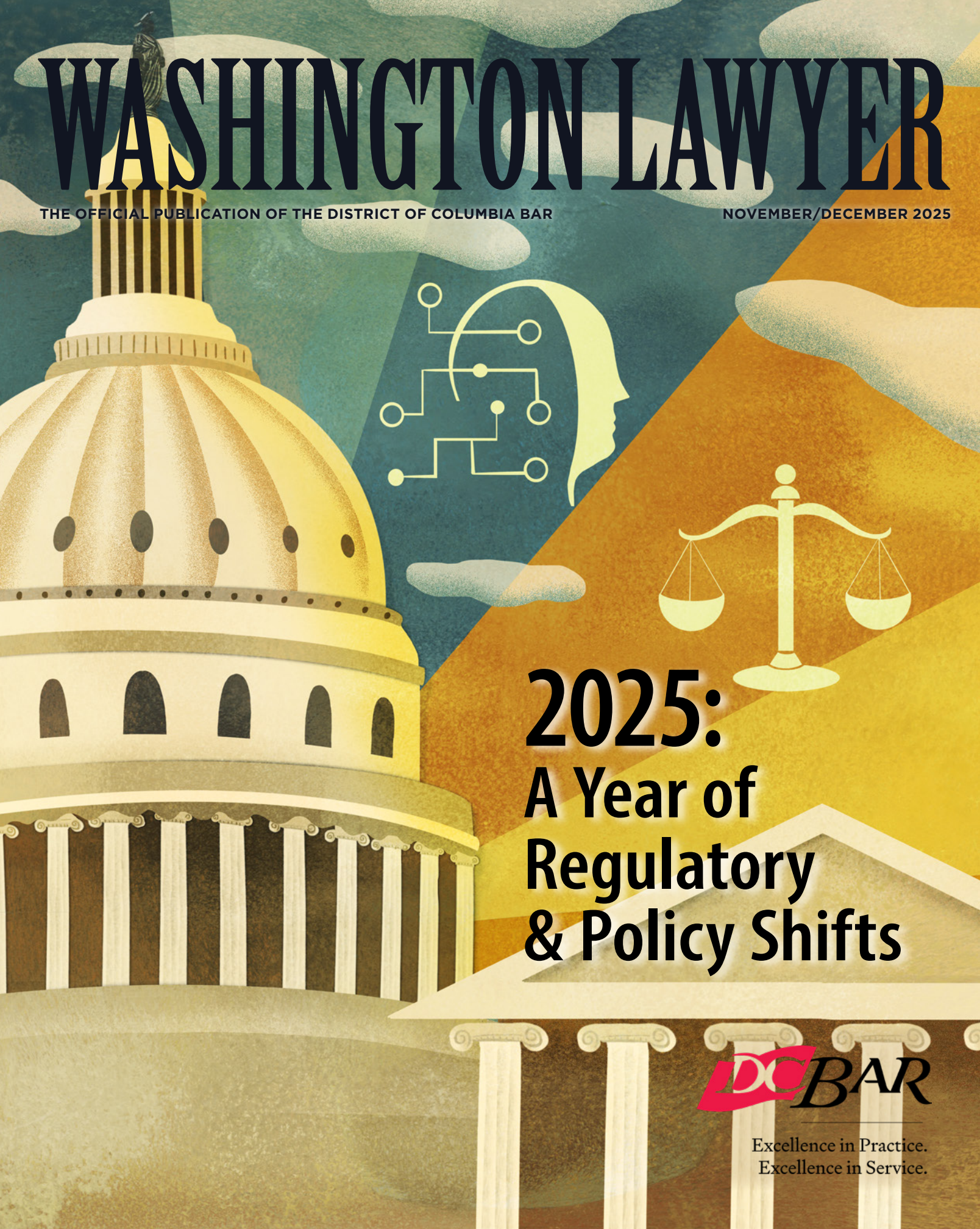

# WASHINGTON LAWYER

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## 2025: A Year of Regulatory & Policy Shifts

