Holland & Knight

美国霍兰德奈特律师事务所

www.hklaw.com

CHINA PRACTICE 期刊
NEWSLETTER

JULY - AUGUST 2019

2019 年 7、8 月刊

Table of Contents

CHINA PRACTICE NEWSLETTER 3
MEDIATION IN U.S. LITIGATION 4
美国诉讼的调解 8
DOING BUSINESS IN THE U.S.: DIRECTORS AND OFFICERS 11
在美国经营事业：董事及高级管理人员 16
THE HIDDEN WORLD OF U.S. MEDIA PRODUCTION 20
有关美国影视制作你可能不知道的事 24
CALIFORNIA CONSUMER PRIVACY ACT UPDATE 28
加州消费者隐私法案的更新状况 33
ABOUT THIS NEWSLETTER 38
有关本期刊 38
ABOUT THE AUTHORS 38
关于本期作者 38

Holland & Knight
美国霍兰德奈特律师事务所

China Practice Newsletter

Holland & Knight is a U.S.-based global law firm committed to provide high-quality legal services to our clients. We provide legal assistance to Chinese investors and companies doing business or making investments in the United States and Latin America. We also advise and assist multinational corporations and financial institutions, trade associations, private investors and other clients in their China-related activities. With more than 1,300 professionals in 28 offices, our lawyers and professionals are experienced in all of the interdisciplinary areas necessary to guide clients through the opportunities and challenges that arise throughout the business or investment life cycles.

We assist Chinese clients and multinational clients in their China-related activities in areas such as international business, mergers and acquisitions, technology, healthcare, real estate, environmental law, private equity, venture capital, financial services, taxation, intellectual property, private wealth services, data privacy and cybersecurity, labor and employment, ESOPs, regulatory and government affairs, and dispute resolutions.

We invite you to read our China Practice Newsletter, in which our authors discuss pertinent Sino-American topics. We also welcome you to discuss your thoughts on this issue with our authors listed within the document.

霍兰德奈特律师事务所是一家位于美国的全球性法律事务所，我们致力于向客户提供高质量的法律服务。我们向在美国及拉丁美洲进行商业活动或投资的中国投资人及公司提供他们所需的各类法律协助。我们也向跨国公司、金融机构、贸易机构、投资人及其他客户提供他们于其与中国相关活动中所需的咨询和协助。我们在 28 个办公室的 1300 多名对各领域有经验的律师及专业人员能够协助客户处理他们在经营或投资过程中所遇到的各种机会及挑战。

我们向中国客户及从事与中国有关活动的跨国客户提供法律协助的领域包括国际商业、企业并购、科技法律、医疗法律、房地产、环保法律、私募基金、创投基金、金融法律服务、税务、知识产权、私人财富管理法律服务、信息隐私及网络安全、劳动及雇佣法律、员工持股计划、法令遵循及政府法规、及争议解决。

我们邀请您阅读刊载我们各作者就与中美有关的各议题所作论述的 China Practice 期刊。我们也欢迎您向本期刊的各作者提供您对各相关议题的看法。

Mediation in U.S. Litigation

By Matthew P. Vafidis

The popular image of civil litigation in the United States, as portrayed in films and on television, is of battling courtroom lawyers cross-examining witnesses and presenting arguments to a judge and jury. As an attorney who has practiced for more than 39 years as an English barrister and as a commercial litigator in San Francisco, I can attest that the reality is far less dramatic. The overwhelming majority of U.S. civil disputes do not involve a trial. Instead, they are resolved by lawyers conducting a thorough analysis of the facts and applicable law to define the real issues in dispute, negotiate with the other party and place the parties in a position to reach a settlement.

While the U.S. civil litigation process may appear designed to prepare the case for trial, it is more accurately understood as a mechanism for encouraging and actively promoting settlement. Ingrained into U.S. civil litigation procedure is the process of identifying the issues through the pleadings, developing the facts and contentions of the parties through discovery, and bringing motions to define and narrow the legal issues. These procedures provide the ideal preparation for settlement, and the pre-trial schedule imposed by the court creates a helpful framework for completing negotiations.

For many decades, when cases neared trial, courts ordered the parties to participate in pre-trial settlement conferences conducted by a settlement judge. But about 30 years ago, federal, and some state, courts began to incorporate settlement processes into formal litigation procedures, particularly at an earlier stage of the case. Courts adopted mandatory alternative dispute resolution (ADR) programs designed to divert the parties into a settlement process in order to avoid the substantial legal expense of discovery and trial preparation. Under the Alternative Dispute Resolution Act, 28 U.S.C. Sections 651-658, all federal courts are now required to authorize by local rule the use of at least one ADR process in all civil actions. Many state courts have adopted similar laws.

TODAY, ADR IS AN ESSENTIAL PART OF U.S. CIVIL LITIGATION

Over the last generation, the use of mediation as an ADR process has expanded rapidly. Since the early 1990s, I have acted as a mediator in commercial and maritime disputes as one of a panel of mediators for the U.S. District Court for the Northern District of California. Over that period, I have seen mediation become the most commonly used ADR process in civil litigation. Mediation is now also offered as an option under most commercial arbitration rules. And many U.S. business contracts require that the parties engage in mediation prior to commencing arbitration or litigation.

By all objective measures, mediation is remarkably effective as a settlement process. On average, approximately 95 percent of all federal and state civil cases in the United States are resolved without a judge or jury making a decision at trial. Although some actions are withdrawn or determined before trial by summary adjudication, the vast majority are resolved by the parties' settlement agreement. In most cases, that settlement is reached after the parties participate in mediation.

WHAT IS MEDIATION AND WHY IS IT EFFECTIVE?

The defining characteristic of mediation is the presence of a facilitator, or mediator, who conducts the negotiation session. A retired judge, or a lawyer with mediation experience who also has expertise in the legal issues involved in the dispute, the mediator is a neutral party who either donates his or her time, or is paid a fee charged by reference to an hourly or daily rate. Unlike a settlement judge, arbitrator or judge and jury, the

mediator does not render a decision in the case and, in most mediations, does not provide the parties with an opinion as to which party is likely to win the case. Instead, the mediator manages the proceedings and sets a forum or framework for the parties to discuss the issues in the case and to negotiate a settlement or compromise on their terms. The mediator must make clear that, when it comes to the settlement negotiations and terms, the party – not the mediator – is in control.

How this is accomplished differs from mediator to mediator. Most mediators will start the proceedings by holding a phone conference with the parties' lawyers to gain a preliminary understanding of the case and decide upon a date and place for the mediation. For me, this conference is useful as an opportunity to set the tone for the mediation, to develop a respectful and friendly relationship with all the lawyers and, so far as possible, to encourage the parties to be positive and committed about the mediation process.

Prior to the mediation the parties will generally be required to submit a written statement, or brief, that explains the party's position. There is no particular form for this mediation statement, which is not filed with the court but is usually exchanged with all other parties, in addition to being submitted to the mediator. In mediation, the parties and their lawyers may engage in *ex parte* communication with the mediator: It is permissible to send the mediator a private letter. Indeed, as a mediator, I encourage this practice as a way to encourage the parties and their lawyers to take responsibility for how the settlement negotiation should proceed.

The representatives of the parties attending the mediation must have full authority to settle the dispute. Although good lawyers are essential to the success of mediation, the parties themselves are actively encouraged to be part of the process. Confronting the other party, and listening to its position in mediation, is often a powerful way to gain a different perspective and consider compromise. Accordingly, in most mediations the applicable court rules require that, in addition to the lawyers for the parties, a representative of each party must, unless excused by court order, attend in person.

CONFIDENTIALITY RULES APPLY IN MEDIATION

With certain limited exceptions, mediation is confidential. The mediator, all counsel and parties, and any other persons attending the mediation are required to keep confidential the contents of the mediation statements, and anything that is said, any position taken, and any view of the merits of the case expressed by any participant at the mediation, or in connection with any mediation. So the mediator and all participants will generally be required to sign a confidentiality agreement before the mediation. Notably, what is said at the mediation and the positions taken by the parties cannot be disclosed to the judge assigned to the case or to persons who are not involved in the litigation, and that information cannot be used for any purpose, including impeachment, in any pending or future proceeding in this court. This confidentiality rule encourages the parties to make concessions for the purpose of trying to resolve the case at the mediation. It also allows each party the freedom to express itself freely in front the other party, a process that can be beneficial if the party feels as if it has had its "day in court" and stated its case.

MEDIATION PROCESS

Other than these general rules, it is up to the mediator and the parties to determine how they wish the mediation to proceed. In many cases, the mediator will hold joint sessions with all parties present and then divide the participants into separate caucuses so that the mediator can confer with each party and its lawyers in private. Joint sessions are useful for introducing and bringing the parties together, establishing the framework for the negotiations, identifying the areas of agreement and the issues in dispute, and the parties' general positions. Separate caucuses are then used to examine the issues more deeply and to engage in more detailed negotiation. Where the parties conduct a bidding process of giving offer and counteroffers in order to reach a compromise, the mediator will spend time with each separate caucus helping the parties and the

lawyers evaluate and respond to the other side's positions, and assisting in framing the negotiations. The mediator will then take that position or proposal to the other side and shuttle between separate caucuses. Generally, the mediator agrees to keep what is said in separate caucuses confidential from the other parties and disclose to the other parties only what he or she is specifically authorized to disclose. In practice, the separate caucus stage can be a dynamic part of the mediation, during which, as a mediator, I like to keep all sides aware of the progress of the discussions, even if they are not directly involved in the discussion.

Given his or her position, the mediator is often tempted to offer an opinion on the merits of the case or legal and strategic issues. Worse still, he or she may be aware of a position or argument that the party's counsel has apparently missed, and may be tempted to mention it. These temptations should, if possible, be avoided. The mediator is generally not required to express or impose his or her perspective about the case. The mediator should certainly help the parties identify the issues in dispute, appreciate the other side's point of view and identify the areas of strength and weakness of their position. However, mediation can break down if the mediator steps over the line and begins to tell the parties what to do. In separate caucuses, parties and their lawyers often ask the mediator privately to give an opinion of the likely outcome of the case and which of their arguments are most persuasive. There may be situations where this is helpful and appropriate. But mediators should avoid volunteering evaluations or, unless specifically asked to do so, giving all parties a judgment as to which party should win the case and why.

A MEDIATOR'S ROLE

The function of the mediator is thus different than a judge or arbitrator, and his or her influence on the parties is more nuanced. To quote the ADR rules of the U.S. District Court for the Northern District of California, "[t]he mediator improves communication across party lines, helps parties articulate their interests and understand those of their opponent, probes the strengths and weaknesses of each party's legal positions, identifies areas of agreement and helps generate options for a mutually agreeable resolution to the dispute." The mediator may therefore find ways to encourage the parties to broaden their options for the resolution of the case, for instance by exploring if there are potential nonmonetary components to a settlement such as considerations relating to future business. Generally, the mediator should allow the parties and their lawyers to dictate the course of the negotiation and the terms of the settlement.

Through experience, a mediator learns various techniques to listen to and assist the parties in understanding areas of reasonable compromise and bridging gaps in negotiations. For example, to set the stage in the initial joint session at the outset of the mediation, I generally review the procedural status of the case and what lies ahead for both parties if they choose not to settle at the mediation. I like to do this in order to emphasize to both parties that they share an interest in bringing an end to the litigation, if possible, through settlement. This is usually not difficult: Given the time and effort that the parties must endure in order to pursue litigation through trial and the fact that, in most U.S. litigation, each party must bear its own attorneys' fees, win or lose, the parties generally have a mutual interest in trying to find a reasonable settlement. To encourage the parties to feel in control of the process, as a mediator I also have a practice of warning the parties that, at some stage, the negotiation may seem to break down with one or more parties refusing to shift its position. When the parties know what to expect, it is easier to convince them that this is all part of the process and to stay at the bargaining table. There are also specific techniques used by mediators for bridging gaps in negotiations. For example, as a mediator, I may propose a "mediator number" to each party separately, with the understanding that if one party rejects the number, I will not disclose to that party whether the other party accepted or rejected it. Where appropriate, I may also use a practice of "bracketing" proposals – if one party demands X, the other party will offer Y. This helps the parties agree to negotiate within a particular monetary range. Ultimately, however, it is up to the parties if they wish to have the mediator give its assistance to this specific degree.

If a settlement is reached at the conclusion of the mediation session, the mediator will usually reduce the essential terms of the settlement to a writing that the parties and their lawyers sign before they leave the

mediation room, so that there are no disputes as to what is agreed. This agreement should also document the place where the settlement was entered into by the parties. Thereafter, in most cases, the parties should agree upon a more extensive settlement agreement, including a release of claims where appropriate, and make provision for the dismissal of the action. After the mediation, most mediators will keep in touch with the parties to offer further assistance, if needed.

