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TECHNOLOGY LAW SECTION'S ANNUAL MEETING

By Benjamin L. Young

On June 27, 2007, the Technology Law Section hosted its annual meeting at the offices of Troutman Sanders LLP. Michael Stewart, outgoing Section Chair, began the meeting by presenting the Annual Report. Following Mr. Stewart's remarks, the Section elected new officers for 2007-2008.



Lael Bellamy, Sandra Sheets
Gardiner and Kevin Cranman
speaking at the Annual Meeting.

THE NEW OFFICERS ARE:

Chair: John P. Hutchins, Troutman Sanders LLP

Vice-Chair: Gaines P. Carter, Arris International, Inc.

Secretary: W. Charles Ross, Senior Assistant District Attorney, Gwinnett

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With the business of the annual meeting concluded, the focus turned to the panel of presenters. Marisha Stewart, a member of the Executive Committee, began with introductory remarks, and introduced speakers Kevin Cranman of TANDBERG Television, Lael Bellamy of Home Depot, and Sandra Sheets Gardiner, from Morris, Manning & Martin, LLP. The presentation, titled "The Art of Negotiating Technology Acquisition Deals," focused primarily on software license agreements.

cont. on p. 12

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OCTOBER 30, 2007

Details on p. 11

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EDITOR'S NOTES *By Robert T. Neufeld*

Welcome to the official start of a new year with the Technology Law Section and another installment of the Section's quarterly publication. With the Section's Annual Meeting in June, the new officers have been installed and plans are underway for an eventful year. As described in Ben Young's cover piece, the Annual Meeting included a presentation on software licensing that included valuable insights from seasoned practitioners and useful materials for the attendees.

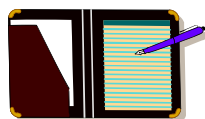
This issue of the Journal includes articles from both regular and new contributors. To begin with, Ben Young and William Still have provided an article discussing data breaches and the liability companies may face when responsible for such breaches. Their article examines novel legislation passed in Minnesota providing liability for retailers responsible for disclosing their customers' financial information.

Following Ben and William's article, we have our regular column from Larry Kunin providing a synopsis of recent case law addressing electronic discovery issues. Larry's column discusses recent federal court decisions applying the new federal rules as well as efforts at the state level to adopt uniform electronic discovery rules.

Finally, we also have an article from new contributors Paul Arne and Sandra Sheets Gardiner. Their article discusses some of the unique legal issues companies are facing in the Web 2.0 world. In addition to setting forth a framework for analyzing these novel legal issues, their article provides useful examples of where the issues can arise.

I hope that you find this issue to be useful for your practice and that you will consider attending the Section's premier event of the year - the Technology Law Institute - on October 30th.

Bob Neufeld is a registered patent attorney and practices intellectual property law with King & Spalding LLP. His work includes litigating intellectual property and technology disputes and securing patent rights in the U.S. and abroad on behalf of his clients. Mr. Neufeld received his B.A. and B.S. from the State University of New York at Binghamton and earned his J.D. from Fordham University School of Law. He can be reached at bneufeld@kslaw.com.

**Calendar of Events**

22nd Annual Technology Law Institute
State Bar Headquarters

October 30, 2007
8:00 am

Next Executive Committee Meeting
Troutman Sanders LLP

November 7, 2007
7:30 am

FROM THE CHAIR *By John P. Hutchins*

This is my first column to you as the new Chair of the Technology Law Section. Before I say anything else, I first really want thank the immediate past Chair, Michael Stewart, for all the hard work and dedication he contributed to the Section last year and during all of his years of involvement as an Executive Committee member and officer. During the Plenary Session of the State Bar of Georgia Annual Meeting, on June 15, 2007, State Bar President Jay Cook honored our Section with an *Award of Achievement*, presented to only three other sections. I am honored to be following in Michael's footsteps, and I hope to live up to the high standard that he set as Section Chair.



John Hutchins is a partner at Troutman Sanders LLP and practices in the area of intellectual property, technology and business litigation, including computer hardware and software development disputes, e-commerce and privacy issues, government procurement disputes, protection of trade secrets and confidential business information, Internet domain name disputes, technology licensing disputes, trademark and copyright infringement and restrictive covenants. He may be reached at 404.885.3460 or via e-mail at john.hutchins@troutmansanders.com.