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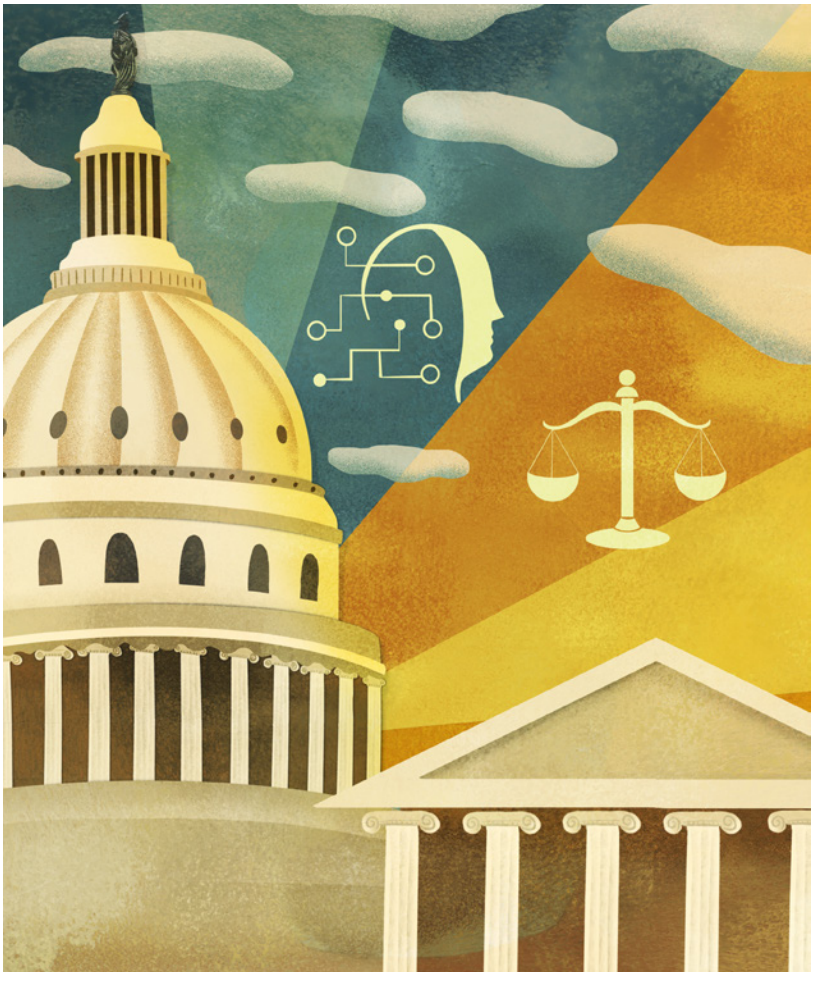
FEATURE

# Year in Review

## Unpacking the Key Legal Developments of 2025

Given the current administration's ambitious agenda of deregulation, prioritization of American interests, and reshaping of the federal workforce, legal professionals have been deep in the trenches, keeping pace with change and pivoting to best advise their clients. As 2025 comes to a close, D.C. lawyers weigh in on recent court decisions, legislation, regulations, and agency priorities that made an impact in their area of law and that are expected to continue to shape legal practice in 2026.



Heidi Younger

### Climate Rollbacks, Fossil Fuel Expansion

In 2025 the federal government set a course for environmental and energy policy law that differs markedly from the Biden administration. On his first day in office, President Trump signed Executive Order 14162, "Putting America First in International Environmental Agreements," ordering the withdrawal of the United States from the Paris Agreement under the United Nations Framework Convention on Climate Change.

The current administration also directed a reorientation toward domestic fossil fuel development. In Executive Order 14154, titled "Unleashing American Energy," the president directed federal agencies to "identify those agency actions that impose an undue burden on the identification, development, or use of domestic energy resources — with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources." This order also rescinded Biden administration executive actions relating to environmental regulations, climate change, and energy policy.

