Spring January 13, 2016

Who is getting paid for your work.pdf

Joel M. Drotts, Esq.

Available at: https://works.bepress.com/joel_drotts/13/
WHO IS GETTING PAID FOR YOUR WORK?

How Data Brokers owe American Consumers Billions in Back Pay!

THE ASSOCIATION FOR CONSUMER EFFECTIVENESS!

PRIVACY POLICY AWARENESS

©2016 Association for Consumer Effectiveness

PROTECT YOURSELF AND BE AN EFFECTIVE CONSUMER
READ THE PRIVACY POLICY BEFORE YOU CLICK ACCEPT!!!
Attention!!!

1. By using or reading this presentation you hereby agree to grant the author and/or the party broadcasting this presentation the right to follow you around and record video of you for the next six months. Furthermore, you also grant the author and/or the party broadcasting this presentation the right to record you at all times, and in all places you go.

2. Furthermore, no other notice of when we are recording you, or clues as to what we are recording about you need or shall be given to you, beyond this single “User Agreement” which you hereby agree to.

3. Moreover, by viewing this presentation you further agree that you grant us an unlimited, exclusive, world wide license to sell any and all video we record of you to any one we want to sell it to.

4. Finally, by continuing to use this presentation you agree to grant us the exclusive right to profit from the sale(s) of the video we record of you, and you hereby forfeiture any and all profits from the sale of, ownership of, or right to control the video we record of you.

DON’T WORRY WE’RE JUST KIDDING. WE JUST WANTED TO MAKE A POINT!
THAT POINT IS THIS:

YOU ARE LEAVING YOURSELF OPEN TO HARMFUL USES OF YOUR INFORMATION WHEN YOU BLINDLY AGREE TO PRIVACY POLICIES!

READ THE PART THAT SAYS “INFORMATION WE COLLECT!”
THE PRIVACY POLICY WE GAVE YOU IS ACTUALLY LESS INTRUSIVE THAN MOST OF THE DATA THAT DATA BROKERS COLLECT ABOUT YOU. MOREOVER, AT LEAST OUR MOCK POLICY IS UP FRONT AND NOT HIDDEN!

BUT THERE’S ARE BIGGER ISSUES:

1. WHO OWNS THE DATA THAT GETS COLLECTED?

2. WHO HAS THE RIGHT TO PROFIT FROM YOUR PERSONALLY IDENTIFIABLE INFORMATION THAT CONTAINS YOUR NAME, OR WHO MAY PROFIT FROM YOUR PERSONAL BRAND AND IDENTITY?

3. WHY ARE YOU NOT GETTING PAID FOR YOUR THE LABOR YOU DO AND EXPEND IN GENERATING THE INFORMATION AND DATA WHICH GETS MONITORED, COLLECTED, HARVESTED, AND SOLD FOR A PROFIT?
IN TODAY'S MODERN CONNECTED WORLD IT IS A FACT THAT EVERY PERSON NOW MUST MANAGE THE GLOBAL BRAND OF THEM!

BELIEVE IT OR NOT YOU HAVE A VALUE. YOU CAN AND DO INFLUENCE THOSE PEOPLE AND COMPANIES CONNECTED TO YOU IMMEDIATELY AND A FEW DEGREES AWAY FROM YOU AS WELL!

THAT INFLUENCE HAS A MONEY VALUE! MOREOVER, YOUR PERSONAL CONSUMER BUYING AND CONSUMING HABITS AND ABILITY HAS A MONEY VALUE THAT IS CALCULATED OVER YOUR LIFETIME!


WITH THAT IN MIND, ASK YOURSELF WHO SHOULD PROFIT OFF OF YOUR INFLUENCE, YOUR BRAND, YOUR NAME, THE AGGRIGATED INFORMATION THAT IS CREATED BY YOU AS YOU LIVE YOUR LIFE, AND IS THE VERY UNIQUE AND SPECIAL INFORMATION THAT MAKES YOU YOU?,
YOU SHOULD BE GETTING PAID FOR THE TIME AND THE LABOR YOU EXPEND IN PRODUCING THE DATA COMMODITY GOODS YOU PRODUCE AND DATA BROKER COMPANIES SELL FOR PROFIT!

THE FAIR LABOR STANDARDS ACT STATES:

“Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) of this section applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972 [20 U.S.C.A. § 1681 et seq.], or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1) of this section.”

So then...... You are getting paid for your work, right?
One term explains and ties all together, and that term is **Commodity Information Bundles! (CIB’S)**

A CIB is an economic good sold as a commodity. These commodity information bundles are produced with the labor and actions of consumers. Data Brokers then collect this information that is grouped and added to these bundles of various consumer information, and sell these bundles of data without permission for a profit. That is of course to say THEIR PROFIT!

Did you know that according to the [Fair Labor Standards Act](https://www.dol.gov/esa/efla/)

(i) “Goods” means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) “Produced” means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.
SO YOU’RE GETTING YOUR CUT OF THE MARKETING DOLLARS CREATED BY THE BRAND THAT IS YOU RIGHT?

In creating CIB’s labor is done by American Consumers as they are PRODUCING for data brokers the GOODS sold by those enterprises and placed into the stream of commerce for sale for profit.

