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TESLAW

THE STATE BAR OF TEXAS ENTERTAINMENT & SPORTS LAW SECTION

October 18, 2016

TESLAW Tidbits:
A Little Taste of TESLAW
October 20, 2016
Issue No. 20

Dear TESLAW Members,

I hope everyone is enjoying the (slow) arrival of cooler fall weather!

As many of you know, our annual [Entertainment Law Institute](#) is just a few weeks away. Per usual, Mike Tolleson and team have put together a terrific set of speakers and legal panels within the entertainment and sports industries. Some highlights for this year's program include:

- Legal Issues of Podcasting
- Don't Try This At Home: The Questionable Ethics of "Better Call Saul"
- The Big Mix-up: Sorting Out the Legal Issues in Remixes, Mash-Ups and Music Samples
- Fifty Shades of Greed: A Case Study on Partnership by Conduct
- eSports: The World of Electronic Game Competition

The full schedule of events is [available here](#). As TESLAW members, you can save \$75 by registering by the early bird deadline of October 20, 2016. Attorneys practicing five years or less can attend for a whopping half-off!

Please also mark your calendars for the 7th Annual TESLAW Mixer, which will be held at Iron Cactus (Sixth Street location) on Thursday, March 16th from 4-6 p.m. All members are encouraged to attend even if they are not attending SXSW.

Sincerely,
Amy E. Mitchell, Chair
[Entertainment and Sports Law Section](#)

Events Calendar

[State Fair of Texas](#), Dallas, TX, Sept. 30 - Oct. 23, 2016

[Austin Film Festival](#), Austin, TX, Oct. 13 - 20, 2016

[Houston Comedy Film Festival](#), Houston, TX, Oct. 22, 2016

[TXMPA Impact Awards](#), Fort Worth, TX, Oct. 23, 2016

[Cine Pitch Fest](#), Austin, TX, Oct. 23, 2016

[Indian Film Festival](#), Houston, TX, Oct. 28 - 29, 2016

[TESLAW Entertainment Law Institute](#), Austin, TX, Nov. 3 - 4, 2016

[Sound on Sound Fest](#), Austin, TX, Nov. 4 - 6, 2016

[South Texas Underground Film Festival](#), Corpus Christi, TX, Nov. 10 - 13, 2016

[Lone Star Film Festival](#), Fort Worth, TX, Nov. 10 - 13, 2016

[Day for Night Art and Music Event](#), Houston, TX, December 17 - 18, 2016

[South by Southwest](#), Austin, TX, March 10 - 19, 2017

Spotlight on Bruce Kaye

Prior to law school, Bruce Kaye's claim to fame was appearing on national TV on the game shows *Wheel of Fortune* and *Sale of the Century*. During law school, Bruce was selected to work as a law clerk to the legendary trial attorney Joe Jamail. Bruce never returned to his goal of being a game show champion, but today gets to champion for his clients' liberty, protect creativity and maximize payouts.

At his hybrid practice in Uptown Dallas, Bruce practices criminal defense (federal and state) and entertainment law, fields he has often found to go hand in hand. In addition to trying serious felonies, Bruce has sued and won against major labels and large independent labels to secure payment for his clients, such as the producer of a hit hip hop track that sold over 4 million ringtones (remember those?). His other clients include small labels, artists, management and most recently, reality TV stars Amanda and Andrea Salinas, the "Tinytwinz" as seen on *Little Women: Atlanta* on the Lifetime network.



Bruce attended Tulane University and the University of Florida and received his J.D. from South Texas College of Law, where he founded the school's Sports and Entertainment Law Society. Bruce is a member of the Dallas Bar, TESLAW and the Litigation Section of the State Bar of Texas, and previously served on the District 3G Grievance Committee. In his spare time, Bruce continues to play the keyboards after a successful professional career playing all over Houston and Dallas.

For more on Bruce, visit his [website](#)

A New California Law Seeks to Stifle Age Discrimination, but is it Legal?

By [Melissa G. Thrailkill](#)

"Age is a matter of mind over matter. If you don't mind, it doesn't matter." – Mark Twain

Mark Twain's insight on aging, while perhaps a comforting offer for framing human mortality for most of us, may highlight why most in Hollywood fear the hand of time. In the entertainment industry, everything seems to matter, especially age. A new California law signed by Governor Jerry Brown on September 24, 2016, however, attempts to legislatively adopt a Mark Twain worldview for Hollywood. The new law, which will become effective in January 2017, prohibits subscription-based entertainment sites, like IMDb, from disclosing the subscriber's age on their profile page, should that subscriber so elect. [CA Civil Code § 1798.83.5](#). It further requires that such a website also remove a subscriber's age from their profile if that subscriber requests that they do so.

For the film industry's biggest union, SAG-AFTRA, the push for legislation became necessary after IMDb continually denied subscribers' requests to remove their ages and dates of birth from their profile pages. See "New California IMDb Age Law Probably Unconstitutional, Experts Say," [The Hollywood Reporter](#), Sept. 27, 2016. In an article published by *The Hollywood Reporter*, CA Assembly Majority Leader Ian Calderon, the sponsor of the bill, stated that the legislation sought to prevent age discrimination in Hollywood hiring primarily for those lesser known actors, whose personal information is not already as publicly known and followed as the bigger stars. *Id.* While the bill would purportedly apply to all online entertainment databases that permit subscribers to post their resumes and other information online, IMDb is, in actuality, the only company the law would currently impact. [See id.](#) In contrast to other similar websites, the Amazon-owned IMDb will not remove valid birthdates from a subscriber's profile. [See id.](#); "New California Law Allows Actors to Hide Their Age on IMDb," Jacob Gershman, *The Wall Street Journal*, Sept. 26, 2016. Because of the company's steadfast denials to removing birthdates, SAG-AFTRA and others turned to the California legislature to address the problems of age discrimination in the film industry. [See "New California ADMB Age Law Probably Unconstitutional. Experts Say."](#) Jonathan Handel, *The Hollywood Reporter*, Sept. 27, 2016.

If IMDb desired to take the legislation to court, the company could have a decent chance of prevailing and overturning the law as a violation of its First Amendment free speech rights. [See id.](#) The law's ability to pass Constitutional muster would depend upon whether or not a court defined the publishing of an actor's date of birth as "commercial speech," which is afforded less Constitutional protections. [See id.](#) Even then, it might not still pass the constitutional standards for regulating this type of speech. Many First Amendment experts and scholars view a person's date of birth as a statement of fact not rooted in discrimination. [See id.](#) Thus, unlike government regulations banning language like "Whites Only" in published ads, for example, IMDb's publishing of an actor's age is not discriminatory or intended to mislead. [See id.](#) Factoring in the time and costs associated with bringing a federal constitutional lawsuit, IMDb may decide that compliance is better for their overall bottom line. Regardless, the law does pit the public's right to have access to factual information on a matter of public interest against an individual's desire to withhold that information out of fear of losing a potential employment opportunity and the state's interest in preventing discrimination based on age. Even if California's law does not fall in a legal challenge, however, Hollywood will still likely present itself as an unfriendly place to those non-box office actors getting older. Only in Mark Twain's world would we eventually see an entertainment industry where age does not matter.

Melissa G. Thraikill is a Dallas-based solo attorney. She obtained her J.D. from the University of California, Berkeley School of Law and focuses her office on "community lawyering." To that end, she provides comprehensive legal services in the areas of family law, entertainment law, probate, appeals, and civil litigation. She can be reached at her [email](#).

[Practice Document](#)

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Send questions, comments, and submissions for TESLAW Tidbits to [Victoria Helling](#), Editor in Chief.

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