In addition, the order revoked President Carter's Executive Order 11991, which directed and empowered the Council on Environmental Quality to adopt regulations implementing the National Environmental Policy Act (NEPA). Trump's executive order allows individual agencies to interpret and implement NEPA requirements independently, which can lead to variability and potential legal challenges.

In July 2025, the U.S. Environmental Protection Agency released its proposal to rescind the 2009 Endangerment Finding Rule, the basis for EPA's standards for regulating

greenhouse gas (GHG) emissions from light-duty, medium-duty, and heavy-duty vehicles. The rule has also provided the scientific, legal, and policy rationale for other regulations limiting GHG emissions from power plants and other stationary sources.

The EPA proposal invites a new review of the science linking GHGs to public health risks and calls into question settled law concerning the scope of EPA's authority to regulate GHG emissions as a pollutant under the Clean Air Act. While the U.S. Supreme Court arguably answered this question in *Massachusetts v. EPA* in 2007, today's Court could be receptive to reconsidering EPA's authority to regulate greenhouse gas emissions specifically and executive agency authority more generally given recent decisions in *Loper Bright Enterprises v. Raimondo* and *West Virginia v. EPA*.

The U.S. Supreme Court ruled on key environmental cases in 2025, including *City and County of San Francisco, California v. EPA*, in which the majority sided with San Francisco, holding that EPA's permitting provisions did not match with the Clean Water Act's (CWA) focus on technological and effluent standards, but rather imposed "end-result" requirements for water quality, which would have been contrary to the CWA. In *Seven County Infrastructure Coalition v. Eagle County*, the Supreme Court affirmed an individual agency's judgment for evaluating environmental impacts under NEPA. And in *Diamond Alternative Energy LLC v. EPA*, the Court found that fuel producers have Article III standing to challenge EPA's approval of California regulations that require automakers to manufacture more electric vehicles.

Looking to 2026, the EPA proposal creates regulatory limbo for the next several years. In the meantime, manufacturers of vehicles and engines must balance the possibility of new federal regulatory standards, the uncertain survival of California's stricter vehicle emission standards given congressional attacks on EPA waivers, and other pending regulatory actions to inform next steps in compliance and deployment of capital for future operations.

On the global front, the International Court of Justice (ICJ) issued in July 2025 a widely noted advisory opinion on climate change. The ICJ opinion surveyed customary law and treaties, including the Paris Agreement, and concluded that these set forth "obligations for States to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions." *— By Richard Blaustein and Lisa Anne Hamilton. Blaustein is a D.C. Bar member and freelance journalist covering the environment, science, and legal issues. Hamilton, a climate law and policy expert, is a steering committee member of the D.C. Bar Environment, Energy, and Natural Resources Community.*

## Sweeping Changes in Tax Law

The One Big Beautiful Bill (OBBB), passed by a slim margin and signed into law by President Trump on July 4, was the single most consequential event in tax law in 2025. The act introduced a wide array of changes to tax law affecting individuals and businesses, and it is expected to impact nearly every sector of the economy and every type of taxpayer.

Provisions of the 2017 Tax Cuts and Jobs Act (TCJA) that were due to expire at the end of 2025 were made permanent, with some modifications, as was the allowance for domestic research, development expensing, and bonus depreciation.

The opportunity zone program, created as part of the TCJA, was made permanent by establishing rolling 10-year periods and including changes that narrowed the definition of "low-income community" and created "qualified rural opportunity funds."

Incentives for commercial investment in the OBBB include the new full expensing provision for qualified production property. This provision allows taxpayers to deduct 100 percent of the cost of constructing new manufacturing facilities in the United States rather than depreciating those costs over 39 years, though several limitations may narrow the provision's applicability.

The New Markets Tax Credit program, created as part of the Community Renewal Tax Relief Act of 2000, was permanently extended. The program encourages investment in low-income communities. The OBBB allocates $5 billion to be awarded to community development entities engaged in qualifying activity on an annual basis beginning in 2026.

