Federal Court Halts DAPA and Expanded DACA Programs

On Monday, February 16, 2015, Judge Andrew S. Hanen of the US District Court for the Southern District of Texas, Brownsville Division **issued** a **preliminary injunction** to temporarily prevent the federal government from implementing the **Deferred Action for Parental Accountability (DAPA) and the expanded Deferred Action for Childhood Arrivals (DACA)** programs.

The order was issued as Judge Hanen continues to consider the lawsuit brought in December 2014 by twenty-six states **seeking** declaratory and injunctive relief against the United States and certain federal officials. The plaintiffs aver that the DAPA and expanded DACA programs violate the Take Care Clause of the US Constitution and the Administrative Procedure Act (APA). In ordering the injunction, Judge Hanen found that the federal government failed to fulfill the APA's "notice and comment requirement." Judge Hanen has not yet issued a final decision on the merits of the case, including whether or not the executive measures violate the US Constitution.

US Citizenship and Immigration Services (USCIS) had planned to begin accepting applications for the expanded DACA program on Wednesday, February 18, 2015. The DAPA program was expected to open sometime in May 2015. Department of Homeland Security (DHS) Secretary Jeh Johnson has **announced** that, pending an appeal, DHS "will not begin accepting requests for the expansion of DACA…as originally planned." Johnson also said, "Until further notice, we will also suspend the plan to accept requests for DAPA."

The DAPA and expanded DACA programs would have provided temporary relief from deportation and work authorization for up to 5.2 million unauthorized immigrants in the US (Warren

2014). The order will not affect unauthorized immigrants eligible for the DACA program implemented in 2012 because the lawsuit does not challenge the original DACA program (Lind 2015).

In a **statement** released on February 17th, the White House stated, "The Department of Justice, legal scholars, immigration experts, and the district court in Washington, D.C. have determined that the President's actions are well within his legal authority." The federal government is expected to appeal the injunction to the Fifth U.S. Circuit Court of Appeals in New Orleans (Koppel and Meckler 2015; Lind 2015). Should the federal government win its appeal, it is possible that enrollment may open for the DAPA and expanded DACA programs.

Regardless of the success of the appeal or Judge Hanen's final decision, officials, experts, and advocates anticipate an extremely long legal battle that may reach the Supreme Court. Meanwhile, service organizations remain optimistic and are continuing to prepare immigrants for the two programs (Koplowitz 2015; Hennessy-Fiske 2015; Solís 2015).

- The Complaint for Declaratory and Injunctive Relief is available at https://www.texasattorneygeneral.gov/files/epress/files/20141203ImmigrationExecutiveOrderLawsuit.pdf.
- Judge Hanen's Memorandum Opinion and Order is available at https://www.scribd.com/doc/255994067/Memorandum-Opinion-Texas-v-United-States. His Order of Temporary Injunction is available at https://www.scribd.com/doc/255992850/Order-of-Temporary-Injunction-Texas-v-United-States.

Samsung Ad Injections Perfectly Illustrate Why I Want My 'Smart' TV To Be As Dumb As Possible

Samsung has been doing a great job this week illustrating why consumers should want their televisions to be as dumb as technologically possible. The company took heat for much of the week after its privacy policy revealed Samsung smart TVs have been collecting and analyzing user living room conversations in order to improve voice recognition technology. While that's fairly common for voice recognition tech, the idea of living room gear that spies on you has been something cable operators have been patenting for years. And while Samsung has changed its privacy policy language to more clearly illustrate what it's doing, the fact that smart TV security is relatively awful has many people quite justly concerned about smart TVs becoming another poorly-guarded repository for consumer data.

But it's something else stupid that Samsung did this week that got less press attention, but that I actually find far more troubling. Numerous Samsung smart TV users around the world this week stated that the company has started injecting ads into content **being watched on third-party devices and services**. For example, some users found that when streaming video content from PC to the living room using Plex, they suddenly were faced with a large ad for Pepsi that actually originated from their Samsung TV:

> *"Reports for the unwelcome ad interruption first surfaced on a Subreddit dedicated to Plex, the media center app that is available on a variety of connected devices, including Samsung smart TVs. Plex users typically use the app to stream local content from their computer or a network-attached storage drive to their TV, which is why many were very surprised to see an online video ad being inserted into their videos. A Plex spokesperson assured me that the company has nothing to do with the ad in question."*

Now Samsung hasn't responded yet to this particular issue, and you'd have to think that the company accidentally enabled some kind of trial ad injection technology, since anything else would be idiotic brand seppuku (in fact it does appear like it has been working with Yahoo on just this kind of technology). Still, users say the ads have them rushing to disable the smart portion of Samsung TVs, whether that's by using a third party solution or digging into the bowels of the TV's settings to refuse Samsung's end user agreement. And that raises an important point: many consumers (myself included) want their TV to be as slack-jawed, glassy-eyed, dumb and dim-witted as possible.

Like broadband ISPs and net neutrality, Samsung clearly just can't help itself, and is eager to use its position as a television maker to ham-fistedly inject itself into a multi-billion dollar emerging Internet video market. But that runs in stark contrast to the fact that most people just want their television (whether it's 720p or 4K) to **simply be a dumb monitor** they *hook smart devices of their choice up to*. Just like people want their broadband ISPs to get out of the way and provide a quality dumb pipe, many people just want a traditional, dumb television to do a great job displaying the signals sent to it and nothing more.