My theme for this year is simple. "It's Your Section." I have been actively involved in the Section for probably about 10 years. I can honestly say that it has been a rewarding experience, both professionally and socially. But one of the things that has repeatedly frustrated the Executive Committee of the Section over the years has been our inability to consistently answer the question – Why aren't more members actively involved?

Now that I have the chance, I am just going to ask you – ***Why aren't you more involved?*** It's your Section! You check the box. You pay your dues. You get the Journal. Yet, of the nearly 500 current members of the Section, only 15 participate on the Executive Committee, and it is that small group that essentially plans and implements all the Section quarterly meetings, makes the annual Technology Law Institute happen, organizes the Spring Social, publishes the Technology Law Journal, maintains the Section website, etc. More amazing to me is that less than half the Section's members participate in any one of those events or activities through the course of the year. I congratulate the members of the Executive Committee and the regular attendees at Section events for their involvement. But I am sure the entire Executive Committee would join me in saying, "We need **your** involvement, and **your** input!"

We have a great year shaping up.

- We already completed our first Quarterly Meeting, held on September 25, 2007, at that Buckhead Club. Larry Kunin of Morris, Manning & Martin organized this luncheon, at which he and Aaron Danzig, Assistant United States Attorney for the Northern District of Georgia, presented a terrific program on statutory remedies for victims of computer hacking.
- The details for the 22nd Annual Technology Law Institute, our Section's premier event, are all in place. The Institute will be held on October 30, 2007, at the State Bar Headquarters. (See advertisement on page 11.)
- Our Journal is once again under the able leadership of Bob Neufeld of King & Spalding, and our Journal authors continue to have articles selected for publication in the Georgia Bar Journal.
- The date for the December Quarterly Meeting is already set for December 7, 2007, and the program will focus on privacy.
- Another Quarterly Meeting, our Annual Meeting and our Annual Spring Social are also on tap for 2008.

So . . . get involved. Volunteer for the Executive Committee. Attend the Technology Law Institute. Commit yourself to attend at least one of the Quarterly Meetings, the Annual Meeting or the Spring Social. Write an article for the Journal. Or, just send me an email with your ideas for what would like to see the Section do to make your membership more valuable. After all, it's your Section, and I would love to hear from you.



THE BREWING STORM: RETAILER LIABILITY FOR DATA BREACHES

By William R. Still, Jr. and Benjamin L. Young¹

Since early 2005, consumers have been inundated with reports of one security breach after another. From lost backup tapes to stolen laptops and from hackers to organized social engineering gangs, security breaches over the last year and a half are estimated to have exposed over 158 million records.² More than 35 states now require companies that experience a security breach to notify the consumers who are potentially affected by the breach.

Security breaches are not cheap. Consumers may suffer out-of-pocket expenses and lose productivity in dealing with an incident. Businesses that suffer a breach also incur financial, as well as reputational, costs. Earlier this year, Forrester Research released a study that found that the average security breach costs a business between \$90 and \$305 per lost record.³ These costs included the costs of actually providing notice, legal fees, and lost productivity.

Finding a cause of action against the company responsible for (or in some cases, victimized by) the security breach has proven difficult. Individual consumers (usually as part of a class action) have encountered various obstacles such as the “economic loss doctrine,” which prohibits recovery based on a negligence claim where the injury suffered is purely economic, as opposed to physical. It is also difficult to articulate damages arising merely out of “the anxiety of waiting and wondering” whether the breach will lead to identity theft. Obviously, there are also serious proximate cause issues, as it is most often almost impossible to know whether a particular breach led to an actual, specific misuse of information. In most cases regarding financial data like credit card numbers, consumers are already protected by the limitations on consumer liability contained in most credit card agreements. Thus, financial institutions have sometimes been left paying the costs associated with someone else’s security breach.

Earlier this year, TJX Companies experienced a security breach in which the stored data on more than 46 million credit and debit cards was compromised. The individual banks and state trade associations filed a class action law suit against TJX Companies to “recover damages in the tens of millions of dollars” the banks say they incurred as a result of the breach.⁴ These damages include the cost of replacing cards, which the banks claim can cost up to \$25 per card.

Until now, however, such a claim may have faced obstacles similar to some of the obstacles faced by consumers, as there has been no statutory authority for imposing liability for financial institution losses on the companies experiencing the security breach.⁵ Financial institutions and their trade associations have been pushing for federal legislation that would impose such liability but have been unsuccessful so far. However, financial institutions have gotten their first victory at the state level.

¹ Mr. Still and Mr. Young are members of the [Privacy & Data Security Team at Troutman Sanders LLP](#).