The process of mediation can be complex. However, given a level of skill, personality and experience on the part of the mediator, the full preparation of the parties and their lawyers, and the commitment of all participants to try to reach a settlement, mediation is effective in resolving most U.S. civil litigation without trial.

美国诉讼的调解

原文作者：**Matthew P. Vafidis**

如同电影及电视上所展现，美国民事诉讼最常见的景象就是律师在争论的法庭上交叉诘问证人及向法官或陪审团陈述其论点。而作为一个已经执业超过 39 年的英国大律师及在旧金山的商业诉讼律师，我可以作证真实情况远没有那么戏剧性。绝大多数的美国民事诉讼都没有涉及到法庭审理。相反地，他们是透过律师对事实及适用法律的详细分析来确认争议的真正问题、并与另一方协商以使双方能达成和解的方式解决。

虽然美国的民事诉讼程序看似为以开庭审理案件的方式所设计，更正确的理解是它是为鼓励及积极促进和解所设计。深植于美国民事诉讼程序的是透过诉状的提出来确认争议、透过揭露程序来发掘当事人的事实及论点、及透过请求的提出来明确及锁定法律争点的程序。这些程序为和解提供了理想的准备，且法院所制定的诉前时间安排为完成协商创造了一个很有帮助的框架。

数十年来，当案件临近开庭时，法院命令当事人参与由和解法官负责进行的开庭前和解会议。但在大约 30 年前， 联邦及一些州的法院开始将和解程序融入于正式的诉讼程序，尤其是当案件还在其初始阶段时。法院采行了强制性的替代性争议解决（ADR）程序来使当事人转到和解的过程以避免揭露程序及庭审准备的大量法律费用支出。依替代性争议解决法案（美国法案汇编第 28 章）第 651 到 658 条的规定，所有的联邦法院现都被当地规定要求在民事案件中至少进行一次替代性争议解决程序。许多州法院也通过了相似的法律。

今天，替代性争议解决是美国民事诉讼的一个重要部分

使用调解作为替代性争议解决的程序在过去一个世代中很快速地扩张。自从 1990 年初期以来，我担任了加州北区联邦地方法院的调解人的一员调解商业及海事纠纷。在那段期间，我看到调解成为民事诉讼中最被惯常使用的替代性争议解决程序。调解现在也成为大部分商业仲裁规则中一个选择。且许多美国的合约要求当事人提出仲裁或诉讼前先进行调解。

从所有的客观评估标准来看，调解是一个相当有效的和解程序。平均而言，美国全部联邦及州民事诉讼有约百分之九十五的案件都在没有透过法官或陪审团员在庭审中作出决定的方式解决。虽然某些诉讼被撤回或在开庭前依即裁审判的方式决定，很大部分的案件是透过当事人的和解协议来解决。在大部分的案件中，在当事人参与调解后达成了和解。

调解是什么、为什么调解那有效果？

调解的代表性特色是由一位推动人或调解人来主持协商过程。通常为一退休法官或对争议的法律有专长并有调解经验的律师来担任，调解人是一个中立的一方并以捐赠自己的时间或是按小时或按日被支付报酬的方式来进行调解。与和解法官、仲裁人、法官及陪审员不同的是调解人并不对案件作出任何决定，且在绝大多数的调解中不向当事人提供哪一方当事人可能胜诉的意见。相反地，调解人对程序进行管理且作出一个当事人可以讨论案件问题并依他们的条件协商进行和解或折中的讨论渠道或框架。调解人必须明白地指出和解协商及和解条款是由当事人--而非调解人--来主导。

而每个调解人如何进行调解各有所不同。大部分的调解人将透过召开一个与当事人律师进行电话会议来对案件获得初步了解及决定调解日期及地点的方式来开始调解程序。对外而言，这个会议将是对调解加以定调、与所有律师建立一个相互尊重和友好关系、及鼓励各当事人对调解程序采取正面及投入的态度的好机会。

在调解之前，各当事人一般将被要求提出一份解释他们的立场的书面说明或案情摘要。这份调解文件并无特别的格式要求。该文件不需提交给法院，但除提交给调解人外，通常也在各方之间交换。在调解过程中，当事人及其律师可与调解人进行单方沟通：可向调解人寄交私人信函。事实上，作为调解人，我鼓励这类做法以鼓励当事人及他们的律师对和解协商应如何进行负起责任。

参加调解的当事人代表必须有完全的权限来对争议进行和解。虽然好的律师对调解的成功是很重要的，当事人本身也被鼓励积极参与调解过程。直接面对对方、及在调解中聆听对方的立场通常是一个获得不同观点及考虑达成折中的强而有力的方式。因此，在大部分的调解中法庭规则要求除了当事人的律师外，每一当事人的代表除非得到法院的豁免许可命令外都需亲自参加调解。

保密规则适用于调解程序

除了有些有限的例外情况外，调解是保密的。调解人、各方律师及当事人、及任何其他参与调解的人员必须对调解说明文件的内容、其所说明的任何事、所采行的立场、参与调解或与调解有关的任何人对案件的道理所表达的任何观点加以保密。因此，调解人及所有参与的人在调解之前通常将被要求签署一保密协议。值得强调的是当事人在调解中说的话或采取的立场不得向被指派审理该案的法官或不涉及该诉讼的人士揭露，且该等信息不得作为它用，包括不得作为在现在或将来进行的程序中质疑之用。保密的规则鼓励当事人在调解中为试图解决案件作出让步。它也让一方当事人可自由地在另一方面前表达自己，而该程序是有帮助的，因为一方可觉得自己有“辩护机会”来陈述自己的案件。

调解程序

除了这些一般规则外，调解应如何进行将由调解人及当事人自行决定。在许多案件中，调解人将召开各方一起参与的会议而后将参与人分为分别的小组，而使调解人可与每一方及其律师进行私下讨论。各方一起参与的会议对介绍各方及让各方能够合在一起、建立协商的框架、确认合意的部分及争议的问题、及各方的一般立场有所帮助。分别的小组会议则用来更深入的检视问题及进行更详细的协商。当当事人进行一出价及还价以达成折中的过程时，调解人会与各别小组一起开会以协助当事人及其律师评估对方的立场并作出回应、及协助制定协商方法。调解人将会将一方的立场及提议带到对方并在各小组间走动。一般而言，调解人同意对在各分别小组中所说的话进行保密且除其被具体授权进行揭露外不向对方揭露。实务上，分别小组讨论在调解过程中是一个很有能量的阶段，在该阶段中，作为一个调解人，我喜欢让各方知道讨论的进展，即使他们没有直接参与讨论。

从他的角度，调解人经常会有冲动对案件的道理或法律及策略的问题提出他的看法。更糟的是，他可能知道一方的律师明显忽略到的立场或论点，且可能有冲动想去提它。这些冲动在可能的情况下应该被避免掉。调解人一般是不需对案件表达他的观点。调解人当然应协助各当事人发现争议的问题、理解对方的论点及发现他们的立场的强弱之处。但如调解人超越自己应扮演的角色并开始告诉各当事人应如何行事的话，调解可能会破裂。在分别的小组会议中，各当事人和他们的律师经常私下要求调解人对案件可能的结果及他们那些论点比较具说服力给予意见。有些情况下这些会有帮助或是合适。但调解人应避免主动提出他们的评估意见，除非具体被要求向各方提供一个哪一方会赢及其理由的判断。

调解人的角色

调解人的功能因此与法官或仲裁人不同，且他对当事人的影响更是微妙。就如同加州北区联邦地方法院的替代性争议解决规则所谈到“调解人促进当事人之间的沟通、帮助各当事人阐明他们的利益及理解他们的对方、探究各方法律立场的强弱、发现合意之处及帮助创造达成双方都可接受的解决争议的选择方法”。调解人因此可寻求鼓

励各方扩大可解决案件的选择方法的范围，例如寻求是否有可能有含有非金钱成分的和解方式（如有关未来生意的对价）。一般而言，调解人应该让各当事人及他们的律师来决定协商的途径及和解的条款。

透过经验，调解人学到许多聆听当事人陈述及协助当事人了解在协商中可做的合理折中及缩减差异的技巧。例如，为了对调解之初的首次共同会议做好准备，我一般会对案件的程序状况及如果双方当事人选择不在调解程序中达成和解的话之后会如何发展进行检验---我喜好这么做以对双方强调他们有共同利益在可能的情况下透过和解将诉讼结束。这并不困难：考虑到双方在透过开庭审理的诉讼需承受的时间及精力的耗费，且事实上大部分的美国诉讼，无论输或赢各方必须负责自己的律师费，双方应有共同利益来试图寻求合理的和解方式。为鼓励各方当事人感到他们对程序有所控制，作为一调解人，我在某些阶段也有警告各方当事人如果一方或多方当事人拒绝改变立场协商可能破裂的做法。当各当事人知道他们可以期待怎样的情况将发生时，更容易说服他们这些是过程的全部而让他们留在谈判桌上。调解人也有其他缩减双方差异的特别技巧。例如，作为一调解人，我可能向每一方分别提出一个“调解人的数目”，而如一方拒绝该数目，我将不会告诉该当事人另外一方是否接受或拒绝该数目。如适当时，我可能也使用一个叫“有范围限制”的提案 ---即如一方要求 X，则另一方将提出 Y---该提案对协助各当事人同意在某特定金额范围内进行协商有所帮助。最后，无论如何，还是由各当事人自行决定他们希望调解人能帮到具体怎样的程度。

如果在调解程序完成时达成和解的话，调解人经常会将和解的重要条款作成书面让各当事人及他们的律师在离开调解室之前签署，以确保对同意了什么一事没有争议。这个协议也应记录当事人在那个地方作成和解。之后，在大部分的案件中，各当事人应该对一份更广泛的和解协议达成一致，包括在适当情况下免除请求权利、及加上撤销诉讼的条款。调解之后，大部分的调解人将继续与各当事人联系提供他们所需的额外协助。

调解的过程可以是复杂的。但在调解人的专长、人格特质及经验下的协助、各当事人及他们的律师的充分准备、以及所有参与各方试图达成和解的决心，调解是一个不需透过开庭审理即可解决大部分美国民事诉讼的有效方法。

Doing Business in the U.S.: Directors and Officers

By Neal N. Beaton

This article sets forth an overview of relevant considerations in connection with the management of a Chinese (or other) entity that has established a U.S. presence.

BOARD OF DIRECTORS

The board of directors of a U.S. corporation is entrusted with the general power of management of the business and affairs of the corporation. This general power includes the authority to make policy and to elect officers to whom the board of directors delegates the power to carry out the policies formulated by the board. In reality, the day-to-day management of most U.S. corporations is performed not by the board of directors, but by the officers of the corporation through express or implied delegation by the board giving management powers to the officers.

Although the word "management" is largely undefined, the state corporation codes, such as that in Delaware, generally do provide certain narrow specific tasks that the board of directors is to perform, such as the selection and removal of officers, the declaration of dividends and the making of decisions relating to fundamental corporate changes such as merger or dissolution. The courts of the various states have developed case law which provides that beyond these specific tasks the board of directors has a general duty to monitor or oversee the business affairs of the corporation. Monitoring involves evaluating the performance of executive officers and replacing those who are not performing satisfactorily, and confronting key officers with questions and proposals to determine if they are acting in the best interests of the corporation and its stockholders. Some commentators suggest that the board, in order to perform its monitoring function most effectively, should be composed of a majority of "nonmanagement" or "outside" directors in order to enhance the likelihood that the board will exercise independent judgment. However, many corporations, especially privately held and subsidiary corporations, do not include outside directors.

A single director, as such, has no individual executive power of action. In contrast, an officer, who is usually elected or appointed by the board of directors to perform specific duties as an agent of the corporation, does have individual executive power. Directors have power of action when working as a whole board, not as individuals.

The board of directors is required to discharge its duties in good faith and all directors must exercise a duty of care. The duty of care requires that the board and each director act on an informed basis in making a business decision. Further, the board and the directors owe a duty of undivided loyalty to the corporation that prevents them from appropriating for themselves any business opportunity that belongs to the corporation. Similarly, a controlling stockholder, when it exercises a power of control in directing the affairs of the corporation, owes a fiduciary duty to the minority stockholders, if any, of the corporation.

Although the board of directors is elected by the stockholders, the board is not considered an agent or representative of the stockholders, but rather a group of persons with independent authority and independent fiduciary duties. A director can be found individually liable for breach of his or her duties as a member of the board of directors.

