

# Internet Law Overview

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The Managers' Legal Function

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# Industry Background

# International Nature of the Internet

- Global advertising/product information/catalogs
- Product ordering from anywhere in the world (both retail and EDA)
- Product (software) delivery/download to any point on the Internet
- Global customer support/service/maintenance
- Communication/feedback (via e-mail, discussion groups)

# Worldwide Internet Size Projections

- 320 million worldwide users by end of 2002
- Worldwide Net advertising \$6.5 billion in 2001
- Total worldwide Net commerce of \$1.3 trillion by end of 2003

# The Internet Boom outside the US

- By end of 2003, 168.5 million users in Western Europe
- Top European sites (Freeserve, Demon) draw 1+ million users each from US annually

# Legal Issues Overview

- Intellectual Property
  - Trademarks/Domain Names
  - Copyright
  - Patent
- Content Regulation
- Data Privacy
- Jurisdiction

# Some Other Legal Issues Not Covered

- Sales of Securities
- E-Contracts and Digital Signatures
- Chat Rooms
- ISP Liability
- Payment Systems
- Taxation
- Telecommunications Regulation
- Telephony

# Intellectual Property



# Domain Name Demographics

- Today, 14.8 million registered domains
  - .com 8,900,000
  - .net 1,300,000
  - .de 980,000
  - .uk 960,000
  - .ar 154,000
  - .jp 65,000
  - .cn 32,000
  - .mx 18,000

# The Market for Domain Names

- more purchases and sales of names
- rising prices:
  - 1996: business.com \$150,000
  - 1998: computer.com: \$500,000
  - 1999: wallstreet.com: \$1,000,000
  - 1998: altavista.com: \$3,000,000
  - 2000: loans.com: \$3,000,000
  - 1999: business.com \$7,500,000

# Coming Soon?

- New Generic Top Level Domains (.firm, .store, .etc )?
- expanded use of the 243 ISO country TLDs (.tv)
- New international TLDs (.eu, .ps)

# Domain Names and Trademark Infringement

- More domain names mean more opportunities for infringement
- Registration of a domain name does NOT grant a trademark license

# Trademark Infringement

- Trademark holders in different lines of business (*Prince: spaghetti v. tennis rackets*)
- Trademark holders in different countries (*Internet World*)
- First to register (AOL.com.br, amazon.gr)

# Metatags and Keywords

- Metatag: Use of a trademark in invisible site text (*West Coast Video, Playboy v. Welles*)
- Sale of search engine keywords for prioritizing search results;
- Sale of search engine keywords for display of banner ads (*Estee Lauder v. Fragrance Counter; Playboy v. Netscape and Excite*)

# Cybersquatting

- 1999 Anticybersquatting Consumer Protection Act
- “cybersquatting” is the act of registering a domain name in “bad faith”
  - applies to trademarks and personal names
  - does not require use in commerce
  - definition of “bad faith” includes mitigating factors
  - “in rem” actions possible
  - statutory damages of \$100,000 per name

# ICANN Dispute Resolution Policy

- Adopted in October, 1999
- Implemented by NSI, AOL and most other registrars
- Applies to “bad faith” use
- Mandatory arbitration by defendant (not plaintiff), subject to initiation of court action by either party



# Copyright

- Copying and posting content (Elvis and *Star Trek* sites)
- Unauthorized software downloads (LaMacchia loophole closed by NET Act).
- Commercial piracy still a major issue in many countries (esp. Asia, Latin America).

# Digital Millennium Copyright Act: Anti-Circumvention

- Video: *Paramount et. al.* (DeCSS circumvents encryption system)
- Streaming Audio: *RealNetworks v. Streambox* (impermissible circumvention of security measures)
- Music Downloads: *RIAA v. Diamond* (MP3 player just a “space shifter”)

# Linking and Framing

- Hyperlinking
  - Unfair association;
  - Use of logos;
  - Linking to infringing content (*Utah Lighthouse*)
  - “Deep” linking (*Ticketmaster v. Tickets.com*; auction sites)
- Framing
  - Generally understood not to be permitted
  - *Total News; Shetland Times*