² Privacy Rights Clearinghouse: <http://www.privacyrights.org/ar/ChronDataBreaches.htm> (updated July 3, 2007).

³ InformationWeek: <http://www.informationweek.com/news/showArticle.jhtml?articleID=199000222> (April 11, 2007).

⁴ Massachusetts Bankers Association Press Release: <https://www.massbankers.org/pdfs/DataBreachSuitNR5.pdf> (April 24, 2007).

⁵ “Avoiding Civil Liability Stemming From Data Breaches: BJ’s Wholesale Wins Dismissal of Bank’s Claims,” Troutman Sanders LLP Privacy e-Alert (<http://www.troutmansanders.com/firm/media/mediadetail.aspx?media=94>) June 23, 2006).

Under Minnesota Statutes, Chapter 325E.64, newly created by H.F. 1758 signed by the Governor last month, a retailer may be held liable for the costs a financial institution incurs because of a security breach the retailer experiences.⁶ This new law imposes information security requirements on retailers that accept credit cards, debit cards, or stored value cards, by prohibiting them from retaining certain information associated with such cards beyond a certain period of time. Specifically, the law states that:

[n]o person or entity conducting business in Minnesota that accepts an access device in connection with a transaction shall retain the card security code data, the PIN verification code number, or the full contents of any track of magnetic stripe data, subsequent to the authorization of the transaction or in the case of a PIN debit transaction, subsequent to 48 hours after authorization of the transaction.

Subd. 2. The law also imposes liability on a retailer if “its service provider retains such data” beyond the limits set forth above. “Access devices” are defined as “a card issued by a financial institution that contains a magnetic stripe, microprocessor chip, or other means for storage of information” and includes credit cards, debit cards, or stored value cards.

If a retailer violates this provision and then suffers a breach, that retailer must reimburse any “financial institution that issued access devices affected by the breach for the costs of reasonable actions undertaken by the financial institution as a result of the breach in order to protect ... its cardholders.” Subd. 3. These costs include, but are not limited to, “any cost incurred in connection with the cancellation or reissuance of any access device affected by the breach; ... any refund or credit made to a cardholder to cover the cost of any unauthorized transaction relating to the breach; and the notification of cardholders affected by the breach.” Subd. 3. (Internal citations omitted). “The financial institution is also entitled to recover costs for damages paid by the financial institution to cardholders injured by a breach.” Id. Finally, the remedies created by this new law “are cumulative and do not restrict any other right or remedy otherwise available to the financial institution.” Id.



This law will be phased in over the next 13 months. The security requirements will be effective August 1, 2007. However, the liability provisions apply to breaches occurring on or after August 1, 2008.

While this legislation accomplishes a major goal of financial institutions, certain groups in the retail industry have, not surprisingly, been critical of the Minnesota legislation. This legislation, retailers argue, imposes significantly higher burdens on retailers than the previous data breach regime. They also argue that merchants are already required to have contracts with financial institutions that require the party responsible for the data breach to pay for the costs.

Though Minnesota is the only state to enact such legislation, legislators in at least five other states (California, Connecticut, Illinois, Massachusetts, and Texas) introduced similar legislation. According to J. Craig Shearman, vice president for public relations at the National Retail Federation, legislation such as the Minnesota bill “at best isn’t necessary and at worst could end up making retailers pay twice or three times for the same incident.”⁷

While legislation imposing direct liability on a company experiencing a security breach is still in its infancy, this is not the only area where states are taking different, and potentially costly, approaches to privacy and information security. As noted already, there are now security breach notification laws in approximately 39 different jurisdictions, including 36 states, the

⁶ Minnesota Legislature: <http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=H1758.4.html&session=ls85> (4th Engrossment, May 18, 2007).

⁷ BNA, Privacy & Data Security Law Report, Vol. 6, No.22, p.848.

federal government (for financial institutions), the District of Columbia, and New York City. Likewise, states are beginning to enact information security requirements.⁸ For example, California law requires businesses that own or licenses personal information about California residents to implement and maintain reasonable security procedures and practices.⁹

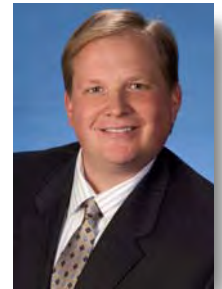
For the past couple of years, Congress has debated legislation that would pre-empt state privacy laws, specifically those requiring notification following a security breach. These efforts have been mainly supported by businesses that are responsible for the high costs associated with ensuring compliance in multiple jurisdictions. On the other hand, consumer advocates have opposed such efforts because of concerns that the federal legislation would water down strong pro-consumer laws enacted in the states. Regardless of whatever other effects it has, Minnesota's move to impose liability on retailers for their security breaches will have the likely effect of making pre-emptive federal privacy laws more difficult to enact.

