

**BUSINESS LAW SECTION OF THE FLORIDA BAR
COMPUTER AND TECHNOLOGY LAW COMMITTEE**

The Florida Bar, Business Law Section
Thursday, January 18, 2024 – 9:00 AM (Palani Ballroom, Renaissance Orlando)

CLTC: Hot Topics

1. Florida Bar Proposed Advisory Opinion 24-1 Regarding Lawyers' Use of Generative AI

- a. On November 13, 2023, the Florida Bar issued a Proposed Advisory Opinion regarding lawyers' use of generative Artificial Intelligence and sought comment from members of the Florida Bar on the proposed opinion.
- b. The BOG will consider any comments received at a meeting scheduled 1/19/24.
- c. The focus of the proposed opinion addresses concerns regarding (i) lawyers taking reasonable steps to protect the confidentiality of client information and (ii) assurance that lawyers develop policies for reasonable oversight of generative AI use to ensure compliance with ethical standards.
- d. <https://www.floridabar.org/the-florida-bar-news/proposed-advisory-opinion-24-1-regarding-lawyers-use-of-generative-artificial-intelligence-official-notice/>

2. New York Times Files Sues OpenAI and Microsoft Claiming Copyright Infringement.

- a. The New York Times alleges that Microsoft Corp. and Open AI, Inc. (and related entities) unlawfully used the Times' articles, investigations, opinion pieces, and other content to train Microsoft's Copilot and Open AI's ChatGPT. The generative AI tools allegedly recite Times content verbatim, closely summarize it, mimics its expressive style, and wrongly attributes information to The Times. According to the lawsuit, the newspaper claimed it engaged in failed negotiations to establish a content licensing agreement with OpenAI for several months. In bringing the lawsuit, The New York Times is joining other artists and authors who have sued OpenAI seeking compensation for the alleged scraping of their content to train algorithms.
- b. https://nytco-assets.nytimes.com/2023/12/NYT_Complaint_Dec2023.pdf

3. Montana Appealing Ruling that Blocked State from Barring TikTok Use.

- a. Montana's first-of-its-kind state ban on the use of TikTok.
- b. U.S. District Judge Donald Molloy issued a preliminary injunction on the ban.
- c. https://www.reuters.com/legal/montana-appealing-ruling-that-blocked-state-barring-tiktok-use-2024-01-03/?mkt_tok=MTM4LUVaTS0wNDIAAAGQb3hCt9bqTA1wI-

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4. Utah's Consumer Privacy Law Effective 12/31/23

- a. The state's Protection of Personal Information Act requires businesses to implement data security practices to protect users' confidentiality, and consumers have the right to request what data is collected on them and to opt out of personal data collection used in advertising.
- b. <https://attorneygeneral.utah.gov/wp-content/uploads/2023/12/PPIA-FACT-SHEET.pdf>

5. Copyright Office Refuses Registration for Artwork Created with AI Painting Tool

- a. On December 11, 2023, the US Copyright Office Review Board issued a letter affirming the refusal to register a work generated using an artificial intelligence (AI) painting application, concluding that the work's expressive elements lacked human authorship. <https://copyright.gov/rulings-filings/review-board/docs/SURYAST.pdf>

6. Shopify Ruling May Support Personal Jurisdiction Defenses

- a. The U.S. Court of Appeals for the 9th Circuit affirmed a decision dismissing, for lack of personal jurisdiction, a class action against Shopify related to its collection and processing of CA residents' personal information, holding that making online services available to citizens of a particular state does not necessarily constitute express aiming of those services toward that state. And, without such express aiming, an online service provider might not be subject to specific jurisdiction in that state.
- b. [https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2077573047&pubNum=0000999&originatingDoc=I725b929395ef11ee8921fbef1a541940&refType=RP&originationContext=document&transitionType=PLDocumentLink&billingHash=123E007992EEEF0979ADD5970E4AD3738C9357B9BD7399E8FDC988BBC8893E88&ppcid=54ed823a70b04bfbb2720e68f2df2ba5&contextData=\(sc.Search\)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2077573047&pubNum=0000999&originatingDoc=I725b929395ef11ee8921fbef1a541940&refType=RP&originationContext=document&transitionType=PLDocumentLink&billingHash=123E007992EEEF0979ADD5970E4AD3738C9357B9BD7399E8FDC988BBC8893E88&ppcid=54ed823a70b04bfbb2720e68f2df2ba5&contextData=(sc.Search))

7. FTC Rite Aid Order Holds Biometric and AI Compliance Tips

- a. On Dec. 19, 2023, the Federal Trade Commission announced the settlement of an enforcement action against retail pharmacy chain Rite Aid Corp. over alleged violations of Section 5 of the FTC Act stemming from its use of facial biometric technology.
- b. According to the FTC, Rite Aid used facial biometrics at its retail locations to identify and remove individuals "likely to engage in criminal activity from" its stores. In its complaint, the FTC alleged that Rite Aid's use of facial biometrics constituted unfair acts or practices in violation of Section 5 because the company failed to take reasonable steps to address the risk that its deployment of such technology was likely to result in harm to consumers, particularly with respect to

false positive match results — which presented an especially acute risk to minority customers.

- c. From a broader perspective, the Rite Aid action serves as an unequivocal warning that the FTC will continue to make both biometrics and AI primary focus areas for the commission for the foreseeable future, which should prompt all businesses that develop or utilize biometric or AI technology to devote the necessary time, effort, and resources to address these increasing liability exposure risks posed by the FTC.
- d. https://www.ftc.gov/system/files/ftc_gov/pdf/2023190_commissioner_bedoya_riteaid_statement.pdf

8. Ohio Federal District Court Judge Grants TRO On State Law Requiring Social Media Platforms and Other Sites To Get Parents' Consent Before Opening Accounts For Children Under 16.

- a. Under the Parental Notification by Social Media Operators Act — approved by the state's General Assembly in July — certain websites must obtain parental consent before establishing accounts for children under 16. They also must present parents with a list of censoring or content moderation features.
- b. <https://www.law360.com/articles/1784200/attachments/0>
- c. <https://news.bloomberglaw.com/privacy-and-data-security/judge-halts-ohio-kids-social-media-access-bill-tech-group-says>