In sum, the board of directors, acting collectively, is entrusted with all significant business decisions of the corporation but many of these decisions and the executive power is delegated to corporate officers or agents. However, while the board has broad discretion to delegate certain management authority to officers, agents and to committees of the directors, such delegation of authority does not relieve the board of directors of its

general duty to act with care, and in no event, can the board delegate its entire duty of management to a third person.

From a legal perspective, there is great flexibility in determining who will be on the board of directors of a wholly owned U.S. subsidiary. There can be as few as one director or as many as desired. The most typical number is to have three directors. The individuals would typically consist of the senior manager of the U.S. subsidiary and two people from the parent company with responsibility for overseeing the subsidiary. It is helpful for the subsidiary to have different directors than the parent company, at least to some extent, since common directors could be cited as a factor in the separate company identity being ignored.

OFFICERS

Officers generally have the role of carrying out the policies and decisions of the board rather than the broader role of creating policy. Corporate officers owe a fiduciary duty to the board of directors and to the corporation of honesty, good faith and diligence. A corporate officer acting within the scope of his authority generally will not be held liable on the transaction if he acted within his delegated powers as an agent of the corporation. Unlike a director who has no executive power to act individually, a corporate officer can act individually, within the scope of his authority.

Officers of a U.S. corporation generally include a president, a treasurer, a secretary and one or more vice presidents. A board of directors generally can create other offices (e.g., chairman of the board, assistant secretary, etc.). Corporate officers generally draw their authority from the bylaws of the corporation which are promulgated by the board of directors, from general and specific resolutions of the board granting authority to the officers, and, to a limited extent, from the state corporation codes. In addition, various legal doctrines, such as apparent or implied authority, ratification or estoppel, can provide *de facto* authority to officers to bind their corporations on the basis of conduct or acquiescence.

Among other things, the bylaws of a corporation describe in general terms the powers and duties of corporate officers. The following is a summary of typical bylaw descriptions of corporate officer positions:

1. Chairman of the Board: Presides at meetings of the board of directors and shareholders, and exercises such other powers and performs such other duties as the board of directors shall from time to time assign to him

2. President: Acts as the chief executive officer (CEO), and subject to the control of the board of directors, he generally supervises and controls the business and affairs of the corporation; the corporation's bylaws often state that the president may execute and deliver corporate contracts and other corporate obligations

3. Vice President: Performs the duties of president in his absence and such other duties as may be assigned to him by the board or president

4. Secretary: Handles "housekeeping functions" such as recording the minutes of meetings of stockholders and meetings of the board of directors, and the register of the names and addresses of the shareholders; at times, U.S. counsel is asked to serve as secretary of the U.S. subsidiary

5. Treasurer: Has charge and custody of, and is responsible for, all funds and securities of the corporation

The president is generally the CEO of the corporation. The chairman of the board generally has the duty to preside at the board and shareholder meetings and, if he is an officer under the bylaws, he also has such other powers and duties as may be assigned by the board.

For U.S. companies, the usual title for the senior executive is president and/or CEO. The term "managing director," while occasionally used in the U.S. (particularly for subsidiaries of foreign entities), sometimes creates confusion since a director of a U.S. corporation cannot generally act for the corporation separately from actions being taken by the board of directors as a whole.

The law is not consistent as to how broad the president's "implied authority" is, simply by virtue of his position. This is the reason why third parties often request a resolution of the board of directors in order to satisfy themselves that the corporate officer they are dealing with, who purports to represent the corporation, actually is acting with authority of the corporation derived from the board. There is a trend in the law to broaden the implied authority of the president as CEO. Thus, some courts have concluded that a president has any powers which the board could have given him. Other courts have limited the president's authority to enter into transactions "arising in the usual and regular course of business" but have construed that phrase broadly.

Even when a corporate officer does not have specific authority from the board to act, a third party may be able to enforce the transaction entered into by the corporate officer in the name of the corporation on any number of theories. For example, a corporation may be bound on the theory of ratification if a board of directors, upon learning that an officer has entered into a transaction without having been specifically authorized to do so, does not promptly attempt to rescind or revoke the action and notify the other party. In some instances, a corporation may be "estopped" from rescinding or revoking such action because the third party relied on the corporate officer's action and it would be inequitable to permit the board to rescind or revoke the action.

Similarly, a corporate officer will be considered to have implied authority, and the transaction he entered into may be enforced, when a third person seeks to show that the directors accepted or ratified prior similar transactions in the past. The acquiescence of the board of directors in the past indicates that an actual grant of authority was informally made. In addition, a third party may rely on a corporate officer's "apparent authority" which customarily arises when a third person, who knows that an officer has exercised authority in the past, continues to rely on that appearance of authority.

DIRECTOR AND OFFICER LIABILITY

Under Delaware corporate law, directors of solvent corporations have two basic "fiduciary" duties – the duty of care and the duty of loyalty. The duty of care usually requires that directors discharge their duties in good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the director reasonably believes to be in the best interests of the corporation. In Delaware, this standard of care is largely established by judicial decisions. The duty of loyalty requires that directors act on behalf of the corporation and its shareholders and refrain from self-dealing, usurpation of corporate opportunity and any acts that would permit them to receive an improper personal benefit or injure their constituencies.

A director's discharge of his or her fiduciary duties is measured against the "business judgment rule," a presumption that in making business decisions directors acted on an informed basis, in good faith and in the honest belief that the action was taken in the best interests of the corporation. Delaware courts have held that to invoke the protection of the business judgment rule, directors have a duty to inform themselves of all material information reasonably available to them. The basis for the rule is that corporate management knows what is best for a particular corporation and judicial second-guessing would chill corporate initiative. The business judgment rule thus provides significant protection to directors from personal liability for their good faith, informed business decisions. The presumption may be rebutted where it is shown that a director had a personal financial interest in a transaction, lacked independence, did not inform himself or herself of all information that was reasonably available, failed to exercise the requisite level of care or stood on both sides of the transaction. In these circumstances, the director must show that his or her conduct meets the stricter

standard of "entire fairness" to the corporation. This obligation to prove the entire fairness of a transaction applies where the same person holds dual or multiple directorships, as in parent-subsidiary contexts.

Directors of financially healthy corporations generally owe fiduciary duties *only* to the corporation and its shareholders. Courts have generally held that directors of such corporations do not owe fiduciary duties to other constituencies, such as creditors, whose rights are purely contractual.

The primary exception to this is that, when a corporation becomes insolvent, directors owe fiduciary duties to creditors. The existence of a duty to creditors does not necessarily mean that duties to shareholders are eliminated. In addition, a Delaware court has stated that when a corporation is in the "vicinity of insolvency," directors owe their duties to the corporate enterprise, which the court described as a "community of interests" that includes stockholders, creditors, employees and any other group interested in the corporation. Under this view, the board of directors has an obligation to exercise its judgment in an informed, good faith effort to maximize the corporation's long-term wealth-creating capacity. If directors conceive of the corporation as a single legal and economic entity, they are less likely to adopt high-risk strategies that might benefit shareholders, who have no downside risk at insolvency, to the detriment of other interested constituencies.

Absent the applicability of this exception, though, only the parent company as a practical matter would be in a position to make a claim against a director or officer of a wholly owned U.S. subsidiary for breach of his or her fiduciary duty.

Under various statutes, directors may be held personally liable for corrupt acts performed in their official capacity and certain debts incurred by the corporation. The following are several examples of obligations for which directors may be held liable:

- failure to remit withholding and sales taxes collected in trust for the benefit of the government
- willful failure to pay wages if there is evidence that the directors had the ability to cause the corporation to pay wages and consciously failed to do so
- willful or negligent conduct in connection with the unlawful payment
- failure to pay franchise taxes
- fraudulent transfers
- breach of fiduciary duty to employee benefit plan

As a practical matter, it is quite rare for there to be even an attempt to hold directors liable in these types of matters. The rare occurrences tend to involve intentional malfeasance such as withholding taxes from employees or collecting sales tax from customers but not remitting such funds to the government.

The potential liability of directors only runs to the shareholders of the corporation and their actions would be viewed under the business judgment rule. The potential liability of officers, on the other hand, is only to the corporation itself (rather than to its shareholders) and would be based on taking actions against the interest of the corporation or outside the scope of their authority. As a practical matter, the question of liability of directors and officers of a wholly owned subsidiary rarely arises (unlike directors of a publicly owned entity, for instance, whose actions may be questioned by minority shareholders) unless there is some actual malfeasance since the parent company is the only possible claimant and would typically not have anything to gain from making claims against its own people.

Indemnification of directors and officers of U.S. companies can be accomplished through one or more of the following:

1. Certificate of Incorporation provisions
2. Bylaws provisions
3. Indemnification Agreement (or provisions in an employment agreement)
4. Insurance

It is common practice for a corporation – particularly if there are multiple shareholders or it is in a litigious industry – to have a number of these protections in place. In addition, directors and officers, particularly outside directors, are likely to insist on them.

在美国经营事业：董事及高级管理人员

原文作者: Neal N. Beaton

本文对中国（或其他国家）的企业组织管理其在美国设立的事业机构所应考量的相关事项作一综合介绍。

董事会

美国公司董事会被赋予管理公司事业及事务的总体权限。这个总体权限包括制定公司政策及选任将由董事会授予权力以完成董事会所制定的政策的高级管理人员。实际上，大部分美国公司的日常管理并非由董事会来负责，而是由董事会透过明示或默示方式授予其管理权力的高级管理人员来负责。

虽然“管理”一词大体上是未经定义的，各州的公司法（例如特拉华州的公司法）一般规定某些特定限制范围的具体事项由董事会来执行，例如选任及解任高级管理人员、宣布股利的分配、及关于重大公司改变事项的决定（例如合并或解散的决定）的作出。各不同州的法院有发展出案例法规定在这些特定事务之外，董事还有监督公司商业事务的一般义务。监督行为包括评估行政管理人员的表现及对该等表现未能符合要求的人员加以汰换，及对主要高级管理人员提出问题及议案以决定他们是否以公司及其股东的最大利益在执行工作。有些评论家建议为使董事会能最有效地执行其监督的功能，董事会的多数成员应由“非管理性质”或“外部”董事来构成以增进董事会行使独立判断的可能性。不过，许多公司，尤其是私人持有的公司或子公司，并未包括“外部”董事。

一个别的董事并没有单独的行政管理权力。相反地，一通常由董事会选任或指定来代表公司执行特定义务的高级管理人员有该个别行政管理权力。董事会作为整体（而非个别董事）有权行使其权力。

董事会应以诚信原则来履行其义务且所有董事都必须尽到注意义务。注意义务要求董事会及各董事在知情的基础上作出商业决定。此外，董事会及董事对公司负有完全的忠诚义务以防止他们占用任何属于公司的商业机会。相似地，一个具有控制权的股东，当其正行使对公司事务方向具有控制的权力时，对公司的少数股东（如有的话）负信托责任。

虽然董事会由股东所选任。董事会并不应该被视为是股东的代理人或代表，而是一群具有独立权限及独立信托责任的人员。一名董事可被认定需个别对其违反其作为董事会成员的义务负责。

总之，董事会作为一整体被授予公司所有重要商业决定的权力，但许多这些决定及行政管理权力都被授权给公司的高级管理人员或代理人。不过，虽然董事会有宽广的裁量权来决定是否将某些其所拥有管理权限授权给高级管理人员、代理人及董事会的委员会，该授权不会减轻董事会应尽注意义务以执行其职责，且在任何情况下，董事会都不可以将其整个管理的义务委托给給第三方。

从法律的角度来看，对决定由谁来担任全资拥有的美国子公司的董事一事有很大的弹性。董事的人数最低可以为一名也可为任何所喜好的人数。而一般是设有三名董事。这些个人董事通常是由一位美国子公司的高级经理人员及母公司派来负责监督子公司的两位母公司人员所构成。子公司与母公司有不同的董事是有助益的。至少在某些程度上，相同的董事可能会被用来作为主张母子公司不应被视为具有分别独立的法人身份的一个因素。

高级管理人员

高级管理人员一般而言扮演的角色为完成董事会制定的政策及决定，而非较广的创建政策的角色。公司的高级管理人员对董事会负信托义务，并对公司负诚实、诚信原则及勤勉义务。如果公司高级管理人员在其权限范围内行

事，一般不会对其在其被授予的权限范围内作为公司代理人所进行的交易负责。不若董事个人不能单独行使行政管理权限，公司高级管理人员在其被授权的范围内可以单独行事。

美国公司的高级管理人员通常包括一总经理、一财务长、一公司秘书及一个或多个副总经理。董事会通常可以创设其他管理职位（例如董事长、秘书助理等）。公司的高级管理人员的权力通常来自由董事会发布生效的公司的组织条款的规定、或来自董事会所通过授予高级管理人员权限的一般及特别董事会决定、或在更有限的情况下来自州的公司法的规定。此外，许多法律原则，例如表见或默示授权、追认权力及禁止反言的原则，可按其行为或默许的行为给于高级管理人员实际权力以对他们的公司产生拘束力。