⁸ "Data Safeguards Rules Exist, Even for Non-Financial Institutions?," Troutman Sanders LLP Privacy e-Alert (<http://www.troutmansanders.com/firm/media/mediadetail.aspx?media=498>) (May 29, 2007).

⁹ Cal. Civil. Code § 1798.81.5.

¹⁰ "Rival data-security bills face off in Congress," Troutman Sanders LLP Privacy e-Alert (<http://www.troutmansanders.com/firm/media/mediadetail.aspx?media=95>) (April 12, 2006).

William Still is a member of Troutman Sanders LLP's governmental law practice group and privacy and data security practice team. As Director of Privacy and Government Affairs for ChoicePoint for almost eight years, William brings important corporate experience and insight to his practice. William can be reached at (404) 885-3044 or by e-mail at william.still@troutmansanders.com.



Benjamin Young is an associate with Troutman Sanders LLP, where he advises clients on technology, privacy, energy, telecommunications and e-commerce related issues. Mr. Young is a current member of the Technology Law Section Executive Committee. Mr. Young earned his J.D. from Vanderbilt University in 2005, and a B.A. in Economics and Political Science from Emory University in 2002. Mr. Young may be reached at (404) 885-3212 or via e-mail at ben.young@troutmansanders.com.



E-DISCOVERY CASE UPDATE

By Larry H. Kunin

Chair, Technology Section Litigation Committee

Invitation to join the Technology Section Litigation Committee: The Litigation Committee is looking for new members. The committee serves a forum to debate technology-related litigation issues and a resource for technology litigation issues for its members. The committee meets quarterly for breakfast or lunch, and sponsors one of the Technology Section's quarterly CLE luncheons, and provides this quarterly e-discovery update. For information please contact Larry Kunin, Morris, Manning & Martin, LLP at 404-504-7798.

New Uniform ESI Law: The National Conference of Commissioners of Uniform State Laws has approved the "Uniform Rules Relating to Discovery of Electronically

Stored Information." Similar to the new Federal Rules, the Uniform Rules cover early planning conference, orders governing discovery, safe harbor limiting sanctions, requests for production, form of production, limitations on discovery, privilege issues and subpoenas. The rules are located at http://www.nccusl.org/update/AnnMtg_ApprovedText.asp.

Attempted Application of the Safe Harbor in Rule 37(f): *Doe v. Norwalk Community College, 2007 WL 2066497 (D. Conn. July 16, 2007):* In this sexual harassment lawsuit, plaintiff sought sanctions for failure to preserve and produce data. Part of the allegation was that defendant failed to follow its retention policy. The defendant attempted to invoke the safe harbor of new Federal Rule 37(f), stating that its document retention policy did not apply to "normal computer usage," but no language supporting this position was in the retention

policy. Among several other issues, the court found that the defendant failed to suspend its routine document retention policy, resulting in the wiping of the key actor's hard drive pursuant to "normal" procedure after his termination. The court thus rejected the applicability of 37(f). The key part of the court's analysis was that defendants was under a duty to preserve the evidence, and thus should have suspended the "normal" procedure. The court also stated that 37(f) required a "routine operation" of a computer system, but here there was a change in the system, meaning it was not a consistent system, and that there were no efforts to preserve ESI. The court thus ordered an adverse inference.

Magistrate Considers Retaining Neutral Forensic Expert to Assess Possible Search of Defendants' Computers.

Peskoff v. Faber, 2007 WL 2416119 (D.D.C. Aug. 27, 2007): In this case, the parties were formerly members of a venture capital fund. Initial production from the fund did not include any emails from plaintiffs during 2001-2003. As a result, the court ordered the defendant to conduct further searches and provide testimony as to the extent of the searches. After a subsequent hearing addressing the further searches, the court held that there were many questions about the searches, and questioned whether a forensic examination is necessary. This also raised questions as to who should pay for the examination. Interestingly, the court cited a revision to Federal Rule 26(b)(2)(C), which is not yet effective, and which establishes a clearer balancing test between the cost of discovery, the needs of the case, the amount in controversy, resources, the importance of issues in the action, and the importance of the discovery to the issues. Applying the test, the court ordered the parties to prepare a request for proposal soliciting bids for a forensic expert, which is underway. There are two other notable issues: (1) Defendant claimed that because the fund was a third party, the plaintiff should pay for production. But the court ruled that this position was waived through prior production without objection. (2) The court noted inaccuracies between testimony of the parties' respective counsel, and ordered them to submit explanations for their testimony regarding ESI.



