Florida Bar Business Law Section
Computer Law and Technology Committee
Hot Topics
August 31, 2019 Meeting
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1) FTC Issues $5 billion dollar fine to Facebook and imposes new restrictions.

- Stems from charges that Facebook violated a 2012 FTC order by deceiving users about ability to control privacy of personal information.
- In addition to the record-breaking fine (for comparison, the next largest for violating consumers' privacy was $275 Million against Equifax), Facebook will submit to new restrictions and a modified corporate structure.
- Requires Facebook to restructure its approach to privacy from the corporate board-level down, and establishes strong new mechanisms to ensure that Facebook executives are accountable for the decisions they make about privacy, and that those decisions are subject to meaningful oversight.
    - 20-year settlement order creates greater accountability at the board of directors' level.
    - Establishes an independent privacy committee of Facebook's board of directors.
        - This removes the exclusive control over privacy by CEO Mark Zuckerberg
        - Members must be independent and will be appointed by an independent nominating committee.
        - Members can only be fired by a supermajority of the Facebook board of directors.
    - Required to designate compliance officers who will be responsible for Facebook's privacy program.
        - Subject to the approval of the new board privacy committee and can be removed only by that committee
    - CEO and Board muys certify quarterly compliance with the privacy program, and annually certifiy overall compliance with the order.
    - Conduct privacy review of every new or modified product, service, or practice before it is implemented, and document its decisions about user privacy.
    - Establishes new privacy requirements that face book must implement.

2) GDPR fines have started to roll in

- British Airways fined $230 Million in response to September 2018 breach of consumer data
    - Based on a variety of information compromised by poor security arrangements, including log in, payment card, and travel booking details as well name and address information.
    - Airline will have a chance to address issues to lower the fine.
- $123 Million fine for Marriot as a result of November 2018 breach.

    - Found Marriot failed to undertake sufficient due diligence, and should have done more to secure its systems.
- Both issued by Britain's Information Commissioner's Office – the government privacy agency

3) Congress's attempts to create legislation to lessen threats of deepfakes.

- Recap: Deepfakes are a technology that allows anyone to create convincing videos of events that never happened. Discussed as a hot topic at our Labor Day Retreat last year.
- First Federal Bill to regulate them – the Malicious Deep Fake Prohibition Act was introduced in December 2018, and the DEEPFAKES Accountability Act was introduced in June.
- The DEEPFAKES Accountability Act would require mandatory watermarks and clear labeling on all deepfakes
    - Likelihood of this being ignored for any being used for nefarious purposes.
- DEEPFAKES Accountability Act defines deepfakes as any media that falsely "appears to authentically depict any speech or conduct of a person," and produced substantially by "technical means."
    - Serious First Amendment concerns arise with that sweeping of language, even in light of provided exceptions.
    - More concerning may be that Congress has signaled an attempt to also try and further control through direct regulation on social media
- Legislation has also been introduced at the state level, including in California, New York, and Texas.

4) Limits on personal twitter accounts becoming a public forum.

- Second Circuit Court of Appeals ruled that President Trump's blocking of Twitter users violates the First Amendment
- Concluded that: "the First Amendment does not permit a public official who utilizes a social media account for all manner of official purposes to exclude persons from an otherwise-open online dialogue because they expressed views with which the official disagrees." *Knight First Amendment Inst. at Columbia Univ. v.* Trump, 928 F.3d 226, 230 (2d Cir. 2019).
    - Did not address "whether an elected official violates the Constitution by excluding persons from a wholly private social media account" or "whether private social media companies are bound by the First Amendment when policing their platforms."
- In the opinion, the Court looked at "what the account is now" not how it begin, or would presumably continue post-presidency.
    - Looking at the presentation of the page (i.e the biography, location, and pictures on the page) found that it bore "all the trappings of an official, state-run account."
    - Observed that he has used the account to announce his policies, his legislative agenda, announce official decisions, engage with foreign political leaders, etc.

- Agreed that, as president, he used the account "as a channel for communicating and interacting with the public about his administration."
- Found that this was sufficient to constitute temporary control over the Account by the government, making it a forum for first amendment purposes.
- Further held that "[o]pening an instrumentality of communication for indiscriminate use by the general public creates a public forum."
    - Thus, the Court found that blocking individuals to exclude them from participation in the forum because of disfavored speech runs afoul of the First Amendment.

5) Court refuses to enter default on ADA website claim based on improper venue

- Plaintiff brought suit against an EconoLodge for failure to describe a hotel in Dalton, Georgia's accessibility features on its website. *Kennedy v. Shiv Krupa*, No. 19-61213-Civ-SCOLA/TORRES, 2019 U.S. Dist. LEXIS 138270, at *1 (S.D. Fla. Aug. 14, 2019).
- Plaintiff, a South Florida resident, claimed that venue was proper in the Southern District of Florida as the place where the injury occurred, as Plaintiff accessed the website there and may intend to visit the hotel in the future.
- The Court refused to enter default, however, because there was no evidence that Defendant resided in the Southern District of Florida or established a business of accommodation in Florida.
- Instead, the only connection to the District was owning and operating a website accessible in South Florida.
- The Court noted that to allow an ADA plaintiff to access a website to confer venue on any place of public accommodation would have "far-reaching implications" and would permit a plaintiff to "establish venue in her home district over any hotel in the country that maintains an accessible website."
- The Court therefore dismissed the Complaint for lack of venue in light of the "drastic" widening of the current venue statute under Plaintiff's theory.