除规定其他事外，公司的组织条款也描述了公司高级管理人员的权力及义务的一般规定。以下为一典型的组织条款关于公司高级管理人员的职位的描述的摘要：

1. 董事长: 主持董事会及股东会并行使董事会不时授予给他的其他权力及履行其他义务

2. 总经理: 作为公司的执行长，并受董事会控制，其一般负责监督及控制公司商业及事务。公司的组织条款经常规定总经理可签署及交付公司合约及其他公司义务

3. 副总经理: 在总经理不在的时候执行总经理的义务，及执行其他董事会或总经理分派的义务

4. 公司秘书: 负责"公司内部事务功能"，例如保管股东会及董事会的议事录及载有股东名称及地址的股东名册。在许多情况下，美国的律师被要求担任美国子公司的公司秘书

5. 财务长: 保管公司所有的有价证券、资金及对其负责。

总经理通常是公司的执行长。董事长通常有义务主持董事会及股东会的召开，且如其依公司组织条款也是公司的高级管理人员的话，他也具有董事会所分派给他的权力及义务。

对美国公司而言，资深的管理人员的职称为总经理及/或执行长。“执行董事”一职称虽然偶尔也在美国被使用（尤其在外国公司的子公司中），有些时候这个职称造成了一些混肴，因为美国公司的个别董事一般在董事会整体作出决议的情形之外是不能个别执行董事职务的。

而就总经理一职称所含的“默示权限”的范围，法律的规定是不一致的。这也是为什么第三方通常要求董事会出具一决议以让他们能满意与他们打交道的声称具有权力的公司高级管理人员的确是具有董事会赋予的公司权限。法律上存在一个将总经理的默示权限扩大如执行长的趋势。因此，有些法院决定总经理有董事会可授予他的任何权力。而其他法院则将总经理的权限限于签署“来自公司一般及经常业务”的交易，但将该权限宽泛解释。

即使当一个公司的高级管理人员没有董事会给与的具体权限来行事的话，第三方也可以其他理由要求执行该公司高级管理人员以公司名义与其签署的交易。例如，如一董事会在得知一没有被具体授权的公司高级管理人员签订一交易时没有迅速地试图撤销或撤回该行为并通知其他方，该公司可按追认的理论受该交易所拘束。在某些情况下，一公司可能被“禁止”对该行为作出撤销或撤回的行为，因为第三方依赖该公司高级管理人员的行为且如允许董事会撤销或撤回该行为时将造成不公平情形。

同样地，当第三方试图显示董事会之前有接受或追认先前类似的交易时，一公司的高级管理人员将被视为具有“默示权力”，且其所签署的交易可以被执行。董事会之前的默示行为已非正式地造成权限的实际授予。此外，第三方可以依赖公司高级管理人员的“表见授权”。该情况通常发生在第三方知道该高级管理人员过去有行使该权力，而继续信赖其有权力的表现。

董事及高级管理人员的责任

依据特拉华州的公司法，有偿债能力的公司的董事有两个“信托”义务，即注意义务及忠诚义务。注意义务通常要求董事以诚信原则、以通常的审慎的人士在相似情况下会注意的情形、及以董事合理相信将符合公司最大利益的情况下履行其义务。在特拉华州，这个注意义务的标准大体上是由案例法所构成的。忠实义务要求董事代表公司及其股东行使并避免自我交易、侵占公司机会及进行任何可能让他们收到不当的个人利益或伤害其所代表的人的利益的行为。

董事对其信托义务的履行是依“商业判断原则”来决定是否符合，而依该原则，董事被假定其所作商业决定是在董事知情的情况下、依诚信原则、且诚实相信该行为的作出是符合公司最大利益的情况下作出的。特拉华州的法院作出判决决定为援用商业判断原则的保护时，董事有义务让其自身知道所有他们可合理获得的重要信息。这个原则的原理是公司管理人员知道什么对某一公司最为有利。而如果司法单位对其再行猜测的话将影响了公司的动机。商业判断原则因此对董事所作出的诚信、知情的商业决定提供了避免个人责任的重要保护。而这个假定在显示董事在交易中有个人财务利益、欠缺独立性、没有让自己知道所有可以合理提供给他的信息、未能行使所要求的注意标准、或涉入交易双边的利益时可被推翻。而在该情况下，董事必须显示他的行为对公司而言符合更严格的“完全公平”原则。当同一人担任两个或多个董事职位时（例如在母子公司都担任董事的情况）， 应有义务证明交易完全公平的情况也适用。

财务健全的公司的董事通常只对公司及其股东负信托责任。法院通常判决该等公司的董事不对其他人士（例如权利只完全基于合约产生的债权人）负责。

而对此主要的例外是，当公司资不抵债时，董事对债权人也负信托义务。对债权人存在这个义务并不表示对股东的义务就消除了。此外，特拉华州的法院说过当公司处于“资不抵债的边缘”时董事对公司事业承担义务，而法院将其描述为一包括股东、债权人、员工及其他对公司有利益的人士的“利益群体”。在这观点之下，董事会有义务以知情及诚信努力的方式作判断以将公司长期创造财富的能力最大化。如果董事将公司设想为一个单一的法律及经济主体的话，他们将更不可能采用一个对在资不抵债的情况下不会有更不利风险的股东有利、但有损其他人士的利益的高风险策略。

除了这个例外的适用外，只有母公司在实务上可能会对其全资拥有的美国子公司的董事或高级管理人员提出他们违反了其信托义务的主张。

根据不同的法律规定，董事可能会对他们依他们的正式职责所进行的贪污行为及某些公司担负的债务负责。以下为董事可能会被认定需负责的几个义务的例子：

- 未能将为政府代收的扣缴税及销售税进行支付
- 故意不支付薪资，如证据显示董事有能力促使公司支付薪资单但刻意不那么作
- 有关非法支付的故意或过失行为
- 未能支付特许税费
- 诈欺移转
- 违法对员工福利计划的信托责任

实际上，相当少发生试图使董事对这些事项承担责任的情形。而这些很少发生的情形包括例如向员工扣缴税款或向顾客收取销售税但没将该等税款向政府缴交。

董事只对公司的股东承担他们的可能风险，且对他们的主张将依“商业判断”原则来处理。另一方面，公司高级管理人员只对公司本身（而不是其股东）承担他们可能的风险，且对其的主张可能将基于其违反公司的利益或其超越他们的权限行事。实务上，除非存在一些实际的违法行为，因为母公司是唯一可能提出主张的人且一般不会从向他自己的人提出主张中获得任何好处，全资子公司董事及高级管理人员的责任问题很少发生（不若公开公司的董事，例如，他们的少数股东可能质疑他们的行为）。

对美国公司的董事及高级管理人员进行补偿可以透过下列一个或多个方法达成：

1. 在公司章程中进行规定
2. 在组织条款中进行规定
3. 补偿协议(或在雇佣合同中加入该等条款)
4. 保险

公司 -- 尤其是有许多股东或从事易生诉讼的产业的公司 -- 有以上一个或多个保障措施是常见的。此外，董事及高级管理人员（尤其是外部董事）也可能坚持有这些保障措施。

The Hidden World of U.S. Media Production

By Robert J. Labate

Do you know that filming on or near the Golden Gate Bridge will cost your feature film, commercial or music video $10,000 a day? Or how Chain of Title requirements differ from a title opinion? Or the problems with licensing works created prior to Jan. 1, 1978? Or that you may lose your film tax credit, grant or rebate – as much as 30 percent of a qualified production spend – if you don't apply at the beginning of production. How about the industry-standard terms for option agreements? And we haven't even addressed copyright clearance and music licensing.

If these terms and issues are familiar, then you need to read no further. But if elements of a media project will be produced in the U.S. or will be distributed in the U.S. – whether in theaters, through an Over the Top service (such as Amazon Prime Video, Hulu or Netflix) or as advertising – then this peek into the hidden world of U.S. media production may be worth your time.

MEDIA TAX CREDITS, GRANTS AND REBATES

Let's start with free money. After watching productions move northward because of Canada's robust film incentive programs, about 36 states in the U.S. now offer some form of tax credit, grant or rebate to attract media production to their states. Some of the best programs are offered by California, New York, Georgia, Louisiana and New Mexico but attractive incentives also are offered by many other states such as Hawaii, Massachusetts, Pennsylvania, North Carolina, Ohio, Utah and Illinois.

These programs differ significantly in the amount and type of incentive offered, the transferability and time periods when tax credits may be applied, the nature of the production and minimum spend that qualifies for an incentive, and the definition of qualifying expenditures. What most have in common is that a production company must apply for the incentive at the beginning of production. Otherwise, it will not qualify for an incentive.

CHAIN OF TITLE AND TITLE OPINIONS

Media projects begin with creating a *Chain of Title*. That means the production company can show it owns, has licensed or otherwise has the right to use and distribute the project (in copyright terms, the Project) and every portion of the Project. The Chain of Title shows the *source* of each element of the Project and the *documents* allowing the producer to use such elements.

For example, if a Project is based on a book then a proper Chain of Title will consist of every option, assignment, license and permission, work for hire contracts that allows the production company to turn the book into a media project and will trace the book ownership, and each element of the book, back to its original creation. If the Project is based on a screenplay, then Chain of Title requires that documents show the right to use the screenplay and must show that the production company has obtained the right to use all sources on which the Project is based. This is particularly true where a book or screenplay is based on the life story of an individual (called Life Rights) and includes showing the source of all plots, themes, ideas, stories, contents, dialogue, characters, artwork, visual images, illustrations, adaptations and other versions of the screenplay or source.

A *title search and opinion* will be required by an Errors & Omissions (E&O) insurance provider and, likely, the U.S. distributor to confirm that the title of the Project does not infringe on a trademark of another media project.

The essential issue is whether there is a "likelihood of confusion" in the minds of consumers between the Project's title and the trademark of another media project. For example, the U.S. Court of Appeals for the Seventh Circuit affirmed that there was no "likelihood of confusion" in the minds of consumers between use of the title "Survivor" for a CBS television series and the use of the same mark to identify a rock band by the same name.

OPTION AGREEMENTS

An option agreement allows a production company to "lock up" rights to certain material, such as a screenplay, book or a life story, for a specified period of time (the option period) for a fraction of the cost of actually licensing that material. If, within the option period, the production company decides to proceed to make the Project using the optioned screenplay, the option agreement will specify all the essential terms of that license or assignment of material. If it decides to not exercise the option, the production company's option lapses. The owner of the optioned material is allowed to keep the option fee, and is free to license the work to someone else. In this case, the production company only paid for the price of an option – not a full-blown license – thereby limiting its financial exposure.

Typically, an option will specify that, during the option period, the producer may use the option material to develop the project and to seek production funding. In addition, an option will specify:

- the initial term of the option – normally one year or 18 months – together with one or two additional option periods that allow the producer to extend the term of the option agreement by making timely additional payments
- the purchase price to be paid upon exercise of the option which, for literary works, often consists of a fixed amount based on the final producer-approved budget and contingent compensation based on net proceeds of the picture
- a set-up bonus, if the project is set up with a major or mini-major studio
- credit provided to the owner if the film is produced based on the material
- consulting service fees that may be paid to the licensor during production of a film based on the licensed work
- ownership rights transferred to the producer upon exercise of the option
- rights reserved to the owner of the licensed rights, such as publishing rights, live dramatic stage performances, radio, video games and the creation of certain other derivative works based on the licensed material, such as sequel and prequel rights
- passive payments made to the licensor if the work is used for remakes, a documentary, a made-for-television film or mini-series, a TV pilot, a TV series and subsequent productions
- the right to use other materials related to the licensed work and, if the option is for life rights, the right to use the subject's letters, photographs and other personal materials
- the right to use the licensor's name, likeness, approved biography and other personality rights in connection with the distribution and promotion of a film based on the licensed rights

- representations and warranties by the licensor as to the originality of a licensed literary work, that the rights do not infringe or give rise to an action by any third party, and that the rights have not been previously used or licensed

- the circumstances under which the rights may revert back to the licensor

On a practical level, if the option agreement does not allow the production company to license the script (or other material) on industry-standard terms, the producer may not be able to assign the optioned rights to another producer or a studio that wants to produce the film.