Use of "Wayback Machine" is not Violation of Computer Fraud and Abuse Act.

Healthcare Advocates, Inc. v. Harding, Earley, Follmer & Frailey, Case No. 05-3524 (E.D. Pa. 2007): The Wayback Machine is a tool accessible on the Internet that accesses archived copies of previous Internet web pages. Here, defendants used the Wayback Machine to access archived images from the plaintiff's website in an intellectual property lawsuit. Generally, the Wayback Machine checks for blocked parts of a website, and if anything is blocked, the Wayback Machine will refuse access to the entire web site. But here, the Wayback Machine malfunctioned, and defendants were able to access the website. The court held that such access did not violate the Computer Fraud and Abuse Act.

Failure to Preserve Temporary Cache Files Related to Use of Wayback Machine is Not Sanctionable.

Healthcare Advocates, Case No. 05-3524 (E.D. Pa. 2007): Another interesting issue in the same order referenced above is that plaintiffs alleged that defendants failed to preserve the temporary cache that captured their view of the plaintiff's web pages. The court rejected this argument, stating that the cache was deleted automatically,

and in fact could have been emptied dozens of times before discovery requests were made. The court also noted that the law firm did not anticipate it would be sued when it used the Wayback Machine, and that there could be little fault attributed automatic deletion of temporary cache files. Although the court did not cite the safe harbor in Federal Rule 37(f), this appears to be an example of deletion caused by routine use of a computer that may qualify for the safe harbor.

Attorneys Ordered to Show Cause Why They Should not Be Sanctioned.

Qualcomm Inc. v. Broadcom Corp., No. 05-CV-1958-B(BLM) (S.D. Cal. Aug. 13, 2007): In a prior order in this patent infringement lawsuit, the district court found that Qualcomm's counsel engaged in an organized pattern of misconduct and concealment through trial. Among the evidence cited in that order was the production of 200,000 relevant emails and

electronic documents several months after trial. The Magistrate judge issued an order directing 14 attorneys to appear to show cause why they should not be sanctioned. The district judge had already ordered Qualcomm to pay Broadcom's litigation fees, which are in the millions, and disqualified two Qualcomm patents. Some commentators have suggested that this case could be more significant than *Zubulake* insofar as attorney responsibility and conduct with regard to ESI is concerned.

Larry Kunin practices in Morris, Manning & Martin's Litigation Department with a concentration in technology and intellectual property litigation, including software performance, trade secret, trademark and copyright litigation, as well as general commercial and reinsurance litigation. Larry received his B.A. from the University of South Florida, his M.B.A. from the University of Miami, and his J.D. from the University of Florida. He can be reached at lkunin@mmmlaw.com.

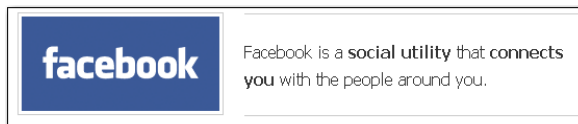


WEB 2.0 AND THE LAW:

Business and Legal Implications of Consumer Generated Media for Emerging and Established Companies (including Facebook, YouTube, Second Life, blogs, and others)

By Paul H. Arne and Sandra S. Gardiner^{1, 2}

The social networking and Web 2.0 phenomenon is changing the landscape of social and business communication. Not only are business models being created around Web 2.0, but non-Web 2.0 businesses are implementing these technologies. Novel legal issues arise in the Web 2.0 context because the information on a Web 2.0 website comes from multiple, and at times uncontrollable, sources. Without a consideration of the legal complexities early in the development of the usage or business model, companies may not adequately address the legal issues required to generate the anticipated revenue or benefit.



What are Web 2.0 models? According to Wikipedia, Web 2.0 is “a perceived second generation of Web-based communities and hosted services such as social networking sites, wikis and folksonomies that facilitate collaboration and sharing between users.”³ Some of these technologies are called “consumer generated media” (CGM) or “consumer generated multimedia” (CGM2).

