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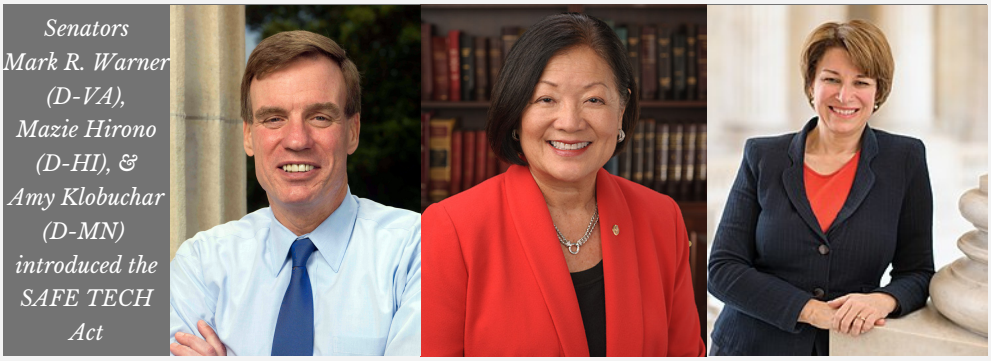
The Advocate

IN THIS ISSUE

Congress Considers Limiting Section 230

by David Cruz Quevedo



Senators Mark R. Warner (D-VA), Mazie Hirono (D-HI), & Amy Klobuchar (D-MN) introduced the SAFE TECH Act

The Safeguarding Against Fraud, Exploitation, Threats, Extremism and Consumer Harms (SAFE TECH) Act is the latest attempt in Congress to modify Section 230.

Rather than a direct repeal of Section 230, opponents have opted to chip away at it by introducing modifications such as this bill.

Introduced by Senators Mark R. Warner (D-VA), Mazie Hirono (D-HI), and Amy Klobuchar (D-MN), it seeks to "allow social media companies to be held accountable for enabling cyber-stalking, targeted harassment, and discrimination on their platforms." The intention is clear, but the actual effects on the Internet, if passed, are not.

In a paper titled *The Contradictions of Platform Regulation*, Mark A. Lemley notes that Democrats want to hold tech companies accountable for the misinformation and hate speech present on their services, and the Republicans want to limit what they think is excessive policing of the Internet.

Section 230(c)(1) generally gives companies like Twitter or individuals with an online blog immunity from whatever content a third party chooses to tweet or comment. As noted by Scott Lincicome in his Cato Institute article, titled *Fine, Let's Talk about Section 230*, "Section 230 protects *all internet companies*, not just social media." Additionally, the law does not treat companies differently than individual creators. Both receive the same protection.

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COVID-19 Has Sparked a Rise in Organized Labor

by Colan MacKenzie

Collective bargaining and organized labor have taken an increasingly important role in the national dialogue regarding the COVID-19 pandemic, according to legal experts and union representatives.

"We got more media inquiries probably in the first two weeks of the pandemic than I'd had in my history at the local," Terry Carter, Communications Director for the Southern California Registered Nurses Union Local 121, said.

While the country still deals with the devastation of the pandemic, Carter said Local 121's members, who work

"in healthcare, have been simultaneously fighting the virus and the hospitals that employ them."

Joe Kaplon, a lawyer representing several different unions and labor groups in the United States, said that organized labor had been in a precarious place for decades even before the pandemic.

Kaplon represents Joint Teamster's Council 42, which encompasses 24 local unions in Southern California, Southern Nevada, Guam, Saipan, and Hawaii, and represents nearly 250,000 employees in dozens of industries, from firefighters and truck drivers to warehouse and grocery store workers.

"The laws in the country are not very positive for unions in general," Kaplon said. "The employer is able to drag [the unionization process] out for months and years going from the organizing portion to the [National Labor Relations Board], to the Circuit Court of Appeals. And then, by the time this whole process is over, it could be a year, two years, three years, and the Union is totally without clout. So the end result is the employer gets what it wants as long as it's willing to spend the money that it takes to keep them out."