LICENSING AND WORK MADE FOR HIRE ISSUES

Licensing is the heartbeat of media production because it allows the production company to use content and materials created by a third party in its Project. The nature of a license depends on the content acquired. For example, licenses of music (which normally include synchronization and master use rights) differ substantially from licenses of video, visual images and life rights.

Three critical elements of a good license are that a production company is permitted to use the licensed content in its Project: 1) *in all media now known or hereafter devised*; 2) *in all territories throughout the world*; and 3) *in perpetuity*. In that way, a production company is free to use and distribute its Project, forever, worldwide and in any medium. Some licensed content, such as music, requires payment of residuals based on distribution but, where possible, the goal should be to license content for a flat fee including for the full exploitation of the project. Importantly, the license should include the right to use the licensed content in the marketing, promotion and publicity of the Project.

If possible, a license also should provide the licensee (e.g. the production company):

- *the right to distribute and reproduce the work*. Any restrictions on distribu¬tion and reproduction should be specified and limited. Be aware of any other limitation as to media, format, territory or time.

- *the right to create derivative works*. If possible, obtain rights to create all derivative works, including those that are "subsidiary" and "ancillary." These distinctions blur, but put these terms into a license to protect the rights to create products down the road. Movie rights to a book, for example, are often labeled "subsidiary," and rights to produce merchandise based on film characters are often termed "ancillary."

- *the right to own derivative works*. A license should provide that the production company is the exclusive owner of works derived from the licensed works that are included in the project.

- *the right to modify*. It is essential that a license provide that licensee has the right to modify the licensed work and associated materials.

- *the right to sublicense and distribute for exhibition or exploitation in any medium or format*. As licensee, the production company wants the unfettered right to sublicense, distribute, and even assign the license in connection with exploitation of its film or media project.

COPYRIGHT AND WORK MADE FOR HIRE AGREEMENTS

Under U.S. copyright law, the "author" of a work is the party that actually creates the work – that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection. The author is deemed

to be the owner of the copyrighted work and has the exclusive right to license, distribute, exhibit, make copies and profit from the use of that work.

For works created after Jan. 1, 1978, copyright protection arises automatically and, for individuals, the exclusive rights exist for the *life of the author, plus 70 years*. Registering work with the U.S. copyright office provides the owner with the right to sue for infringement. If the copyright was registered prior to the infringement, then the owner is entitled to seek "statutory damages," plus attorneys' fees. Statutory damages may be up to *$30,000 per work* for ordinary infringement and may be up to *$150,000 per work* for intentional infringement.

The U.S. Copyright Act permits a work to be "made for hire" where it is specifically created or commissioned – in writing – by another. Most often, a work created by an employee (or an employee-in-fact) within the scope of employment, qualifies as a "work for hire" and the employer is the "author" for copyright ownership purposes.

For a work created by a nonemployee, such as an independent contractor, to qualify as a work for hire, there must be a written agreement executed before the work is created or, in some jurisdictions, soon after the work is created. The agreement must specify that the work is created as a "work made for hire," and the work is specially commissioned for use within one of nine specific categories, one of which is "As part of a motion picture or other audio-visual work." Work for hire agreements often contain an assignment provision so the production company becomes the owner of the work by assignment if the work for hire provision is ruled invalid.

FAIR USE

Fair use is a unique – and often confusing – aspect of U.S. copyright law. The fair use doctrine – contained in Section 107 of the U.S. Copyright Act – allows the producer to use another's copyrighted work without license or permission for purposes, such as: criticism, comment, news reporting, teaching (including multiple copies for the classroom), scholarship or research. Whether use of another's work without permission is protected as "fair use" depends on whether the secondary use is "transformative;" the nature of the original work; the amount of the original work used in the secondary work; and the effect on the potential market for the original work. The copyright office maintains a searchable index of recent fair use cases.

An illustration of fair use is provided by a recent decision of the U.S. District Court for the Southern District of California, which granted summary judgment in favor of ComicMix LLC which was sued by Dr. Seuss Enterprises L.P. for the use of Dr. Seuss source material in an alleged parody titled "Oh, the Places You'll Boldly Go!" – a mashup of Star Trek and the Dr. Seuss' book, "Oh, the Places You'll Go!" See *Dr. Seuss Enterprises OP v. ComicMix et al*, case number 3:16-cv-027779 (S.D. Ca. March 12, 2019). Weighing the factors listed above, the District Court concluded that the ComicMix book is "highly transformative," that ComicMix took no more than was necessary for their purposes and harm to the market for the original Dr. Seuss work was speculative. However, this decision has been appealed to the U.S. Court of Appeals for the Ninth Circuit, which, 20 years ago, ruled in favor of Dr. Seuss Enterprises in another fair use case.

有关美国影视制作你可能不知道的事

原文作者：Robert J. Labate

你知道在金门大桥或附近拍摄电影、商业或音乐影像节目每天需花费美金 10,000 元吗? 产权链和产权意见书的要求有何不同？许可 1978 年 1 月 1 日以前创作的作品会遇到什么问题？你知道如果你没有在制作一开始就提出申请，你可能会失去获得金额可达你合格的制作支出 30%的影片税额扣除、补助或退款吗？又什么是符合产业标准的选择权合约条款？我们还没开始谈到版权审查和音乐许可呢？

如果你熟悉这些条款及问题你将无需进一步阅读本文章。但如果一个媒体项目的任何部分将在美国制作或将在美国发行 – 无论是在电影院或通过互联网提供（例如亚马逊 Prime 影像、葫芦或网飞）或作为广告播放，则应该值得你花点时间了解一下有关美国影视制作你可能不知道的事。

媒体税额扣除、补助、及退款

让我们从免费的款项谈起吧。在看到因为加拿大强力的奖励计划造成制作产业北移，美国大约有 36 个州现提供某种税额扣除、补助或退款来吸引媒体到该州进行制作。加州、纽约州、佐治亚州、路易斯安娜州及新墨西哥州提供了某些最好的奖励计划，但许多其他州例如夏威夷州、马萨诸塞州、宾州、北卡罗来纳州、俄亥俄州、犹他州及伊利诺伊州也提供了具有吸引力的优惠计划。

这些计划在所提供的优惠的金额及形态、税额扣除是否可转让及可使用的时间、适用该优惠的制作性质及最低制作花费金额、及合格的花费的定义上有相当的不同，但大部分的计划都有一个相同之处，那就是制作公司必须在制作开始之初就申请该等优惠。否则，它将不适应任一优惠。

产权链和产权意见书

媒体项目始于产权链的建立。产权链的建立表示制作公司可以显示其拥有、取得许可或以其他方式有权使用及发行项目（以著作权的用词，即“项目”）及项目的每一部分。产权链显示项目的每一成分的来源及允许制作人使用该成分的各相关文件。

例如，如果一个的项目是根据一本书来制作的，则适当的产权链将包括每一个选择权、转让、许可、及同意、允许制作公司将书本转换为媒体项目及追溯书本所有权的雇拥作品合约、及书本从原始产生后的的每一成分。如果一个的项目是根据影视剧本来制作的，则产权链将要求显示制作公司有权使用电影剧本且必须显示制作公司已取得权利使用所有项目所根据的来源的文件。当一本书或一个影视剧本是根据一个个人的人生故事(称为“人生权”)时更是重要，且包括显示影视剧本的所有故事情节、主体、构思、故事、内容对话、特点、图片、视觉影像、示例、改编或其他版本的来源。

过失及疏忽责任保险的保险人将会要求提出一个产权调查及意见书，且美国发行人必须确认项目的产权没有侵犯其他媒体项目的商标权。这个重要的问题取决于在消费者的心中是否存在会有对项目的名称及其他媒体项目的商标权产生“混肴的可能”。例如美国联邦第七巡回上诉法院确认了 CBS 电视公司的连续剧节目“存活者”的名称不会在消费者的心中产生将其及与使用同样名称的摇滚乐团的“混肴的可能”。

选择权合约

选择权合约允许制作公司以实际上取某些资料所需的费用的一部分取得“保留” 在一特定期间（“选择权期间”）对某些资料，例如影视剧本、书本、人生故事的权利。而如果在选择权期间，制作公司决定使用选择权项下的影视剧本来制作项目的话，选择权合约将明确规定关于该资料的许可或转让的重要条款。如果决定不行使选择权的话，制作公司的选择权将失效，而选择权项下的资料的所有人将可以保留选择权费用，并可以自由地将作品许可给其他人。在该情况下，制作公司只付了选择权的费用 –而非整个许可的费用 –因此缩小了它的财务风险。

一般而言，一个选择权会规定，在选择权期间，制作人可以使用选择权资料以开发项目及寻求制作的资金。此外，选择权将规定：

- 选择权的初始期间 – 通常为 1 年或 18 个月 – 加上一次或两次额外的选择权期间而允许制作人以按时支付额外付款的方式延长选择权合约的期间；
- 在行使选择权时应支付的购买金额，对文学作品而言，通常包括当制作人同意制作预算时的一个固定金额及根据影片净收益计算出的一个或有补偿金额；
- 一个设置奖金 （如项目为主要或小型的主要影视制作公司所使用时）；
- 如影片是根据资料制作时，应向所有人提供的款项；
- 根据许可作品制作一影片时可能向许可人支付的顾问服务费用；
- 行使选择权时所有权应移转给制作人；
- 保留给许可权利所有人的权利，例如发行权，现场戏剧舞台表演、广播电台、电子游戏、及根据许可资料创作某些其他衍生作品的权利，例如制作续集及前传的权利；
- 如作品被使用于重拍、纪录片、电视专用影片或迷你系列、电视试播节目、电视连续剧及其后制作时应向许可人支付的被动性付款；
- 使用有关许可作品的其他资料的权利，及如果选择权是关于人生权利的话，使用该主体的信件、相片及其他个人资料的权利；
- 在发行及推广根据许可权利制作的影片时使用许可人的姓名、肖像、核可的传记及其他人身权利的权利；
- 许可人对许可的文学作品所做该权利没有侵权也不会造成第三人提出诉讼、且该权利之前没有被使用或被许可的承诺及保证；
- 权利可能回到许可人的情况。

在实务的层面上，如果选择权合约没有允许制作公司依产业标准的条款许可剧本（或其他资料）的话，制作公司可能没法向其他希望制作影片的制作人或影片制作公司转让它的选择权权利。

许可及雇佣创作问题

许可是媒体制作的核心，因为其允许制作公司使用第三方创作的内容及资料于它的项目中。许可的性质取决于它取得的内容。例如音乐的许可（其通常包括同步录音及主使用权）与视频、影像及人生权利的许可有很大的不同。

一个好的许可的三个重要要件是制作公司被允许在 (1)所有现在所知或其后产生的媒体中；（2）全世界所有领土上；及（3）永久的时间内，使用许可的内容于它的项目上。在该情形下，制作公司可自由地、永远地、在全球及在任何媒介上使用及发行它的项目。有些许可内容，例如音乐，需根据发行支付余款，但可能的话，目标应该是以固定费用取得可在它的项目上完全利用许可内容的许可权利。重要的是，许可应包括在推广及宣传项目上使用许可内容的权利。

如可能的话，许可应提供作为制作公司的被许可人如下权利：

- 发行及重制作品的权利。任何对发行及重制的限制应被明确列出及限制。应注意对媒体种类、形式、地域或时间的任何其他限制。
- 创作衍生作品的权利。如可能的话，取得创作所有衍生作品的权利，包括那些属于“附属性”或“补充性”的作品。这些区别模糊，但在许可中加上这些条款以保障之后创作产品的权利。例如，根据一本书拍摄电影的权利，经常被标示为“附属的”权利，而根据影片的角色生产商品的权利经常被叫做“补充性”的权利。
- 拥有衍生性作品的权利。许可应规定制作公司是项目所包括的许可作品所产生的的衍生性作品的唯一所有人。
- 进行修改的权利。重要的是许可应规定制作公司有权对许可作品及相关资料进行修改。
- 在任何媒介或以任何形式进行再许可或再发行的权利。作为被许可人，制作公司希望在利用它的影片或媒体项目上具有不被限制的权利进行再许可或再发行甚或转让许可权利。

著作权及雇佣创作合约

根据美国的著作权法，一个作品的“作者”是真正创作该作品的人 – 即将一个想法转化为以固定及有形的表示方式的人享有著作权的保护。作者被视为著作权作品的所有人且有完全权利对该作品进行许可、发行、展示、复制或从其使用上获利的权利。

对 1978 年 1 月 1 日以后创作的作品，著作权的保护自动产生，且就个人而言，该专属的权利期间为作者的终身外加 70 年。向美国版权局登记著作权提供所有人对侵权提起诉讼的权利。如果著作权在侵权发生之前就已登记，所有权人有权要求“法定赔偿”及律师费。对每一个作品的一般侵权的法定赔偿最高可达 30,000 美元，而对每一个作品的故意侵权，法定赔偿最高可达 150,000 美元。

美国著作权法允许一作品在“雇用创作”情况下作成，而该情况须有他人以书面的方式建立或聘用。最常见的情况时一个雇员（或实际上进行雇员工作的人）在其雇佣的范围内所创作的作品被视为“雇佣创作”，且雇主就著作权的所有权目的而言被视为“作者”.