In the energy sector, the OBBB eliminates or phases out certain renewable energy credits in the Inflation Reduction Act of 2022, increases the investment credit for semiconductor manufacturers for certain new facilities, and allows oil and gas companies to exempt intangible drilling and development costs when calculating their corporate alternative minimum tax.

International tax regulations saw widespread modification. The OBBB significantly reformed the foreign-derived intangible income regime, rebranding it as foreign-derived deduction eligible income, beginning in tax years following December 31, 2025. The bill also made substantial changes to the global intangible low-taxed income regime, renaming it "net controlled foreign corporations tested income," signaling a shift in focus from intangible income to a broader taxation of all foreign earnings of controlled foreign corporations. *— By D.C. Bar staff writer and attorney Jeremy Conrad.*

## Shifting Priorities in Cybersecurity & Data Privacy

Legislation in the United States focused on cybersecurity and privacy has been dynamically evolving in 2025 at both the federal and state level. As of August this year, at least 19 states have enacted comprehensive privacy laws. While most contain a fairly comprehensive set of data subject rights, only California has a private right of action to bring suit, though limited to certain types of data breaches implicating personal data theft. Remarkably, in contrast to most other state privacy laws, the Texas Data Privacy and Security Act does not consider revenue thresholds or volume of data processed to set a threshold for applicability; some narrow exemptions exist for small businesses, however.

As to the long-awaited federal legislation on privacy protection, there is little likelihood that the American Privacy Rights Act will become law next year, unless the agenda and priorities of lawmakers change. Cybersecurity insurance might be regulated at the federal level with the introduction of the Insure Cybersecurity Act of 2025, but again this will likely take many months in the most favorable scenario. In the meantime, enforcement of the Cybersecurity Maturity Model Certification program is finally scheduled to get started in November 2025, setting higher cybersecurity requirements for contractors of the U.S. Department of War.

In January 2025, the U.S. Department of Justice (DOJ) released a Final Rule on Bulk Data Transfers, which restricts large-scale transfer of sensitive personal data of Americans to certain foreign countries. Separately, the Federal Trade Commission (FTC) finalized changes to the Children's Online Privacy Protection Rule, setting new requirements around the collection, use, and disclosure of children's personal information.

FTC has also released an updated version of the Rule on Unfair or Deceptive Fees, which may have a palpable impact on AI-powered systems. The eventual enforcement of the rule, however, remains unclear as it might be at odds with the White House's strategy on unrestrained development of AI across the country. The invalidation of FTC's "click-to-cancel" rule by the U.S. Court of Appeals for the Eighth Circuit, just before the rule's scheduled entry into force in July, further illustrates the challenges to administrative rulemaking since the overturning of the *Chevron* doctrine by the U.S. Supreme Court in 2024.

Meanwhile, in response to the growing number of data breaches, the U.S. Department of Health and Human Services has published a proposed amendment to the HIPAA Security Rule to strengthen cybersecurity safeguards for electronic protected health information. The rule may come into force early next year. In parallel, the newly created Cyber and Emerging Technologies Unit at the U.S. Securities and Exchange Commission will likely continue enforcing the cybersecurity disclosure rules, but perhaps less vigorously compared to recent years.

The White House will likely play a significant role in enforcing and shaping cybersecurity legislation in 2026. Executive Order 14306, signed in June, has amended several executive orders of previous administrations, shifting priorities to secure software development, AI safety, and protection against foreign cyber threats. *— By Dr. Ilia Kolochenko, D.C. Bar CLE faculty member and CEO of ImmuniWeb®.*

## 'America First' Agenda in Trade Policy

From the U.S. perspective, the biggest news in international law in 2025 was the imposition of tariffs on imports from various countries and the implications they pose for international commerce and cross-border transactions.