Union members "in healthcare, have been simultaneously fighting the virus and the hospitals that employ them."
- Terry Carter,
Communications Director for Nurses Union Local 121

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Staff List

Community Spotlight: Professor Chien's Participation in the Presidential Transition

by Shyam Rajan

It was not a call she was expecting, but it was one she answered with excitement. Colleen Chien, Professor of Law at Santa Clara University, was surprised when asked to join the Biden/Harris transition team as a part of the Agency Review Team.

"I didn't know what the call was about," she said. "I was extremely privileged and humbled to get it. I knew that if there were any way I could serve, I would do so."

With her prior experience working in the Obama Administration serving as Senior Advisor to the Chief Technology Officer, Chien said that today's work-from-home environment helped her decide.

"Typically, transition teams need to physically be in D.C. working with the agencies and meeting with other team members; if that had been the case, if I had had to move to D.C., I don't know that I would have been able to say yes," noting her family and academic responsibilities have changed drastically during the COVID-19 pandemic.

In the Obama Administration, Chien said her office worked on a wide variety of issues ranging from helping to advance innovation for Ebola response to patent reform.

"Transition is an extremely short period of time, so many of my teammates on the Agency Review Team were people who already had deep experience having been in the Obama Administration before. My teammates included Kathy Sullivan, among the first females to walk in space but also a former leader of the National Oceanic and Atmospheric Administration which is just one of many agencies of the Department. They intimately understood the agencies they were working with," Chien said.

As a member of the Department of Commerce Agency Review Team, Chien worked with the U.S. Patent and Trademark Office to prepare the incoming leaders of the Biden Administration. "[President Biden's] really been focused on trying to hit the ground running," she said, "given what an important point in history we are in right now in terms of dealing with the pandemic [and] putting trust back into the government."

Members of her team had been working on the transition well before November 3rd, preparing for President Biden's potential inauguration months before election day.

However, the delayed ascertainment of election made it difficult for Chien to coordinate with federal agencies to facilitate the transition without inordinately influencing them. Contact with these agencies was allowed only with express permission by the General Services Administration or President Trump himself. Because of the extent of pre-election preparation coupled with the uncertainties regarding his concession, contact with the federal agencies with which she was involved would be unpredictable and indirect.

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Email us at lawadvocate@scu.edu and visit our website at thescuadvocate.com

Supreme Court Case on NCAA Student-Athlete Compensation

by Lukas Pinkston

For the first time in nearly thirty years, the Supreme Court has granted certiorari to hear a case dealing with how collegiate athletes are compensated.

Recently, athletes have brought cases against the National Collegiate Athletic Association ("NCAA") to address whether or not they can be compensated for their play time (?) or their names, images, and likenesses ("NIL").

In the landmark 2015 case *O'Bannon v. National Collegiate Athletic Ass'n*, the Ninth Circuit ruled that the NCAA was subject to antitrust laws. However, the Court went on to rule that the NCAA would not be in violation of federal antitrust laws as long as they provide student-athletes with the cost of attendance. The Court acknowledged that athletes receiving large NIL cash payments untethered to their education would reduce consumer demand for collegiate athletics. This is because amateurism is integral to the NCAA's market and *not* paying student-athletes outside of the cost of attendance is precisely what makes them amateurs.

The NCAA plans to lean heavily on this proposition in the upcoming Supreme Court case *Alston v. NCAA*.

In *Alston*, former collegiate football and basketball players brought an action alleging that the NCAA had violated federal antitrust laws. At the Ninth Circuit, the Court held that "NCAA limits on education-related benefits do not 'play by the Sherman Act's rules,' and affirmed the lower court decision in all respects, holding, "[i]t is the fact that the prices of student-athlete compensation are fixed, as opposed to the amount at which these prices are fixed, that renders the agreement at issue anticompetitive."

"NCAA limits on education-related benefits do not 'play by the Sherman Act's rules'" - Ninth Circuit Court

Leo Koloamatangi, a former college football athlete and current center on the New York Jets, says he feels that even if this judgment is upheld, it is not going to have the benefit most collegiate athletes are hoping for.

"The truth is you're only in college, and unless you're Kyler Murray or Saquon Barkley, you're not actually going to be making much money. Less than one percent of the athletes are probably going to be heavily compensated," Kolamatangi said.