就非雇员（例如以独立承包商）所创作的作品，为符合成为“雇佣创作”，则必须在作品被创作前（或在某些州，作品被创作后短时间内）签署一书面合同。该合同必须明确规定作品是以“雇佣创作”的方式被创作出，且作品是特别被委托为在 9 个特别的类别中使用所创作，而其中 1 个是“作为电影或其他视听作品”之用。雇用创作合同通常包括一个转让条款，使雇佣创作合同被判定无效时制作公司仍可以透过转让成为作品的所有人。

合理使用

合理使用是美国著作权法中一个独特且经常造成混肴的规定。美国著作权法第 107 条中所规定的合理使用原则允许制作人在没有取得许可及允许的情况下为下列目的使用作者的著作权作品：例如批评、评论、新闻报道、教学（包括在教室中使用多份影本），学术或研究。没有取得许可的情况下使用作者的作品是否享有“合理使用”的保护取决是否该等再使用是“有改变性的”、原始作品的性质、在再生作品中用了多少原始作品、及对原始作品潜在市场的影响。版权局中有一套关于合理使用的案件的可查询目录。

美国加州南区联邦地方法院在最近的一个判决中作出有利 ComicMix LLC 的即裁判决，判定被 Dr. Seuss Enterprises, L.P.提出诉讼，声称 ComicMix 使用 Dr. Seuss 来源的资料于其滑稽模仿作品— “Oh, the Places You’ll Boldly Go!”， 而其为星际迷航及 Dr. Seuss 的书 “Oh, the Places You’ll Go!” 的混搭作品。请见 *Dr. Seuss Enterprises OP v. ComicMix et al*, case number 3:16-cv-027779 (S.D. Ca. 2019 年 3 月 12 日)。在权衡上述各因素后，联邦地方法院作出 ComicMix 的书具“高度改变性”，而 ComicMix 为其目地只用了所必要的成分，且对原始 Dr. Seuss 的作品的损害是属臆测性的。不过该判决被上诉到美国联邦第九巡回上诉法院，而该法院在 20 年前在另一个合理使用案件上作出对 Dr. Seuss Enterprises 有利的判决。

California Consumer Privacy Act Update: Senate Considering Multiple Potential Amendments

By Ashley L. Shively

HIGHLIGHTS:

- California's protracted legislative and regulatory process has complicated the landscape for businesses needing to implement the operational, technical and procedural changes required by the California Consumer Privacy Act.
- California lawmakers introduced a series of bills in 2019 to clarify and refine the scope of the Act prior to the effective date of Jan. 1, 2020. One notable proposal to expand the private right of action was blocked during the legislative process. A number of other bills have passed the California Assembly and now are being considered in the Senate.
- Industry has supported the need to remove certain categories of data, namely employees and contractors, from the scsope of the law, as well as the need to protect businesses' disparate treatment of consumers who are part of loyalty programs. Whether those bills will be signed into law, however, may not be clear for several more months.

California enacted the California Consumer Privacy Act (CCPA) last year in an expeditious compromise between consumer privacy advocates, legislators and businesses. In return, advocates agreed to drop a ballot initiative from the November 2018 election that could have resulted in more stringent privacy protections. The final bill reflected the rushed circumstances under which it was passed, and state legislators soon passed a series of amendments to fix key issues in the new law. The private sector nevertheless remains concerned that aspects of CCPA are too vague and broad-based, making any understanding of the Act difficult to implement and complicated for consumers to understand.

The Act directs the California State Attorney General to issue regulations on seven important areas, including potential additional categories of "personal information" within scope of the CCPA, the rules and procedures governing the submission of consumer requests to opt-out of the sale of personal information and businesses' compliance with the same, and certain exceptions to the law. See Civil Code §1798.185.

The Office of the California Attorney General held a series of CCPA public forums where staff indicated that draft regulations can be expected by fall 2019. (See Holland & Knight's alert, "Final Public Forum Held on California Consumer Privacy Act," March 7, 2019.) Given that time frame and the mandatory public comment period on any draft regulations, it is unlikely that the implementing regulations will be finalized prior to the CCPA's effective date of Jan. 1, 2020. Fortunately, the Act provides that the state may not begin any enforcement until six months after final regulations are enacted. Civil Code §1798.185(c). Consumers, on the other hand, can bring a private right of action for violations of the statute's data breach provision or under California's Unfair Competition Law as soon as the Act goes into effect. Complicating businesses' efforts to operationalize the CCPA is the fact that the Act includes a one-year, look-back window, requiring businesses to provide personal information for the prior 12 months in response to consumers' verifiable requests. Civil Code §1798.130.

Against this background, California lawmakers introduced a series of bills in 2019 to clarify and refine the scope of the Act prior to the 2020 effective date. One notable proposal to expand the private right of action was blocked during the legislative process. A number of other bills have passed the California Assembly and now

are being considered in the Senate. Industry has supported the need to remove certain categories of data, namely employees and contractors, from the scope of the law, as well as the need to protect businesses' disparate treatment of consumers who are part of loyalty programs. Whether those bills will be signed into law, however, may not be clear for several more months. The California Senate has until Sept. 13, 2019 to bring bills to a floor vote, and Gov. Gavin Newsom must sign or veto legislation by Oct. 13, 2019.

California's protracted legislative and regulatory process complicates the landscape for businesses needing to implement the operational, technical and procedural changes required by the law. This means that privacy and compliance personnel, in consultation with legal and business stakeholders, will need to weigh risk-based decisions involving implementation, as well as take into account the viability of CCPA-like bills in other states and potential federal legislation.

Holland & Knight's cybersecurity, privacy and public policy professionals have extensive experience advising and assisting companies in developing cybersecurity, data security and privacy compliance programs. They also have substantial experience in advocating and working on the nuances of federal and state privacy and consumer protection matters, and are available to assist in addressing any questions you may have regarding CCPA or these latest developments.

OVERVIEW OF POTENTIAL AMENDMENTS TO CCPA

A dozen bills passed in the California Assembly in May. A series of deadlines exist for the bills to be signed into law, including deadlines to pass in Senate committees, pass a Senate floor vote and to be signed by the governor. How quickly the process will move is unclear. For that reason, it is important for businesses to monitor the direction of bills in order to understand the impact of CCPA, as well as the likely scope of what compliance may mean, come January 2020.

- **AB 25 California Consumer Privacy Act of 2018 [to exclude employees], passed Assembly (61-0) on May 29, 2019.** As recently amended by the author, Assembly Member Edwin Chau, AB 25 would exclude a "natural person acting as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or contractor of that business" from all provisions of the CCPA except the notice and disclosure provision in Section 1798.100 and data breach/private right of action provision in Section 1798.150. The author's July amendment would also add a Jan. 1, 2021, sunset provision to this amendment. The bill has been referred to the Senate Judiciary Committee.

- **AB 846 Customer loyalty programs, passed Assembly (50-1) on May 28, 2019.** As amended, the bill would add language to the CCPA confirming that a business may charge higher prices or provide a lower level of service to a consumer who exercises rights under the Act, provided that the differential treatment is reasonably related to the value provided to the business by the customer's data, or is in connection with the customer's voluntary participation in a loyalty, rewards or discount program. The bill has been referred to the Senate Judiciary Committee.

- **AB 873 California Consumer Privacy Act of 2018 [to redefine personal information], passed Assembly (56-0) on May 22, 2019.** As amended, this bill would 1) revise the definition of personal information [Civil Code §1798.140(o)(1)] to include information that is "reasonably capable of being associated with" a particular consumer or household, as opposed to "capable of being associated with a particular consumer or household" and 2) replace the definition of "deidentified" [Civil Code §1798.140(h)] to, instead, mean information that does not identify, and is not reasonably linkable, directly or indirectly, to a particular consumer, provided that the business makes no attempt to reidentify the information and takes reasonable technical and administrative measures designed to a) ensure that the data is deidentified, b) publicly commit to maintain and use the data in a deidentified form, and

c) contractually prohibit recipients of the data from trying to reidentify it. This bill also revises a provision [Civil Code §1798.145(i)] of the CCPA prohibiting the Act from being construed to require a business to reidentify or otherwise link information that is "not maintained in a manner that would be considered personal information" to instead refer to information that is "not maintained as personal information." The bill has been referred to the Senate Judiciary Committee.

- **AB 874 California Consumer Privacy Act of 2018 [to redefine personal information], passed Assembly (76-0) on May 9, 2019.** This bill would redefine "publicly available" personal information [Civil Code §1798.140(o)(2)] to mean information that is lawfully made available from federal, state or local records, and clarify that "personal information" does not include deidentified or aggregate consumer information. The bill has been referred to the Senate Judiciary Committee.

- **AB 981 Insurance Information and Privacy Protection Act, passed Assembly (77-0) on May 22, 2019.** Introduced with the aim of wholly exempting insurance institutions, agents and support organizations (collectively, "insurers") from the CCPA, AB 981 was amended in committee and now would excuse insurers subject to the Insurance Information and Privacy Protection Act (IIPPA) from complying with consumers' requests to delete personal information [Civil Code §1798.105] and to opt-out of the sale of personal information [Civil Code §1798.120], but only to the extent necessary to complete an insurance transaction. The exemption would not apply to the limited private right of action for data breaches in the CCPA or business activities not subject to the IIPPA. AB 981 would also harmonize some of the consumer protections contained in the CCPA with the requirements of the IIPPA by updating disclosures and requiring insurers to provide a notice of information practices, including the categories of personal information collected and for what purpose. The bill has been referred to the Senate Insurance and Judiciary Committees.

- **AB 1138 Social media: the Parent's Accountability and Child Protection Act, passed Assembly (41-5) on May 23, 2019.** As amended, the bill would restrict children under age 13 from opening a social media account without parental consent, beginning July 1, 2021. The bill would permit a business to use any Federal Trade Commission-approved verification method to certify parental consent. The bill has been referred to the Senate Judiciary Committee.

- **AB 1146 California Consumer Privacy Act of 2018: exemptions: vehicle information, passed Assembly (56-0) on May 23, 2019.** As amended, the bill would exempt from the CCPA vehicle information — defined as VIN, make, model, year, odometer reading, and the name and contact information of the registered owners — shared between a new motor vehicle dealer and the vehicle's manufacturer. The exemption applies only, however, if the information is shared pursuant to or in anticipation of a vehicle repair relating to warranty work or a recall. The amendment would not excuse dealers and manufacturers from complying with CCPA's notification [Civil Code §1798.100] and disclosure [Civil Code §§1798.110, 1798.115] requirements. Nor would dealers and manufacturers be protected from civil actions brought under Section 1798.150. The bill has been referred to the Senate Judiciary Committee.

- **AB 1202 Privacy: data brokers, passed Assembly (53-13) on May 28, 2019; passed Senate Judiciary Committee (7-1) on July 2, 2019; now in Appropriations.** The bill would require data brokers to register with the State Attorney General (AG), require the AG to create a public registry of data brokers and grant enforcement authority for violations to the AG.

- **AB 1281 Privacy: facial recognition technology: disclosure, passed Assembly (61-13) on April 25, 2019; passed Senate Judiciary Committee (7-2) on July 2, 2019; now in Appropriations.** This bill would require a brick and mortar business in California to disclose the use of facial recognition technology with a clear and conspicuous sign at the entrance of the location. A business that fails to

comply with the provisions shall be liable for a civil penalty of up to $75 per violation but not to exceed $7,500 annually.

- **AB 1355 Personal information, passed Assembly (76-0) on May 9, 2019.** As amended, this bill would exclude deidentified or aggregated information from the definition of personal information [Civil Code §1798.140(o)], and clarify that permissible discrimination [Civil Code §1798.125] must be reasonably related to the value provided to the business by the consumer's data. The bill has been referred to the Senate Judiciary Committee.

- **AB 1416 Business: collection and disclosures of consumer personal information, passed Assembly (47-17) on May 29, 2019; appears to have died in the Senate.** As written, AB 1416 would have allowed businesses to share the personal information of consumers for purposes of complying with "any" government program or for fraud detection, even if customers opted out of having their data collected and shared. The bill was pulled by the author, Assembly Member Ken Cooley, before it could be heard by the Senate Judiciary Committee.