Under the International Emergency Economic Powers Act (IEEPA), the president announced "reciprocal" tariffs on April 2 — dubbed "Liberation Day" — aimed at addressing the national security threat presented by the "large and persistent" annual trade deficits between the United States and its foreign trading partners.

> Attorneys are encouraged to monitor the legal challenges to the various tariff actions imposed by President Trump, as the outcome of these cases may alter the application of certain tariff actions and even qualify some importers for refunds if certain actions are invalidated.

In February, the president also invoked IEEPA to implement tariffs on imports from Mexico, Canada, and China in response to the declared national emergency related to the illicit entry of fentanyl into the United States from these countries. In August the president imposed a 40 percent tariff under IEEPA on certain Brazilian products to address threats to U.S. national security and foreign policy posed by the Brazilian government, as well as a 25 percent tariff on Indian-origin imports in response to India's continued purchase of Russian oil.

Country-specific reciprocal tariff rates went into effect for most countries on August 7. Amidst the flurry of tariff actions, several countries sought to negotiate trade deals with the United States to reduce rates. The Trump administration has announced the development of "framework" agreements for negotiations with the European Union as well as with Japan, Indonesia, Vietnam, and the United Kingdom.

Other tariff measures have been implemented pursuant to Section 232 of the Trade Expansion Act, which allows the U.S. Department of Commerce to conduct investigations into the impact certain imports may have on U.S. national security. The president has imposed tariffs on a variety of product groups, including a 50 percent tariff on copper, steel, and aluminum imports and a 25 percent tariff on most automobile and auto part imports. Several Section 232 investigations remain ongoing and may lead to increased tariffs on a variety of commodities, including commercial aircraft and jet engines, critical minerals and derivative products, semiconductors and semiconductor manufacturing equipment, timber and lumber, robotics and industrial machinery, and personal protective equipment and medical equipment.

Furthermore, tariffs ranging from 7.5 percent to 100 percent on a wide variety of Chinese-origin imports remain in effect under Section 301 of the Trade Act of 1974. The Section 301 tariffs on Chinese products were initially imposed during the first Trump administration and kept in place under President Biden. The United States Trade Representative has also initiated a Section 301 investigation into Brazil's acts, policies, and practices related to digital trade and electronic payment services, discriminatory tariffs, anti-corruption enforcement, IP protection, ethanol market access, and illegal deforestation. This investigation may lead to the implementation of additional tariffs on Brazilian goods.

The new tariffs have not gone unchallenged. Notably, the U.S. Court of Appeals for the Federal Circuit issued a decision on August 29, finding that President Trump exceeded his authority under IEEPA in implementing the reciprocal and fentanyl trafficking tariff actions. The ad-

ministration promptly appealed the decision to the U.S. Supreme Court, which is set to hear oral arguments on November 5. In addition, challenges to the Section 301 tariffs on Chinese goods have lingered from the first Trump administration. On September 25, the Court of Appeals for the Federal Circuit issued an opinion in one of the leading Section 301 cases upholding the validity of these tariff actions.

Attorneys are encouraged to monitor the legal challenges to the various tariff actions imposed by President Trump, as the outcome of these cases may alter the application of certain tariff actions and even qualify some importers for refunds if certain actions are invalidated. *— By Mary Ann McGrail, principal of the Law Office of M. A. McGrail, and Olga Torres, founder and managing member of Torres Trade Law.*

## Rise of AI, Authorship, and Fair Use Litigation

In the world of copyright law, courts are hearing numerous cases involving AI, pitting creators and rights-holders against AI developers. In the milestone case *Thaler v. Perlmutter*, the U.S. Court of Appeals for the District of Columbia Circuit held in March that Creativity Machine, an AI system, cannot be the recognized author of a copyrighted work because the Copyright Act of 1976 requires all eligible work to be authored in the first instance by a human being. The court also rejected the plaintiff's argument that under the Copyright Act's work-made-for-hire provision, he could be deemed the author of the work at issue because Creativity Machine functions as his employee.

