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June 3, 2016

Hon. Marcia M. Waldron  
Clerk of the Court  
United States Court of Appeals for the Third Circuit  
James A. Byrne United States Courthouse  
601 Market Street  
Philadelphia, PA 19106

Re: In re: Nickelodeon Consumer Privacy Litigation  
Case No. 15-1441

Dear Ms. Waldron:

The *Spokeo* decision supports the minor Plaintiffs. The *Spokeo* Court re-affirmed extensive caselaw holding that “intangible” injuries may create standing. “[B]oth history and the judgment of Congress play roles” in determining whether an intangible injury is sufficient. *Spokeo* at 7.

“[I]t is instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts.” *Id.* Congress is “well positioned to identify intangible harms that meet Article III requirements,” and thus, “may elevate to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law.” *Id.*

Here, the minor Plaintiffs allege unauthorized dissemination, taking, and profit of their personal information. The unauthorized intrusion, unauthorized taking, and profiting from a person’s information are classic and actionable intangible injuries in American courts.

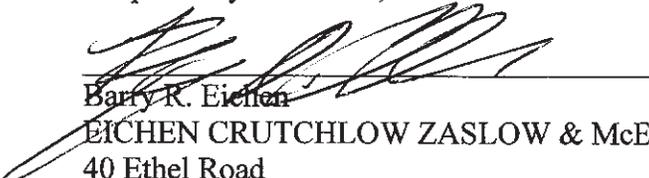
The Plaintiffs’ ECPA and VPPA statutory claims have historical common law antecedents: trespass, intrusion upon seclusion, conversion, and misappropriation. These statutes protect a right to privacy recognized as “a most fundamental human right,” “the most comprehensive of rights,” and “the right most valued by civilized men.” *Kewanee Oil Co. v. Bicron Corp.*, 416

U.S. 470, 748 (1973) (trade secrets); *Olmstead v. U.S.*, 277 U.S. 438, 478 (1928) (search and seizure).

In passing the ECPA, Congress explained, “[T]he law must advance with the technology to ensure the continued vitality of the fourth amendment . . . [otherwise], we will promote the gradual erosion of this precious right.” S. Rep. 99-541 at 5. The VPPA’s legislative history emphasizes that “the relationship between the right of privacy and intellectual freedom is a central part of the First Amendment.” S. Rep. 100-599 at 5. Thus, Congress did not “create” injuries via statute; rather, it adapted existing privacy violations to new technology, defined privacy right boundaries, and created remedies so Americans could vindicate their own fundamental rights.

If the Supreme Court wished to strike the ECPA, VPPA, and countless other privacy statutes with private rights-of-action, the Court would have done so. Thus, this Court should reject Viacom’s standing argument.

Respectfully submitted,

  
Barry R. Eichen

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