Dumb TVs just make more sense for most users: many people own televisions for ten years, and the streaming hardware embedded

in these sets quickly becomes irrelevant even with updated firmware. Dumb TVs, with less sophisticated internals, should also be cheaper to buy. And if you're any kind of respectable audiophile, you've got game consoles and devices like Roku hooked into a receiver and a decent 5.1 (or above) system, making the set's internals redundant. Swapping out a crop of the latest and greatest (not to mention relatively cheap) Rokus or Chromecasts every few years just makes more sense for most of us.

Last I saw, around 50% of people who buy connected TVs aren't using the connected portion of the set. Yet if you peruse the latest sets (especially the ongoing standards minefield that is 4K or UHD) you'll find that buying a dumb television is getting increasingly more difficult. I won't even get into the problems with HDCP 2.2 DRM stifling 4K growth and confusing the hell out of consumers on the bleeding edge, as that's another article entirely.

Bottom line: I want my pipes dumb, my TVs dumber, and **my choice** of a full variety of intelligent devices and services without bull-headed companies stumbling drunkenly into my line of sight. Samsung's clumsy week simply couldn't have illustrated the growing need for dim-witted television sets any better.

Only a total idiot would have filed a defamation case over the term "total idiot"

The Nebraska Supreme Court reminds us in Steinhausen v.

Homeservices of Nebraska, 289 Neb. 927 (Neb. 2015) that rhetorical hyperbole is not actionable as defamation. I can assure you that total idiots nationwide will fail to get the memo.

In this case, someone referred to a home inspector as a "total idiot."

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> *Nitz argues that in the context of the Hotsheets— which she refers to as a place for HomeServices agents to "express their opinions without pulling punches"38—the phrase "total idiot" is not "a factual statement that [Steinhausen] is mentally defective."39 Steinhausen responds that "[i]diocy is verifiable" and "can be defined and proved."40 He notes that "idiot" is defined in one dictionary as "a stupid person or a mentally handicapped person" and asserts that he "is neither stupid nor mentally handicapped."41 (Op. at 939)*

The Nebraska Supreme Court correctly analyzed its responsibilities in the case – something that I find lacking pretty often in trial courts nationwide.

> *The threshold question in a defamation suit is whether a reasonable fact finder could conclude that the pub- lished statements imply a provably false factual assertion.44 Statements of fact can be defamatory whereas statements of opinion—the publication of which is protected by the First Amendment—cannot.45 Put another way, "subjective impres- sions" cannot be defamatory, as contrasted with objective "expressions of verifiable facts."46 Distinguishing the two pre- sents a question of law for the trial judge to decide.47 In mak- ing this distinction, courts apply a totality of the*

circumstances test.48 Relevant factors include (1) whether the general tenor of the entire work negates the impression that the defendant asserted an objective fact, (2) whether the defendant used fig- urative or hyperbolic language, and (3) whether the statement is susceptible of being proved true or false.49 (Op. at 940)

The court then explained Rhetorical Hyperbole.

As noted, whether the language is hyperbolic is relevant to distinguishing fact from opinion. Rhetorical hyperbole—"language that, in context, was obviously understood as an exaggeration, rather than a statement of literal fact"—is not actionable.54 In particular, "[t]he ad hominem nature of abu- sive epithets, vulgarities, and profanities,"55 which some writ- ers "use to enliven their prose,"56 indicates that the statement is hyperbole. (Op. at 941)

Then the court showed what a total idiot you have to be to file under these facts.

Exercises in "name calling" (See Chang v. Cargill, Inc., 168 F. Supp. 2d 1003, 1011 (D. Minn. 2001)) generally fall under the category of rhetorical hyperbole. (See, e.g., Blomberg v. Cox Enterprises, Inc., 228 Ga. App. 178, 491 S.E.2d 430 (1997)). For example, courts have held that " 'idiot,' "(Robel v. Roundup Corp., 148 Wash. 2d 35, 56, 59 P.3d 611, 622 (2002). Accord Blouin v. Anton, 139 Vt. 618, 431 A.2d 489 (1981)) " 'raving idiot,' "(DeMoya v. Walsh, 441 So. 2d 1120, 1120 (Fla. App. 1983)) " '[i]diots [a]float,' " (Cowan v. Time, Inc., 41 Misc. 2d 198, 198, 245 N.Y.S.2d 723, 725 (N.Y. Sup. 1963)). and more vulgar variants (See Chang v. Cargill, Inc., 168 F. Supp. 2d 1003, 1011 (D. Minn. 2001)) were rude statements of opinion, rather than lay diagnoses of mental capacity. Similarly, courts have held that statements calling the plaintiff " 'stupid,' " (Chang v. Cargill) a " 'moron,' " (Purcell v. Ewing, 560 F. Supp. 2d 337, 343 (M.D. Pa. 2008))

and a " 'nincompoop' " (Stepien v. Franklin, 39 Ohio App. 3d 47, 49, 528 N.E.2d 1324, 1327 (1988)) were not actionable. Courts have also held that statements potentially referring to the plaintiff's mental health, such as "'raving maniac'" (DeMoya v. Walsh, 441 So. 2d 1120, 1120 (Fla. App. 1983)); "'pitiable lunatics'" (Thomas v. News World Communications, 681 F. Supp. 55, 64 (D.D.C.1988)); "wacko," "nut job," and "'hysterical'" (Lapine v. Seinfeld, 31 Misc. 3d 736, 752, 754, 918 N.Y.S.2d 313, 326, 327 (N.Y. Sup. 2011)); "'crazy'" (Stepien v. Franklin, supra note 65, 39 Ohio App. 3d at 49, 528 N.E.2d at 1327); and "crank," (See Dilworth v. Dudley, 75 F.3d 307 (7th Cir. 1996)) were statements of opinion. (Op. at 941-942) (citations added in from footnotes)