democracy & Technology also filed an amicus brief in support of a preliminary injunction, contending the right to publish truthful information that pertains to a matter of public interest is not diminished because others may use that information for improper purposes.

In a strongly worded opinion issued February 22, 2017, the district court granted a preliminary injunction. The court stated that “it’s difficult to imagine how AB 1687 could not violate the First Amendment.” The court found AB 1687 restricts non-commercial speech on the basis of content and thus must satisfy strict scrutiny—that is, it must be “‘actually necessary’ to serve a compelling government interest.” Although preventing age discrimination is a compelling goal, the court held that “the government ha[d] not shown how AB 1687 is ‘necessary’ to advance that goal.” The court went so far as to state, “In fact, it’s not clear how preventing one mere website from publishing age information could meaningfully combat discrimination at all.” And even if it could, the Court said that “there are likely more direct, more effective, and less speech-restrictive ways of achieving the same end.”

Despite the court’s strongly worded opinion, the court battle over the law continues. In a statement published on its website, the Screen Actors Guild said that the preliminary injunction is “an early skirmish in what will be a long-term battle.”² It vowed to “continue to fight until we achieve for actors and other entertainment industry professionals, the same rights to freedom from age discrimination in hiring enjoyed by other workers in other industries.” Therefore, although AB 1687 cannot be enforced for now, the court battle over whether it violates the First Amendment’s free speech clause likely will not be resolved for some time.

¹ Cal. Civ. Code § 1798.83.5.

² [SAG-AFTRA Statement on IMDb Injunction, SAG-AFTRA](#) (February 22, 2017 at 4:02 p.m.).