

Re: An update regarding PhotoRobot

From Amanda Prose <aprose@wck.com>
To mattguertin<MattGuertin@protonmail.com>
CC Megan Neumann<mneumann@wck.com>
Date Wednesday, January 18th, 2023 at 11:43 AM

Hi Matt,

Thought I would share that I found one case where the Federal Circuit has ruled specifically that the Wayback Machine's archived pages are not a proper subject for judicial notice - this means that because "a private internet archive falls shorts of being a source whose accuracy cannot reasonably be questioned as required by [Federal Rule of Evidence] Rule 201".

In short, the Courts have held that for Wayback Machine archived webpages to be considered by the Courts they must be accompanied by other evidence to authenticate them and those who have the pages asserted against them or their interests can (and should!) question the accuracy of those pages.

See *Weinhoffer v Davie Shoring*, 23 F.4th 579 (5th Cir. 2022). A printout of the decision attached. This is the first time this issue has been addressed by the Courts.

Best regards,

Amanda

westman champlin & koehler
INTELLECTUAL PROPERTY ATTORNEYS

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[Weinhoffer v. Davie Shoring, Inc., 23 F...pdf](#) 122.05 KB