We human animals are social and creative beings. Some of the internet-enabled technologies that implement interactions between humans and allow humans to express themselves have exploded. A few examples demonstrate this phenomenon. In April, 2007, there were 57 million users of MySpace. Facebook users have doubled in the last six months to 23 million, adding about 100,000 new members per day.⁴ Half of those members normally access Facebook at least once a day. On an average day, 200,000 videos are uploaded to YouTube. Also on an average day, 200 million videos are viewed.⁵

¹ Paul and Sandra are partners in the Technology Group of Morris, Manning & Martin, L.L.P. This article does not create an attorney/client relationship with you and does not provide specific legal advice to you or your company. Certain legal concepts have not been fully developed and certain legal issues have been stated as fact for which arguments can be made to the contrary, due to space constraints. It is provided for educational purposes only.

² Copyright © Paul H. Arne and Sandra S. Gardiner, 2007. All rights reserved.

³ *Id.*

⁴ Wall St. Journal, *Facebook Opens Its Pages As a Way to Fuel Growth*, 5/21/07.

⁵ MSNBC (from the Associated Press), *YouTube Founders Complacent? Just You Watch*, 5/18/07.

Money motivates people, and there is a lot of money being thrown around in Web 2.0 technologies. In July 2005, MySpace was purchased by NewsCorp for \$580 million. In November, 2006, YouTube was sold for \$1.6 billion in Google stock.



Laws Impacting Web 2.0

Many companies creating technologies that enable consumer generated media and users of social networking and consumer generated content sites are unaware that their activities online continue to be subject to the laws of various jurisdictions. Some of the more significant legal hurdles include issues arising from copyright law, trade secrets, trademark and unfair competition, invasion of privacy, defamation, truth in advertising, Regulation FD of the Securities and Exchange Act of 1934 and contractual violations.

Choosing a lawyer familiar with all of these laws is important to assess and minimize risk associated with your company's use of Web 2.0 technologies.

For companies facilitating the transmission or generation of consumer generated media, "who owns the copyright in the content?" is an important issue to determine the use of such content and associated risks and revenue models. A copyright subsists in an original work of authorship fixed in any tangible medium of expression. Obviously, the content submitted or generated on the Web 2.0 sites are subject to copyright. Copyright law can provide protections for some companies depending on their relationship with the content creation or contractual agreements with content providers.



Companies using these technologies to transact business may also be concerned about the ability to protect their trademark and prevent unfair competition. A trademark is a name, logo, design or other indicia of source of origin used to distinguish products or services of a company or business. In the US, trademarks may be protected under common law by use in a geographic area or through federal registration with the US Patent and Trademark Office (or other similar office in the relevant jurisdiction). However, use of these trademarks online raises issues regarding jurisdiction and applicable laws that may protect (or not) your trademarks.

Examples of How Web 2.0 Technologies may be Used

This section identifies some of the ways traditional companies and Web 2.0 business model companies are using or may use social networking and consumer generated media their businesses. The uses for these technologies is varied, and many other models and uses are also being used and implemented. These fact patterns are designed to raise the awareness of the issues that have, and in the future may, arise in a Web 2.0 world.

⁶ CNNMoney.com, March 29, 2006.

⁷ Google press release, November 13, 2006.

A. Facebook for a Company.

Several companies are contemplating implementing Facebook or a similar technology to employees and clients. Facebook allows users to post significant personal information that can be viewed by anyone with access to the account. The extent of personal information available online can facilitate identity theft, inadvertent disclosure of confidential company-client information, and publication concerning business relationships which a company may prefer remain confidential and other legal concerns.

B. Using Consumer Generated Media for Marketing and Advertising through Web 2.0

Several companies provide the capability for companies to run programs to invite consumers to generate advertisements and related collateral regarding the company products and to vote on their favorite proposed advertisements. Through these programs, consumers are enthusiastic to become heavily invested in the brands by creating the content. These technologies also enable companies to receive widespread consumer feedback by allowing very large numbers of consumers to rate the proposed advertisements. There remain legal challenges with these new models. These programs put consumers in charge of the brand and related messages, as well as create issues surrounding ownership of the various forms of content in the provided content.