# Patents

- “Business Methods” patents are now available in the US (but not in Europe)
  - *State Street v. Signature Financial* (mutual fund hub and spoke management method)
  - *Amazon.com v. Barnesandnoble.com* (one-click ordering)
  - *Priceline.com v. MS Expedia* (name your price service)

# Proposed Business Method Patent Reform?

- US PTO Initiative
  - quality (training, prior art search)
  - industry outreach
- Jeff Bezos (Amazon.com)
  - 3-5 year life (retroactive)
  - pre-issuance public comment period
  - prior art database

# Content Regulation

# Encryption -- US Export Restrictions

- Pre-1999: strict controls on export of encryption software from the U.S.
- Bernstein case: May 1999 U.S. federal court rules that encryption source code is “speech” that cannot be subjected to pre-export review by the Government

# Encryption -- new export rules

- Jan. 2000: New Bureau of Export Administration regulations.
  - allow U.S. companies to widely export retail encryption software (other than to the 7 terrorist states)
  - exporters will be required to notify the Government of all exports of encryption items with key lengths of 64 bits or more.



# International Content Regulation

- Encryption (US)
- Pornography (US, Australia, Europe, Asia)
- Racism (UK ISPs)
- Terrorism (Germany, Spain, Asia)
- Sedition (principally Asia)
- Language (France)
- Gambling (US, Europe)
- Advertising (Germany)
- Everything? (China)

# Data Privacy

# Employee Data Privacy

- May a Company Monitor its Employees?
- For the Most Part, “Yes”
- Pending Legislation Might Prohibit
- Give Notice to Employees

# Customer Data Privacy in the U.S.

- 1998: Children's Online Protection Act (websites directed at children under 13)
- 1998: FTC Guidelines (websites should provide notice, choice, access, security and enforcement)
- 2000: Federal Reserve and OTC rules (banks and holding companies)

# EU Data Privacy Directive

- Prohibits Export of “Personally Identifiable” Data to Non-Compliant countries
- Data must be:
  - Accurate and kept up to date;
  - Not kept for longer than necessary;
  - Safeguarded
- Customers have:
  - Right to be informed of the purposes of collection;
  - Right to consent;
  - Right to obtain a copy of data;
- US/EU “Safe Harbor”: Has been agreed, awaiting approval

# Private Sector Privacy Initiatives

- Privacy Policy Certification Groups
  - TRUSTe
  - BBBOnline
- P3P: Platform for Privacy Preferences (will enable users to screen websites based on privacy policies)
- Activism: Center for Democracy and Technology boycott of DoubleClick
- Personalization Consortium (DoubleClick, KPMG, American Airlines, 23 others)

# Jurisdictional Issues

# Jurisdictional Issues

- Where can a web-based company be sued?
  - Content regulation;
  - Intellectual property infringement;
  - Contract and warranty claims;
  - Consumer protection laws;
  - Product liability;



# Recent US Jurisdictional Cases

- Jurisdiction WAS asserted in
  - CompuServe v. Patterson (6th Cir. 1996)
  - American Network (S.D.N.Y. 1997)
  - Zippo (W.D. Pa. 1997)
- Jurisdiction was NOT asserted in:
  - Cybersell (9th Cir. 1997)
  - Bensusan v. King (2nd Cir. 1997)

# US Trends in Internet Jurisdiction

- Interactivity Now the Key
- Passive Sites = No Jurisdiction
- Highly Interactive = Jurisdiction
- American Bar Association is trying to propose standardized guidelines

# International Jurisdictional Structure

- No global convention on assertion of jurisdiction
- Assertion/reach of jurisdiction is a determination by each country
- European Union: Brusses/Lugano Convention on Jurisdiction and Enforcement of Judgments
- U.S. Uniform Enforcement of Foreign Judgments Act and Uniform Foreign Money Judgments Recognition Act
- Extradition treaties

# International Initiatives

- EU Council of Ministers working on revisions to 1968 Brussels Convention on Jurisdiction
  - pro-consumer initiative that could lead to jurisdiction in any country where activities were “directed”
- ICC Task Force with North American and European members also considering the issue

# CONCLUSION

- On the Net, new paradigms of doing business are arising rapidly.
- Opportunities are boundless, both for “dot.coms” and bricks and mortar;
- The price of expanding the boundaries is legal uncertainty at the edges.

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