Kolamatangi was not against having the players "who are driving more revenue make more revenue", but he explained that " it's more like three people making a lot of money and no one else making any money. Maybe some free clothes."

Donald Polden, Dean Emeritus and Professor of Law at Santa Clara University, said he believes that the *Alston* case could be overturned at the Supreme Court.

"If there is an inconsistency between circuits on the holdings as there is here, and four [justices] want to hear these cases, the 'insiders' say you've got four votes against the Ninth Circuit opinion," Polden said.

Polden said that could mean that there will be a "constitutional showdown" to determine the NCAA's power to enforce its amateurism rules between states who have passed Fair Pay to Play statutes and the Supreme Court's ruling.

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FTC Sues Facebook, Inc. for Acting as a Monopoly

by Patricio Muñoz-Hernandez

Facebook, Inc. is facing a lawsuit over alleged monopolistic practices.

On December 9th, 2020, the Federal Trade Commission ("FTC") filed suit against Facebook for acting as a monopoly. The FTC was joined by 48 attorneys general — representing 46 states, the District of Columbia, and Guam. Alabama, Georgia, South Carolina, and South Dakota have declined to join. The lawsuit highlights anticompetitive practices and acquisitions of important players, including Instagram and WhatsApp.

The FTC seeks to enforce its power under Section 5(a) of the FTC Act, which allows it to regulate unfair methods of competition. The FTC alleges that the company has played a defensive role by "choosing to buy rather than compete", citing CEO Mark Zuckerberg's own words. The lawsuit aims for various types of relief, chief among them being a divestment of Instagram and WhatsApp.

Facebook, the largest and most profitable online social network globally, generated $70 billion in revenue and $18.5 billion in profits last year. Facebook's business model revolves around selling advertising, much of which is based on personalized user data.

"All of these cases involving the tech giants really are revolving around the issue of the data that is collected." - Donald Polden

"The claim is that Facebook knew or had reason to believe these companies would be major competitors in industries that Facebook was interested in developing. Facebook had a couple of very high-profile acquisitions of companies that were likely to be [their] competitors in the future.

This is the source of the problem," Donald Polden, Dean Emeritus and Professor of Law at Santa Clara University, said.

Polden said it is important to consider whether the data collection practices hinder competition.

"All of these cases involving the tech giants really are revolving around this issue of the data that is collected. Anytime you engage in search-like activities or connection activities on the social media site, it generates data," Polden said.

Polden said that the amount and kind of data held by the larger company provides leverage.

"It gives Facebook a decided advantage in terms of the product that it uses, and it also lets Facebook discriminate by precluding access to this information," Polden said.

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Participation in the Presidential Transition

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Regardless, she enjoyed working closely with the U.S. Patent and Trademark Office, as well as other agencies of the Department of Commerce and other Transition team members as part of her role on the Tech, Strategy and Delivery Team. "Being able to be in that position... and be a good ambassador of Santa Clara was something I was proud to be able to do," she said.

As a member of the Biden/Harris transition team, Chien learned as much as she gave. "I've been excited and encouraged to see that the Biden Administration has embraced policy pilots and the use of rigorous evidence in developing law and policy." "It's a very exciting time to be practicing law and to be entering the legal field," she said. "I'd be happy to share my experience, [and] try to be a bridge to D.C. for students."

"I'd be happy to share my experience, [and] try to be a bridge to D.C. for students." - Professor Colleen Chien

Although she was one of just a few California professors deployed in D.C. at this pivotal time, she hopes the bond between Santa Clara University School of Law and Washington will only strengthen.

"One of the highlights of serving during this period was running into Santa Clara Law alums, like Laura Peters, the outgoing Deputy Director of the Patent Office, and Julie Mar-Spinola, who was the outgoing head of the Patent Public Advisory Committee (PPAC). I'm sure there will continue to be connections between the Biden Administration and Santa Clara people whether as serving directly for the new government or advising it. I think again having the insight of our alumni and Silicon Valley lawyering, Jesuit lawyering, is something I could bring to the transition."

"It's a very exciting time to be practicing law and to be entering the legal field," she said. "I would encourage those who are wanting to get their hands dirty so to speak in helping the American people and get in the arena... There's a lot of excitement and optimism and also just given the inequalities that have been laid bare by the pandemic. There is a second pandemic of racial inequality that has been emphasized since last summer, and a real opportunity to make lasting change."