C. Marketing and Sale of Products in Virtual Worlds such as Second Life



Many bricks and mortar companies and other non-Web 2.0 companies are moving into virtual worlds such as Second Life to advertise, market and sell their products. These virtual worlds are often viewed as a way to reach an alternate demographic and to further add to the product brand. In a virtual world, it remains possible for third parties to market and sell knock-offs of your products, or to take other actions that may impact your trademark and brand or ability to conduct your transactions. For instance, an unrelated party can claim to be selling your products for a discounted price, thereby impacting the brand and the company's ability to realize any profit from the transaction. Another example is the ability of unrelated parties to disrupt the virtual location where your business is being transacted. These disruptions can be accomplished through disabling code that can impact the virtual location or its ability to conduct transactions. Legal consequences and remedies of such activities are not as easily determined when they occur in the virtual world. Companies should work with legal counsel familiar with the technologies and applicable laws before embarking on such ventures.

Conclusion

The importance of Web 2.0 technologies is becoming increasingly important in all businesses, whether an emerging Web 2.0 business model company or a large company incorporating these technologies in its advertising programs, business development or employee retention practices. With some forethought about the use of Web 2.0 technologies in your business, and strategies to address the legal issues sooner rather than later, you can capture the benefits of using Web 2.0 technologies in your business and generate revenue from these business models.





22ND ANNUAL TECHNOLOGY LAW INSTITUTE

TUESDAY > OCTOBER 30, 2007 > 8:00 A.M. – 5:30 P.M.
8 CLE CREDIT HOURS, INCLUDING .5 ETHICS CREDIT
AND 1 TRIAL PRACTICE HOUR

STATE BAR OF GEORGIA HEADQUARTERS
104 MARIETTA STREET, ATLANTA, GEORGIA

8:00 - 8:30 > Registration

John P. Hutchins, Esq. > Program Chair
Troutman Sanders LLP • Atlanta, GA

Property Rights, Legal Issues and Business Models in Virtual Communities (Panel Discussion)

Professor Ian MacInnes, Ph.D.
Associate Professor, School of Information Studies
Syracuse University • Syracuse, NY

Professor Josh Fairfield
Associate Professor of Law
Indiana University School of Law • Bloomington, IN

IP Rights in China

Monin Ung, Esq.
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Anonymity and Pseudonymity in Internet Litigation

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Gaines Carter, Esq.
Arris Group, Inc. • Suwanee, GA

Technology Outsourcing

Karen Sanzaro, Esq.
Hunton & Williams LLP • Atlanta, GA

Virtual Worlds

KeyNote Luncheon Address
THE STATE AT PLAY: Field Notes
from a Make-Believe Jurisdiction

Julian Dibbell
Contributing Editor
Wired Magazine • South Bend, IN



Digital Rights Management: What's the Big Deal?

Jason Schultz, Esq.
Electronic Frontier Foundation • San Francisco, CA

Matt Kilgo, Esq.
Recording Industry Association of America • Atlanta, GA

Advanced Licensing Issues (Panel Discussion)

Ellen G. Ray, Esq., > Moderator
King & Spalding • Atlanta, GA

Chris Chan, Esq.
Sutherland, Asbill & Brennan • Atlanta, GA

Sheila Burks, Esq.
IBM Internet Security Systems • Atlanta, GA

Corporate Governance Issues for Technology Companies (Panel Discussion)

John Yates, Esq.
Morris Manning & Martin LLP • Atlanta, GA

Kent Webb, Esq.
Womble Carlyle • Atlanta, GA

Glen Shipley
CFO, Internet Commerce Corp. • Atlanta, GA

Update on Open Source and the GPL

David S. Teske, Esq.
Alston + Bird LLP • Atlanta, GA

Nationwide Update

Professor Michael B. Landau, Esq.
Georgia State University College of Law • Atlanta, GA

5:30 > Reception

Immediately Following Program

To register, visit www.iclega.org

Co-sponsored by > ICLE of Georgia and The State Bar of Georgia Technology Law Section



TECHNOLOGY LAW SECTION VOLUNTEER OPPORTUNITIES

The Committee on Volunteer Activities of the Technology Law Section seeks to provide members a collection of both community service projects and pro bono legal service opportunities.