Therefore, every second an American Consumer is monitored in order to produce the data needed to create the commodity information bundled goods data brokers sell for profit, the American Consumer is owed payment for that labor.

This will be easy to calculate as the dates, times, places, and locations of exactly where these American Consumer Producers are being monitored and tracked, by which companies, and to what extent (offering the possibility of different rates of payment) they are being monitored, therefore lawfully producing the valuable data enterprises use to create their data goods which these enterprises sell into the streams of commerce.
IF LABOR LAW IS NOT YOUR CUP OF TEA, THEN HOW ABOUT YOUR RIGHT TO CELEBRITY AND TO PROFIT FROM THE COMMERCIAL USE OF YOUR NAME AND LIKENESS?

LETS GO BACK TO THE FIRST SLIDE. YOU WERE NOT OK WITH THE IDEA OF BEING VIDEO RECORDED, RIGHT? WELL, THE DATA GETTING COLLECTED ABOUT YOU IS FAR MORE REPRESENTATIVE OF WHO YOU ARE THAN VIDEO COULD EVER BE!
The statutory right originated in Civil Code section 3344 (hereafter section 3344), enacted in 1971, authorizing recovery of damages by any living person whose name, photograph, or likeness has been used for commercial purposes without his or her consent. Eight years later, in Lugosi v. Universal Pictures (1979) 25 Cal.3d 813 (Lugosi).

**The Transformative Use Test**

In both of the aforementioned cases, all judges agreed (at least theoretically) that the appropriate test was the “transformative use defense” developed by the California Supreme Court in Comedy III Productions, Inc. v. Gary Saderup, Inc., 25 Cal.4th 387 (2001). The test is “a balancing test between the First Amendment and the right of publicity based on whether the work in question adds significant creative elements so as to be transformed into something more than a mere celebrity likeness or imitation.” To make this determination, both courts ostensibly looked at the five Comedy III factors, including whether:
(1) the celebrity likeness is one of the raw materials from which an original work is synthesized;

Avatars are nothing but raw celebrity likeness. Essentially, different snap-shots or bits of information about the owner of the avatar (The person the avatar is imitating.) are merely observed, collected, and often even stolen, and then compiled into a singular profile or consumer avatar. Therefore, without the raw essence of being who we are, an avatar could not be constructed.
(2) the work is primarily the defendant’s own expression if the expression is something other than the likeness of the celebrity;

There is absolutely no new artistic expression, change in the material or collected information whatsoever. Information is merely compiled in an unexpressive or transformative manner.
(3) the literal and imitative or creative elements predominate in the work;

The entre avatar is nothing but literal imitative collections of personal information, compiled in a manner devoid of transformative artistic expression.
(4) MARKETABILITY and economic value of the challenged work derives primarily from the fame of the celebrity depicted; and

The entire point of an avatar is to market and profit from the fame and celebrity of each consumer individual, as an avatar’s value is in its ability to depict the avatar’s owner doing exactly what the owner does on a daily basis. The shopping habits, spending habits, payment cycles, doctors’ visits, food eating habits, gas bills, and every other collectable peace of observable information all compiled to form a highly personal likeness of the individual doing exactly what makes the individuals’ avatar of commercial value; simply being themselves as we’re monitored by intrusive data collection practices.
(5) an artist’s skill and talent has been manifestly subordinated to the overall goal of creating a conventional portrait of a celebrity so as to commercially exploit the celebrity’s fame. That is an excellent description of exactly what an avatar is. Any skill or talent in collecting the information or compiling the information is grossly subordinated, by the only goal in creating an avatar, which are commercial and financial gains.

In both cases, the majority opinions relied heavily on the case of No Doubt v. Activision Publishing, Inc., 192 Cal.App.4th 1018 (2011). In the No Doubt case, members of the rock band “No Doubt” appeared in a game published by Activision called Band Hero where users could simulate performing in a rock band in time with popular songs. Activision licensed No Doubt’s likeness, but exceeded the scope of the license. When the 9th U.S. Circuit Court of Appeals analyzed Activision’s “transformative use” defense, the court ruled against Activision because the video game characters were “literal recreations of the band members” doing “the same activity by which the band achieved and maintained its fame.” The court ruled that the fact that the avatars appear in a context of a videogame that “contains many other creative elements[] does not transform the avatars into anything other than exact depictions of No Doubt’s members doing exactly what they do as celebrities.”
ONE MORE TIME NOW...

WHO SHOULD BE PAYING YOU FOR YOU?

READ THE PRIVACY POLICY BEFORE YOU CLICK. COMPLAIN TO THE COMPANIES WHICH HAVE PRIVACY POLICIES YOU DISAGREE WITH, AND TELL THEM IF THEY WANT YOUR BUSINESS THEY WILL RESPECT YOUR RIGHT TO PRIVACY AND YOUR EXCLUSIVE RIGHT TO PROFIT FROM BEING YOU!
Tell your friends how to be more effective consumers by reading the privacy policies before they click, complain to offending companies, and check out our website at http://www.oneacedata.com.

We are the Association for Consumer Effectiveness and we got your back!