Professor Colleen Chien conducts research on the patent system, inequality, and criminal justice issues as Director of the Paper Prisons Initiative (paperprisons.org)

Follow her on Twitter @colleen_chien

Congress Considers Limiting Section 230

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Section 230(c)(2) allows Facebook and YouTube creators the freedom to remove or restrict objectionable posts or comments so long as they are in good faith. Again, this law applies equally to both large entities and individuals. Nearly all of today's popular online services like YouTube, Facebook, and Twitter came into existence well after Section 230 was passed into law. A possible repeal raises the question of what an Internet without Section 230 would look like. Eric Goldman, a Section 230 expert and Professor of Internet Law at Santa Clara University School of Law, said he believes that if Section 230 were repealed, many companies would exit the industry, or if they remain, would be extremely and aggressively managed.

"Most services won't be willing to undertake the cost and the risk," Goldman said.

Jess Miers, Section 230 scholar and Legal Policy Specialist, said she believes a post-Section 230 repeal world would be one with less content. "It is easier to not have content than it is to fight for that content," Miers said. "Even if services stay, a repeal or modification to Section 230 will hurt small businesses and startups more than the big Internet companies that the repeal or modification was intending to rein in."

Miers said as private entities, Internet companies enjoy First Amendment rights and are therefore able to restrict content as they see fit, but a First Amendment defense is not a guaranteed win.

She said a guaranteed procedural win is the main benefit of Section 230. Without it, companies would be risking expensive litigation when exercising their First Amendment rights.

"FOSTA is a huge cautionary tale as to what we need to think about when we amend the law," - Jess Miers

Lincicome said he believes reforming or repealing Section 230 would help "incumbents" at the expense of smaller upstarts, especially due to increased litigation costs.

"Google and Twitter have in-house legal teams and can absorb these costs; new companies certainly can't," Lincicome wrote.

Miers said that Congress's passage of the the Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Trafficking Act (SESTA) resulted in the removal of personal ads on Craigslist and the ban on adult content on Tumblr.

Both of these laws attack the immunity granted by Section 230.

"FOSTA is a huge cautionary tale as to what we need to think about when we amend the law," Miers said.

In his paper *Why Section 230 is Better Than the First Amendment*, Goldman says other niche online communities that do not enjoy widespread social acceptance are particularly at risk if Section 230 were to be repealed because it is the most risk-averse strategy for Internet companies.

"Compared to the First Amendment, Section 230 helps keep more 'at risk' legitimate content online," Goldman said.

Olivier Sylvain, Professor at Fordham Law School and Director of the McGannon Center for Communications Research, wrote in a post on Senator Warner's website that he supports modifications to Section 230.

"Proposed changes create a new and necessary incentive for such companies to be far more mindful of the social impacts of their services in areas of law that are of vital importance to the health of the networked information environment [without] abandoning the protection for intermediaries' distribution of otherwise lawful content," Sylvain wrote.

Supreme Court Case on Student-Athlete Compensation

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"What that could mean for the States is that there has to be a reckoning between whatever [the Supreme Court] decides in terms of the antitrust nature. You could have a ruling, for example, under the federal antitrust laws that it's permissible for the NCAA to impose reasonable restriction on non-educational, but also on educational expenditures by schools. And you could have a state law that permits college athletes to monetize their name, image, and likeness, prohibiting the schools, the conferences, and the NCAA from imposing reasonable restrictions as a matter of state law," Polden said.

Polden said the NCAA's understanding of "amateurism" prohibits student athletes from getting paid.

"The history of the NCAA's prevarication and variation in this sort of thing on payment and what it means to get paid is legendary," Polden said.

Polden characterizes *Alston* as a last-ditch effort by the NCAA to maintain its ban on student-athlete compensation.

"[The NCAA's] current argument is that the erosion of society as we know it is going to happen, unless the Supreme Court takes a definite position on this and to finally and irrevocably rule about amateurism and the NCAA's ability to define it," Polden said.