Legal battles over ownership have intensified, with authors and publishers suing AI companies for allegedly using their copyrighted works without permission to train AI models. In *Thomson Reuters v. ROSS Intelligence*, the U.S. District Court for the District of Delaware ruled that ROSS infringed on Thomson Reuters's copyrights by using legal headnotes from Westlaw, its legal research platform, to train ROSS's AI legal research engine.

Conversely, in *Bartz v. Anthropic PBC*, the U.S. District Court for the Northern District of California found that using purchased books for AI training constituted fair use, though issues related to unlicensed works remain unresolved. The court granted summary judgment in favor of Anthropic, holding that the company's use of copyrighted materials to train its large language models constituted lawful and "quintessentially" transformative fair use. However, the creation of a general-purpose digital library using pirated materials failed fair-use scrutiny.

In patent law, the U.S. Patent and Trademark Office (USPTO) introduced a significant procedural overhaul for inter partes review (IPR) proceedings. Effective March 26, 2025, a bifurcated system separates decisions on discretionary denial from merit-based reviews, allowing a designated panel to evaluate non-merit factors before another panel addresses the petition's merits. This framework emphasizes policy alignment, fairness, and efficiency in evaluating petitions.

In addition, the USPTO announced in July a major policy shift, stating that it will strictly enforce a previously loosely applied procedural rule requiring IPR petitions to "specify where each element of the claim is found in the prior art patents or printed publications relied upon." This change may make it harder for challengers to invalidate patents through IPR proceedings. *— By Zhiwei Hua, a D.C. Bar member whose practice at Concord & Sage PC focuses on intellectual property law and the cross-border e-commerce market.*

## D.C. Criminal Law Reform — Under Congressional Shadow

Following congressional overturning of the sweeping Revised Criminal Code Act of 2022, the District of Columbia has focused on more specific measures. In March, the District's Second Chance Amendment Act of 2022 became effective, amending its outdated expungement and record-sealing code.

Further code updates included two notable changes to the District's rebuttable presumption of pretrial detention. Under the Peace DC Omnibus Emergency Amendment Act of 2025, one update extended the temporary expansion of the presumption from July 2025 to December 2026. An update under the Secure DC Omnibus Amendment Act narrowed the scope of offenses triggering the presumption to exclude robbery absent physical injury, as well as second-degree burglary.

In July, the U.S. Attorney's Office for the District of Columbia filed a Federal Rule of Appellate Procedure 28(j) letter in *Benson v. United States*, No. 23-CF-0514, notifying the D.C. Courts that DOJ would no longer defend D.C. Code § 7-2506.01 (which bans large-capacity ammunition feeder devices) against Second Amendment challenges. Further, DOJ noted that its position aligned with briefs to the Seventh Circuit in *Barnett v. Raoul*.

In September, Republican lawmakers introduced more than a dozen bills designed to amend the District of Columbia Home Rule Act and impose harsher criminal penalties. Among other key provisions, the proposed bills seek to lower the age — from 16 to 14 — to try youth offenders, repeal the Incarceration Reduction Act, give Congress the sole authority over sentencing guidelines, and give the president sole power in choosing the D.C. attorney general. The congressional push to reshape D.C. criminal law was swiftly condemned by D.C. Council and Mayor Muriel Bowser.

Notable D.C. Court of Appeals opinions published this year include *In re R.W.*, 334 A.3d 593, which reversed denial of the motion to suppress the finding that police officers did not have reasonable articulable suspicion for the defendant's seizure, in violation of the Fourth Amendment. In *Riley v. United States*, the Court of Appeals vacated the trial court's partial denial of the appellant's relief under the Incarceration Reduction Amendment Act (IRAA), finding that it conflicted with the finding in *Doe v. United States* that reliance on non-IRAA statutes/factors was erroneous. *— By Robin Earnest, a federal appellate attorney and founder of The Earnest Law Firm.*

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