- **AB 1564 Consumer privacy: consumer request for disclosure methods, passed Assembly (65-0) on May 13, 2019.** This bill would ease the burden on businesses' handling of consumer rights requests by expanding the permissible methods by which a business may direct a consumer to submit such requests, and clarifying that an online-only business need only provide an email address for requests. The bill has been referred to the Senate Judiciary Committee.

CALIFORNIA BILLS INTRODUCED BUT NOT PASSED

Lawmakers introduced a number of bills to amend CCPA that did not move forward in the legislative process. Many of the bills included key themes that are important to businesses.

- **AB 288** would have required social networking services to provide users who close their account with the option to have their personal information permanently deleted. Set for hearing in late April, it was canceled at the request of Assembly Member Jordan Cunningham.

- **AB 1760**, which would have required opt-in consent for the sharing of personal information, was pulled from consideration by Assembly Member Buffy Wicks when it became apparent it lacked the votes to pass out of the Assembly Privacy and Consumer Protection Committee.

- **SB 752** would have clarify the duties and responsibilities of advisory boards and commissions established in the CCPA. The bill failed in the Appropriations Committee.

- **SB 753** would have excluded certain advertising practices from the definition of a "sale" under the Act. The bill was removed from the agenda before its April 23, 2019, hearing in the Senate Judiciary Committee.

- **SB 561** was sponsored by California Attorney General Xavier Becerra to significantly expand civil actions brought under the Act by allowing a consumer to bring a private action for a violation of any provision of the CCPA. The bill also would have eliminated the 30-day window for a business to cure an alleged violation of the Act and reduced the administrative burden on government by removing the ability of businesses to seek the opinion of the AG on CCPA compliance. The Appropriations Committee took the bill under submission, and it was never brought to a vote.

STATES ACROSS THE COUNTRY ARE CONSIDERING PRIVACY LEGISLATION

Nearly two dozen states introduced substantive privacy legislation in 2019. Many states followed California's lead by introducing sweeping bills akin to CCPA. Early efforts were, for the most part, unsuccessful. In Washington state, for instance, the Washington Privacy Act promptly passed through the State Senate (46-1) only to fail to come to a vote in the House before the legislative session expired. Bills introduced in Connecticut, Mississippi, New Mexico, Texas and Rhode Island also all appear dead. Within the last several weeks, however, state lawmakers have introduced a second wave of robust data privacy bills in key states, including Illinois, Minnesota and New York. Those bills would all go further than CCPA, incorporating additional concepts from the EU's General Data Protection Regulation such as data controllers and processors.

More focused privacy legislation has also had some success. In May, Nevada Gov. Steve Sisolak signed SB 220, which gives consumers the right to opt out of the sale of covered information by internet service providers and websites beginning Oct. 1, 2019. And in June Maine signed into law a bill that will prohibit internet service providers from selling customers' data without consent beginning June 2020. Nevada [Nev. Revised Stat. §205.498] and Minnesota [Minn. Stat. §§325M.01 to 325M.09] already have similar laws. On the other hand, in Hawaii, Gov. David Ige vetoed a bill that would have prohibited the sale of location data collected by smartphones without the explicit consent of the user.

PRIVACY LEGISLATION IN CONGRESS

There is bipartisan support in Congress, and across the private sector, for federal privacy legislation. Key members of Congress are working on a compromise to address heavily regulated sectors, such as healthcare and the financial industry, as well as the technology sector and other areas that do not currently have significant privacy requirements. Challenges in the legislative process, including speculated disagreement over a private right of action and federal pre-emption of state privacy legislation, and the need for a bill that can span industry sectors, however, means that the process will likely spill into next year. As a result, it appears unlikely that a federal bill will be signed into the law by President Donald Trump before CCPA's January 2020 compliance deadline.

For additional information regarding the CCPA or the latest developments detailed in this article, contact the author.

加州消费者隐私法案的更新状况:
加州参议院正考虑多项修订案

原文作者: Ashley L. Shively

重点摘要:

- **加州冗长的立法及法规制定程序对需要执行加州消费者隐私法案所要求的操作性、技术性及程序性改变的企业加诸了许多复杂度。**
- **加州的立法人员在 2019 年引进了一系列的法案以在加州消费者隐私法案于 2020 年 1 月 1 日生效前对其适用范围加以改进。一个要将私人诉讼权扩大的重要提案在立法过程中被挡下了。而好几个其他法案在加州众议院中通过而现为参议院所考虑中。**
- **产业界支持将某些信息的类别（即雇员及承包商的信息）从法律的适用范围中除去，并且支持对企业以完全不同的方式对待其忠诚会员计划的顾客的做法加以保护。而这些法律提案是否会被签署成为法律，还需等几个月才会清楚。**

加州去年在消费者隐私倡议团体、立法人员及企业的快速妥协之下通过了加州消费者隐私法案（CCPA）。在该折中之下，消费者隐私倡议团体同意不在 2018 年 11 月的选举中提出可能会导致更严格的隐私保护的投票提案。最终的法案反映了其在仓促的情况下被通过的结果，而州的立法人员很快地又通过了一系列的修订案来解决新法中的一些重要问题。不过私人行业仍然顾虑 CCPA 的某些部分太过不清楚及宽泛，使私人企业难以了解如何执行法案，而法案也过于复杂而使消费者不好理解。

CCPA 要求加州的司法部长就七个重要领域、包括 CCPA 适用范围中可能的额外“个人信息”类别、消费者如何选择退出个人信息的销售及企业如何配合遵循该等要求的规定及程序、及对该法案的某些例外情形发布施行规则。请见民法第 1798.185 条。

司法部长的办公室举行了一系列关于 CCPA 的公听会，而在公听会上司法部长办公室的人员表示 2019 年秋季将可看到该等施行规则的草案（请见 2019 年 3 月 7 日所发表 Holland & Knight 的法律提示专栏文章 “CCPA 最后公听会的举行”）。考虑到对任何施行规则草案的强制性公共评论的期间，施行规则不太可能在 CCPA 于 2020 年 1 月 1 日生效前被确认完成。幸运地，CCPA 规定州只能在施行规则被制定后的 6 个月以后才可开始执行 CCPA。民法第 1798.185（c）条。另一方面，消费者可以在 CCPA 生效后立即对违反 CCPA 中关于数据泄露的条款规定及根据加州的不公平竞争法的规定提出私人权利诉讼。对企业实施 CCPA 造成更多复杂问题的是，CCPA 包括了一个 12 个月的回顾窗口，而按该窗口要求，企业在消费者提出可确认的要求后应向其提供之前 12 个月的个人信息。请见民法第 1798.130 条规定。

在这背景之下，加州立法人员在 2019 年引进了一系列的法案以于 CCPA 在 2020 年生效之前厘清及进一步改善 CCPA 的适用范围。一个提议扩大私人诉讼权的重要提案在立法过程中被裆下。而好几个其他法案在加州众议院中被通过而现为参议院所考虑中。产业界支持将某些信息的类别（即雇员及承包商的信息）从法律的适用范围中除去，并且支持对企业以完全不同的方式对待其忠诚会员计划的顾客的做法加以保护。而这些法案是否会被签署成为法律，还需等几个月才会清楚。加州参议院在 2019 年 9 月 13 日以前可提出其自己的法律提案供投票表决，且 Gavin Newsom 州长必须在 2019 年 10 月 13 日前签署或否决任何法案。

加州冗长的立法及法规制定程序对需要去执行加州消费者隐私法案所要求的操作性、技术性及程序性改变的企业加诸了许多复杂度。这意味负责处理隐私问题及其遵循的员工，在与法律及企业所有人商议之后，将需要作出涉及执行及考虑到其他州的与 CCPA 相似的法律及可能的联邦法律的风险评估决定。

霍兰德奈特律师事务所的网络安全、隐私及公共政策的专业人员有广泛的经验咨询及协助企业发展其网络安全、数据安全及隐私遵循计划。他们在联邦及州的隐私及消费者保护事项的一些细节的推动及工作中也有很多经验，且可以协助您处理关于 CCPA 或这些最近的发展的事项的任何问题。

CCPA 可能的修订案一览

加州众议院在 5 月时通过了 12 个法案。而这些法案如何被签署成为法律面临了一系列的截止日期，包括在参议院委员会中被通过的截止日期、在参议院中被表决及被州长签署成为法律的截止日期。这些程序能多快被推进仍不清楚。基于这个理由，企业监控这些法案的发展情况成为重要的，以使其能了解 CCPA 将会造成的影响、及 2020 年 1 月将面临的可能遵循范围。

- **2018 年加州消费者隐私法案众议院第 25 号【为排除员工的适用】法案，2019 年 5 月 29 日（以 61 对 0 票）在众议院中被通过。**如最近为它的提案人众议员 Edwin Chau 所修订，众议院第 25 号法案将一个企业的求职者、雇员、所有人、董事、管理人员、医疗人员或承包商从 CCPA 除了关于揭露规定的 1798.100 条及关于数据泄露/私人诉讼权利的 1798.150 条之外的所有条款的适用中排除。提案人 7 月所提的修订也对此一修订案增加了一个 2021 年 1 月 1 日的日落条款的规定。这个法案被送到参议院司法委员会。

- **消费者忠诚会员计划众议院第 846 号法案，2019 年 5 月 28 日（以 50 对 1 票）在众议院中被通过。**如同修订案所示，该修订案将对 CCPA 增加文字以确认企业可以对根据 CCPA 行使权利的消费者收取更高的价格或提供更低阶的服务，只要该等差别待遇与消费者的信息的提供对企业产生的价值合理相关，或与消费者自愿参与一忠诚会员、奖励或折扣计划有关。这个法案被送到参议院司法委员会。

- **2018 年加州消费者隐私法案众议院第 873 号【为对个人信息重新定义】法案，2019 年 5 月 22 日（以 56 对 0 票）在众议院中被通过。**如同修订案所示，该修订案将 1)修改个人信息的定义【加州民法第 1798.140（o）(1)条】以包括“可合理能与特定消费者或家庭产生连系”的信息，而不是“能与特定消费者或家庭产生连系”的信息，且 2)将“解除识别”【民法第 1798.140（h）条】的定义改变，使其指无法识别，及不能合理地直接或间接地与特定消费者产生连结的信息，只要企业没有试图重新标示信息且采取合理的技术及行政措施以 a)确保信息被解除识别，b)公开地承诺以解除识别的形式保有及使用信息，及 c）透过合约禁止信息的接收人试图重新识别该信息。这个法案也修订了 CCPA 的一个条款【民法第 1798.145（i）条】，禁止 CCPA 被解释为要求企业重新辨识或以其他方式将“不被以可被视为个人信息的方式保有的”的信息进行连结，而相反地将信息称为“不以个人信息保有的信息”。这个法案被送到参议院司法委员会。

- **2018 年加州消费者隐私法案众议院第 874 号【为对个人信息重新定义】法案，2019 年 5 月 9 日（以 76 对 0 票）在众议院中被通过。**这个法案将对“可公开取得“的个人信息重新定义【民法第 1798.140（o）(2)条】，以使该信息指可合法由联邦、州或地方提供的信息，且厘清“个人信息”不包括解除识别或聚合的消费者信息。这个法案已被送到参议院司法委员会。

- **保险信息及隐私保护法众议院第 981 号法案，2019 年 5 月 22 日（以 77 对 0 票）在众议院中被通过。**以为完全豁免保险机构、代理人及支持组织（合称“保险人”）适用 CCPA 的目而提出，众议院第 981 号法案在委员会中被修订，而现在可能豁免适用保险信息及隐私保护法的保险人遵循配合消费者的要求删除个人信息【民法第 1798.105 条】及选择退出个人信息销售【民法第 1798.120 条】的规定，但该豁免只限于为完成保险交易所需的程度。这个豁免对 CCPA 下的数据泄露所生的有限的私人诉讼权利或不为保险信息及隐私保护法规范的企业活动并不适用。众议院第 981 号法案也可将 CCPA 中所包含的某些消费者保护规定与保险信息及隐私保护法的规定进行协调，以更新揭露内容及要求保险人提供一信息通知做法，包括个人信息收集的类别及为何目的收集。这个法案已被送到参议院保险及司法委员会。

- **社群媒体：父母责任及儿童保护法众议院第 1138 号法案。2019 年 5 月 23 日（以 41 对 5 票）在众议院中被通过。**如修订案所示，这个法案将限制小于 13 岁的儿童于 2021 年 7 月 1 日之后在没有得到父母许可时设立社群媒体账号。这个法案将允许企业使用任何联邦贸易委员会核准的确认方式确认父母的许可。这个法案被送到参议院司法委员会。