With oral arguments before the Supreme Court scheduled for late March, collegiate athletes and fans alike are eagerly waiting to see how this case will play out and what is in store for the future of the NCAA.

COVID-19 Has Sparked a Rise in Organized Labor

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Even in cases where the laws should have protected workers, issues arose regarding enforcement. Wage theft, or the denial of wages or benefits owed to an employee by an employer, remains commonplace in California according to Ruth Silver Taube, a Professor of Law at the Santa Clara University and Coordinator of the Santa Clara County Wage Theft Coalition.

She noted that in one case before the pandemic, a restaurant that had been on the losing side of dozens of suits, had changed its ownership on paper at least seven times in order to avoid paying. "There were 21 judgments against them," Silver Taube said.

Santa Clara County Wage Theft Coalition and Silver Taube organized a leafleting campaign and rally in front of the business in 2015. Silver Taube said, in addition to those 21 judgments, the restaurant owed $1.6 million from citations from the Bureau of Field Enforcement of the Department of Labor Standards Enforcement. Eventually, they had to shut their doors.

Silver Taube pointed out numerous other issues that California labor groups battled for years, including human trafficking, unjust retaliation from employers on their employees in response to whistleblowing complaints or attempts to organize unions, and numerous health code issues across the state. All of these problems and more were exacerbated by the COVID-19 pandemic. "It's almost an order of magnitude [worse]," Silver Taube said.

Silver Taube made a particular note regarding fast-food restaurants in California, which she said are a hotbed of health code and employee safety violations.

In one instance last summer, an injunction was issued against McDonald's in Oakland because it was not properly enforcing pandemic guidelines.

> **"They're not giving PPE. [Instead], they were making them use dog diapers. They were not social distancing."**
> **- Ruth Silver Taube**

The fight for proper personal protective equipment (PPE) has been a unifying theme for labor organizations in the country. Kaplon said he negotiated several collective bargaining contracts during the pandemic, all of which included some form of PPE protections.

Carter explained that not only did the management of several hospitals refuse to properly communicate to their employees throughout the duration of the pandemic, but some even failed to properly supply front-line medical workers with PPE.

"I think the hospitals weren't prepared and I think they didn't want to have that in writing. They wanted to blame it on a national shortage but the member leaders in the Union didn't completely trust the narrative that there was a national shortage because the nurses were going out and buying their own PPE. They were buying their own PAPRs, sometimes at like $1,300 in personal expenses. They were buying their own N95s," Carter said.

Powered air-purifying respirators (PAPRs) are motor-driven respirator units designed to protect against contaminated air. Carter said that for some front-line healthcare workers, an N95 mask is not enough.

"Some people have to wear the PAPRs because they either haven't been fit tested for the N95, the hospital didn't have an N95, or they have a facial structure that no N95 really safely fits," Carter said.

Carter said the employees were never compensated for those expenses. Nonetheless, life for workers and their unions had to go on.

Collective bargaining contract negotiations and strikes still continued and even ramped up as the COVID-19 surge of late 2020 started. According to the Orange County Register, The Teamsters Joint Council 42 threatened a strike in October 2020 over PPE issues. The Registered Nurses Union Local 121 also threatened a ten-day walkout on December 24th that was only averted with a marathon, 102-hour long negotiation session according to the Union's press releases. Several news outlets have covered the fast-food workers' single-day strike across the country on February 15th as part of the Fight for $15 movement, which seeks to raise the minimum wage to $15 per hour.

In addition to contract negotiation and walkouts, workers have found other ways to use the legal system to protect themselves.

Silver Taube said that since January, she has reviewed well over 1,000 health code-related complaints. Most of them were submitted anonymously because the employees feared retaliation from their employer.

Mike Gaitley, an attorney with the Community Legal Services program at Legal Aid at Work, a non-profit, legal services organization focused mainly on worker's rights, said he has seen a significant shift in the volume of calls his office has received, especially with the surge in COVID-19 cases over the winter of 2020 and into 2021.

"We helped more people in an eight-week period, from roughly the end of March into the end of May, than we did in all of 2019," Gaitley said.

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COVID 19 Has Sparked a Rise in Organized Labor

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Gaitley said the subject of those calls changed as time went on as well.

“In the beginning, many of our clients had problems accessing unemployment insurance. This most recent surge caused many, many more workers to have questions and need legal help related to having COVID or having a relative with COVID,” Gaitley said.

One of the biggest problems Gaitley noticed throughout the most recent surge was workers accessing financial assistance from the government.

“This pandemic unemployment insurance roughly translates to a lot of people that normally would not get unemployment insurance labor, the self-employed, contractors, and gig workers, getting coverage."

"Those programs were pretty generous at the time,” Gaitley said.

This changed over time, however. The Families First Coronavirus Relief Act passed by Congress in March of 2020 and acted as a “pay replacement program” for many workers in the United States. “That program ended December 31. It had a sunset, and so those workers are now sort of having to kind of scrap together pay replacement programs,” Gaitley said.

He said he is also concerned for the status of some of the workers most vulnerable to COVID-19: the elderly. “The law does not provide them with reasonable accommodation because of their age, and I think that's a huge gap in the law that needs to be filled,” Gaitley said.

Even with these significant obstacles, many are optimistic about the future of the American labor movement.

The labor market contracted significantly in 2020 and millions lost their jobs. Those who retained employment, however, were likely to be a member of a union according to the Bureau of Labor Statistics.

“The disproportionately large decline in total wage and salary employment compared with the decline in the number of union members led to an increase in the union membership rate,” the Bureau said in a January 2021 report.

Kaplon said he expects that number to increase in the next few years. “People now are beginning to see that it's time that the employees do for themselves, that which the government isn't going to do for them. I've been doing this for over 40 years and in this time period I have employees that were never interested in being represented by a union now expressing interest. If this keeps going, in five years you are going to see a significant boost in membership,” Kaplon said.

FTC Sues Facebook, Inc.

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Polden said the goal of the FTC is to level the playing field so that smaller players can have equal and fair opportunities.

“I think that a lot of the focus is going to be on particular kinds of conduct or behavior around trying to create fair opportunities for all firms, customers, and certainly competitors who would like to have access and are willing to pay for access to data collected on the platform to be able to get that data on a fair basis,” Polden said.

After filing suit, the FTC made a statement that summarized their objective.

“Today's enforcement action aims to restore competition to this important industry,” - Ian Conner

“Today’s enforcement action aims to restore competition to this important industry and provide a foundation for future competitors to grow and innovate without the threat of being crushed by Facebook,” Ian Conner, Director of the FTC Bureau of Competition, said.

In the statement, Conner described what the FTC considered before bringing legal action and why it was important.

“Unwinding Facebook’s prior acquisitions of Instagram and WhatsApp, and barring Facebook from engaging in additional anticompetitive practices that have helped it dominate the personal social networking market,” Conner said.

Conner said the FTC concluded that healthy competition is important in society and the lawsuit relates to that mission.

“The American public deserves a competitive and vibrant personal social networking market, and we are taking this action to restore the competitive vigor necessary to foster innovation and consumer choice,” Conner said.

On the other side, Facebook has demonstrated its opposition to the suit.

“Billions of people use Facebook’s products every day. To earn their time and attention, we compete fiercely against many other services across the world,” Jennifer Newstead, Vice President and General Counsel of Facebook, said. “We compete for advertising dollars with other digital platforms, from Google to TikTok, and with other channels such as television, radio and print.”

In a Facebook newsroom article, Newstead explains why the FTC is attempting to retroactively undo deals that were supposed to be final.

“Both of these acquisitions were reviewed by relevant antitrust regulators at the time. [M]any years later, with seemingly no regard for settled law or the consequences to innovation and investment, the agency is saying it got it wrong and wants a do-over,” she said.

Newstead said that the FTC holds misguided antitrust views, explaining that Facebook is continuing to resolve issues, but none of them are antitrust concerns.

“The American public deserves a competitive and vibrant personal social networking market,” - Ian Conner

“We look forward to our day in court, when we’re confident the evidence will show that Facebook, Instagram and WhatsApp belong together, competing on the merits with great products,” Newstead said in the article.

Technology

Covering legal news out of Silicon Valley

Self-Driving Cars Set to Hit California Roads

by Tessa Duxbury

Self-driving vehicles will soon be visible on Bay Area roads after the California Department of Motor Vehicles (DMV) issued its first-ever autonomous vehicle deployment permit in December 2020.