- **2018 年加州消费者隐私法案众议院第 1146 号法案：免除车辆信息，2019 年 5 月 23 日（以 56 对 0 票）在众议院中被通过。**如修订案所示，这个法案将免除车辆信息适用 CCPA。车辆信息被定义为与新的汽车经销及车辆制造商分享的车辆识别号码（VIN）、车款、型号、年份、里程表数目、及登记所有人的名称及联系信息。不过这项免除只适用于为进行保修或召回的车辆的维修而分享的信息。这个修订案将被不免除经销商及制造商遵循 CCPA 关于通知【民法第 1798.100 条】及揭露【民法第 1798.110 条及民法第 1798.115 条】的要求的规定。而且经销商及制造商也没有免于依 1798.150 条提起民事诉讼的保护。这个法案已被送到参议院司法委员会。

- **隐私：信息经纪商众议院第 1202 号法案，2019 年 5 月 28 日（以 53 对 13 票）在众议院中被通过、2019 年 7 月 2 日在参议院司法委员会被通过、现在到了拨款委员会。**这个法案将要求信息经纪商向州的司法部长（AG）进行登记、要求司法部长建立一信息经纪商的公共登记平台及授予司法部长关于对违反的执法权力。

- **隐私：脸部辨识科技： 揭露，众议院第 1281 号法案，2019 年 4 月 25 日（以 61 对 13 票）在众议院中被通过、2019 年 7 月 2 日在参议院司法委员会被通过、现在到了拨款委员会。**这个法案将要求在加州有实体店铺的企业在入口以清楚及明显的标牌揭露使用脸部辨识科技。如一企业未能遵守这些规定的话将负每一违反最高 75 美元但每年最高不超过 7,500 美元的民事处罚。

- **个人信息众议院第 1355 号法案，2019 年 5 月 9 日（以 76 对 0 票）在众议院中被通过。**如修订案所示，这个法案将把解除辨识的信息或聚合信息从个人信息的定义中排除【民法第 1798.140（o）条】，且厘清被允许的歧视【民法第 1798.125 条】必须是与消费者信息对企业提供的价值合理相关。这个法案已被送到参议院司法委员会。

- **商业：消费者个人信息的收集及揭露众议院第 1416 号法案，2019 年 5 月 29 日（以 47 对 17 票）在众议院中被通过，而显然止于参议院中。**如其内容所示，1416 号法案将允许企业为遵循“任何”政府计划或为发现诈欺而分享消费者的个人信息，即使消费者对其信息的收集及分享选择退出。这个法案在参议院司法委员会有机会审查前被起提案人众议员 Ken Cooley 撤回。

- **消费者隐私：消费者要求揭露方式众议院第 1546 号法案，2019 年 5 月 13 日（以 65 对 0 票）在众议院中被通过。**这个法案将以扩大企业可以处理消费者权利要求的方式使企业可以要求消费者提出该等要求而减轻企业处理消费者权利要求的负担，且厘清如只在网上营业的企业可提供以电邮地址供要求的提出。这个法案已被送到参议院司法委员会。

被提出但未通过的加州法案

立法人员提出一些修改 CCPA 的法案但未能将该等法案在立法程序中向前推进。许多该等法案包含了对企业是为重要的议题。

- **众议院 288 号法案**要求社会关系网络服务商提供关闭他们账号的人选择将他们个人信息永远删除的选择权。本来预定于 4 月下旬举行公听会，在众议员 Jordan Cunningham 的要求下被取消。
- **众议院第 1760 号法案**要求分享个人信息时需取得选择参与的同意，当考量到其明显没能获得足够的票数在众议院大会及消费者保护委员会通过时，众议员 Buffy Wicks 将其撤回。
- **众议院第 752 号法案厘清**依 CCPA 建立的咨询理事会及委员会的义务及职责。该法案未能在拨款委员会通过。
- **众议院第 753 号法案**将某些广告做法从 CCPA 的“销售”定义中排除。该法案在其预定于 2019 年 4 月 23 日在参议院司法委员会召开的公听会前被从议题中移除。
- **众议院第 561 号**法案为加州司法部长 Xavier Becerra 所支持以寻求透过允许消费者对违反任何 CCPA 条款提出私人诉讼而重大扩大依 CCPA 提出民事诉讼的权利。这个法案将取消企业有 30 天改正一指称对 CCPA 违反的权利及取消企业寻求司法部长对如何遵循 CCPA 的意见的能力。拨款委员会将该法案撤回，且从未进展到投票阶段。

全国许多州目前在考虑有关隐私权的立法

将近有 24 个州在 2019 年有提出实质的隐私权立法法案。许多跟随加州的榜样提出像 CCPA 一样的大范围法案。早期的努力许多并没有成功。在华盛顿州，例如华盛顿隐私权法案迅速地在州的参议院通过（46 票对 1 票）但未能在立法会期结束前在众议院进行投票。在康涅狄格州、密西西比州、新墨西哥州、德州及罗德岛提出的法案也都显示遭到废弃。不过在过去几个礼拜，州的立法人员在许多重要的州引进了第二波强力的信息隐私法案，包括伊利诺伊州、明尼苏达州及纽约州。这些法案可能含盖的范围将比 CCPA 更广，而包括欧盟 GDPR 中的额外概念，例如信息控管人及处理人。

而适用范围更集中的法案也取得了一些成功。今年 5 月，内华达州州长 Steve Sisolak 签署了参议院第 220 号法案，该法案从 2019 年 10 月 1 日起给予消费者权利从网路服务提供商及网站的涵盖信息的销售中选择退出。在今年 6 月,缅因州签署了法案于 2020 年 6 月起禁止网络服务提供人未取得同意即销售消费者的信息。内华达州【内华达修订法案第 205.498 号】及明尼苏达州【明尼苏达第 325M.01 及 325M.09 法案】已经有了类似的法案。另一方面，在夏威夷州，州长 David Ige 否决了一项将禁止当地智能手机商在未经取得使用者的同意前将其所收集到的地点信息出售的法案。

在国会的隐私权法案

在国会有两党及个私人产业支持的联邦隐私权法案。国会的重要成员正寻求达成折中一处理一些受到重大规范的产业，例如医疗及金融产业，及其他目前尚未受到相当的隐私权要求规范的科技业及其他领域。立法过程所遇到的挑战，例如众所猜测的对私人诉讼权利及联邦法律是否取代州的隐私法律的议题的不同意见的挑战、及对法案

的需求跨越不同产业类别将意味这个过程将可能越过明年。因此，看来 CCPA 在 2020 年 1 月的遵循截止日前联邦的法案显然不可能被特朗普总统签署而成为法律。

有关本文中所述 CCPA 进一步信息及最新的发展，请与作者联系。

About This Newsletter
有关本期刊

Information contained in this newsletter is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. Moreover, the laws of each jurisdiction are different and are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult competent legal counsel. Holland & Knight lawyers are available to make presentations on a wide variety of China-related issues.

本期刊所刊载的信息仅供我们的读者为一般教育及学习目的使用。本期刊并不是为作为解决某一法律问题的唯一信息来源的目的所设计，也不应被如此使用。此外，每一法律管辖区域的法律各有不同且随时在改变。如您有关于某一特别事实情况的具体法律问题，我们建议您向合适的律师咨询。美国霍兰德奈特律师事务所的律师能够对许多与中国相关的问题提出他们的看法及建议。

About the Authors
关于本期作者

Neal N. Beaton is a partner in Holland & Knight's New York office, where he practices in the area of corporate and commercial transactions, intellectual property, international trade and business immigration law. He is experienced in mergers and acquisitions (particularly on behalf of non-U.S. parties); venture capital and minority investments; pharmaceutical and intellectual property licensing, joint development and other technology agreements; joint ventures; distribution agreements; shareholder agreements; employment agreements; trademark and copyright protection; antitrust compliance; and corporate and visa planning.

Robert J. Labate is a partner in Holland & Knight's San Francisco office and serves as co-chair of firm's national Entertainment Law and Sports practice to assist clients with their transaction and litigation goals. He works with major media companies on a variety of copyright, licensing, content acquisition, program production, financing and music issues. He also advises media and corporate clients regarding network advertising, sponsorship and talent agreements as well as use of social media and websites for marketing and promotion.

Ashley L. Shively is a class action litigator and privacy attorney in Holland & Knight's San Francisco office. She focuses her litigation practice on the defense of financial institutions and businesses in consumer class and individual actions, including fair lending, data breach, privacy, credit reporting, debt collection, false advertising and unfair business practices. She has extensive experience litigating class actions under the Truth in Lending Act (TILA), Telephone Consumer Protection Act (TCPA) and California's Invasion of Privacy Act (CIPA).

Matthew P. Vafidis is a partner in Holland & Knight's San Francisco office. He is a litigation attorney and a qualified English barrister whose practice focuses on business disputes, counseling and investigations, where he acts for a range of commercial clients, particularly in the maritime and transportation industries.

Contact Our China Practice Attorneys | 与我们的 China Practice 律师联系

Primary Contacts 主要联系人：

Hongjun Zhang, Ph.D. 张红军博士
Washington, D.C.
+1.202.457.5906
hongjun.zhang@hklaw.com

Mike Chiang 蒋尚仁律师
San Francisco
+1.415.743.6968
mike.chiang@hklaw.com

Juan M. Alcala | Austin
+1.512.954.6515
juan.alcala@hklaw.com

Vito A. Costanzo | Los Angeles
+1.213.896.2409
vito.costanzo@hklaw.com

Josias N. Dewey | Miami
+1.305.789.7746
joe.dewey@hklaw.com

R. David Donoghue | Chicago
+1.312.578.6553
david.donoghue@hklaw.com

Jonathan M. Epstein | Washington, D.C.
+1.202.828.1870
jonathan.epstein@hklaw.com

Carrie S. Friesen-Meyers | San Francisco
+1.415.743.6954
carrie.friesen-meyers@hklaw.com

Leonard H. Gilbert | Tampa
+1.813.227.6481
leonard.gilbert@hklaw.com

Enrique Gomez-Pinzon | Bogotá
+57.1.745.5800
enrique.gomezpinzon@hklaw.com

Paul J. Jaskot | Philadelphia
+1.215.252.9539
paul.jaskot@hklaw.com

Sophie Jin | Washington, D.C.
+1.202.469.5179
sophie.jin@hklaw.com

Roth Kehoe | Atlanta
+1.404.817.8519
roth.kehoe@hklaw.com

Robert J. Labate | San Francisco
+1.415.743.6991
robert.labate@hklaw.com

Alejandro Landa Thierry | Mexico City
+52.55.3602.8002
alejandro.landa@hklaw.com

Rebecca Leon | Miami
+1.305.789.7703
rebecca.leon@hklaw.com

Moqi Liu | San Francisco
+1.415.743.6963
moqi.liu@hklaw.com

Jeffrey W. Mittleman | Boston
+1.617.854.1411
jeffrey.mittleman@hklaw.com

Anita M. Mosner | Washington, D.C.
+1.202.419.2604
anita.mosner@hklaw.com

Ronald A. Oleynik | Washington, D.C.
+1.202.457.7183
ron.oleynik@hklaw.com

Douglas A. Praw | Los Angeles
+1.213.896.2588
doug.praw@hklaw.com

John F. Pritchard | New York
+1.212.513.3233
john.pritchard@hklaw.com

Robert Ricketts | London
+44.20.7071.9910
robert.ricketts@hklaw.com

Luis Rubio Barnetche | Mexico City
+52.55.3602.8006
luis.rubio@hklaw.com

Evan S. Seideman | Stamford
+1.203.905.4518
evan.seideman@hklaw.com

Jeffrey R. Seul | Boston
+1.617.305.2121
jeff.seul@hklaw.com

Vivian Thoreen | Los Angeles
+1.213.896.2482
vivian.thoreen@hklaw.com

Shawn M. Turner | Denver
+1.303.974.6645
shawn.turner@hklaw.com

Matthew P. Vafidis | San Francisco
+1.415.743.6950
matthew.vafidis@hklaw.com

Stacey H. Wang | Los Angeles
+1.213.896.2480
stacey.wang@hklaw.com

Charles A. Weiss | New York
+1.212.513.3551
charles.weiss@hklaw.com

Jose V. Zapata | Bogotá
+57.1.745.5940
jose.zapata@hklaw.com

Office Locations 办公室地点

Anchorage | Atlanta | Austin | Bogotá | Boston | Charlotte | Chicago | Dallas | Denver | Fort Lauderdale | Houston
Jacksonville | Lakeland | London | Los Angeles | Mexico City | Miami | New York | Orlando | Philadelphia | Portland
San Francisco | Stamford | Tallahassee | Tampa | Tysons | Washington, D.C. | West Palm Beach