This permit was issued to Mountain View-based robotics company, Nuro, and is accompanied by additional limitations. The permit enables Nuro to commercially deploy its vehicles in optimal weather conditions and on roads with speed limits under 35 MPH.

With no human driver oversight or trailing "chase-cars," Nuro's R2 vehicles will be the first of their kind in California. They are expected to deliver groceries and food to recipients in both Santa Clara and San Mateo County.

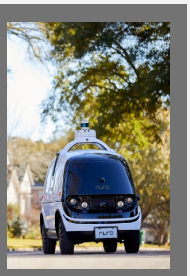
Referencing a new independent economic impact study evaluating self-driving delivery services, Nuro's Medium blog reports that autonomous vehicle delivery services will result in 348,000 fewer crash-related injuries. Of course, even if less frequently, crashes will still occur, and liability determinations will still need to be made.

Nuro representatives were not available for comment, but the company assures Californians that safety remains its top priority in a recent Medium blog post.

"R2 was purposefully engineered for safety, with a design that prioritizes what's outside – the people with whom we share the roads – over what's inside," Nuro said.

According to the DMV, in addition to their organizational focus on driver safety, Nuro must also comply with DMV permit application requirements, including maintaining an insurance policy. The DMV also requires that autonomous vehicles be equipped with an easily accessible mechanism to engage and disengage the autonomous technology, a visual indicator that signals when the autonomous technology is engaged, and a safety system to alert the driver to autonomous technology failure, amongst other requirements.

Currently, there exists no federal autonomous vehicle policy mandating a specific level of insurance for autonomous vehicles. Russ Martin, Senior Director of Policy and Government Relations at the Governor's Highway Safety Association (GHSA), said the development of these policies is important as autonomous vehicle development continues. Martin said GHSA had been engaged on Capitol Hill in an attempt to establish some kind of federal framework for automated vehicles.



Nuro's R2 Unit

"[GHSA] is very supportive of [autonomous vehicle] technology and . . . excited about the safety benefits it will bring, although we know there will be other potential impacts [on] transportation, mobility, and society," he said.

Focusing on highway safety, Martin said GHSA is primarily concerned with how regular drivers will interact with this technology.

Nuro R2 compartments loaded with groceries

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Photo from medium.com

The organization seeks to ensure that drivers know what these technologies do and are ready to use them responsibly.

Jackie Beckwith, Manager of Advocacy and Public Relations at the Association for Unmanned Vehicle Systems International (AUVSI), discussed the difficulty of determining fault amongst vehicle, sensor, and software manufacturers, as well as human drivers.

"It's nothing that we have an easy answer to, that's for sure, but it's a question that needs to be determined clearly. Otherwise, it's just going to be a litigation holiday," Beckwith said.

Beckwith said engagement with government officials in an honest and transparent way is really the path to success for companies competing in the autonomous vehicle market.

As states attempt to position themselves favorably amongst autonomous vehicle manufacturers, Theodore Claypoole, Partner at Womble Bond Dickinson, presents a feasible solution: the no-fault insurance pool that would operate on a no-fault basis, providing compensation to injured persons involved in autonomous vehicle accidents, regardless of who is found at fault. He said such a pool would enable increased innovation amongst autonomous vehicle manufacturers.

While Claypoole said that a nation-wide fund would be ideal, the increased safety benefits should encourage most legislators to expand their state's autonomous vehicle industry.

"It makes it a lot easier to experiment and makes it a lot easier to try new things. It makes it a lot easier not to worry so much about liability in the future," Claypoole said.

His solution attempts to resolve the issues Beckwith described since it would eliminate the potential for suit against the vehicle, software, and sensor manufacturers following an accident.

"Are we going to accept the fact that [accidents are] going to be part of autonomous vehicle driving, just like [they're] a part of regular people driving, or are we going to be resistant to it? I think having insurance solutions helps that," Claypoole said.

Claypoole said consumer acceptance would also be increased by a no-fault insurance pool since consumers would be reassured that legislators have already said that if there is an accident, there's money set aside to cover damages