Technology Opportunities

Protection of Website: Georgia Legal Services Program (“GLSP”) and the Atlanta Legal Aid Society (“ALAS”) provide free online legal resources and information via the website, www.LegalAid-GA.org. Unfortunately, some entities have sought to misappropriate these resources and sell the information for profit. GLSP and the ALAS need assistance protecting these important resources. To assist with this matter, contact ALAS/GLSP Technology Consultant Tracey M. Roberts (troberts@glsp.org)

Technology Agreements: GLSP is also developing a plan for the wide-area networking of its twelve (12) field offices across the state, including the negotiation for (and implementation of) Internet-based case management software and its Voice over Internet Protocol (“VoIP”) services. GLSP is seeking advice and counsel on future technology plans and contracts. Also, GLSP seeks intellectual property counsel to serve as advisors to GLSP management. For more information on this opportunity, contact Mike Monahan (mike@gabar.org)

Technology Best Practices: Volunteer lawyers are needed for a legal seminar for community-based groups scheduled for early December in Atlanta. The seminar, intended for a basic-to-intermediate skills audience, will address legal issues for nonprofit managers related to Internet usage, website development and content, and e-mail and communications policies. Interested? Contact Mike Monahan (mike@gabar.org)

Technology Agreements: From time to time, area non-profits need attorneys to review equipment leases, register domain names, and assist with the registration of trademarks and related issues. The Pro Bono Partnership of Atlanta, Inc. (“PBP-Atl”) (www.pbpatl.org) was formed with a mission to make it as easy and enjoyable as possible for transactional lawyers at corporations and law firms to provide valuable pro bono services for nonprofit agencies servicing the public interest in Metropolitan Atlanta. PBP-Atl services community-based nonprofits whose primary purpose is to operate ongoing programs or activities that benefit low-income communities or that otherwise serve the public interest.

PBP-Atl is seeking assistance with an audit of the nonprofit’s website, including its Terms of Service, privacy policy, copyright and trademark use and links to other websites. For more information on these and other opportunities, please contact Executive Director Rachel Spears. (rachel.spears@pbpatl.org).

Teaching/Training/Advice: TECH CORPS Georgia, Inc.’s (“TECH CORP”) (www.techcorpsga.org) mission is to promote “Digital Inclusion” for the residents, teachers, students and entrepreneurs of Georgia’s low-income and otherwise under-served communities, and to advocate for the use of technology in promoting self-sufficiency and economic resiliency.



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HIGHLIGHTS FROM THE EXECUTIVE COMMITTEE

By Gaines P. Carter & W. Chuck Ross

The Executive Committee has met three times since publication of the Summer issue of the Georgia Journal of Technology Law - on July 13, 2007, August 17, 2007, and September 14, 2007. Highlights of the June, July, and August Executive Committee meetings follow. The minutes of the September meeting will be reviewed and revised (if necessary) at the next Executive Committee meeting and published in the Winter issue of the Journal.

MARCH 9, 2007

Mike Stewart opened the meeting at 7:40 a.m.

- **Attendees** – M. Stewart: M. Stewart, J. Hutchins, C. Ross, G. Carter, B. Neufeld, E. Robinson, Melloney Douce, Keane Decarlo, M. Youst, M. Meyer.
- **Review of May Meeting Minutes** – Hutchins moved to accept, Stewart seconds. All approved.
- **Old Business**
 - Spring Social Event – Ross – Date: May 15, 2007, 19 attendees, Gordon Biersche, Total cost \$716.80 has been reimbursed.
 - Planning discussion re: TLI 2007 – misc – October 30 is the date. Ga. Bar Facility is the location. Speakers are confirmed.
 - Elections – Stewart. Chuck Ross is currently leading the balloting.

- Pod-Cast – Ross/Hutchins/Carter – speaker (Hutchins & Young) First podcast is to be at the Annual meeting (if speaker will agree). The plan is to record TLI speaker.
 - Journal Update – Neufeld – Journal is prepared. Bowen has submitted. L. Kunin plans to submit an eDiscovery article.
 - Annual Meeting – Stewart – flyer to be prepared by end of next week. 11:30 to 1:30 PM June 27, 2007 at floor 52 of Troutman Sanders – Subject – negotiating a software agreement. Moderated panel (by K. Cranman) Sandra Sheets, Lael Bellamy from Home Depot.
 - Litigation Committee –Hutchins – no update from Kunin.
- **New Business**
- Need new ideas for remainder of this year and next year.
 - Mugs to be transferred from Stewart to Hutchins.
 - June 11, 2007 Tech Section will receive an award at the GA Bar annual meeting in Florida.
 - Next Meeting Date/Location – Stewart – July 13th at Troutman Sanders. Meetings will continue at Troutman Sanders on the second Friday of each month for the next year.



Meeting adjourned at 8:03 a.m.

JULY 13, 2007

John Hutchins opened the meeting at 7:35 a.m.

- **Attendees** – John Hutchins, Gaines Carter, Chuck Ross (via teleconference), Marisha Steward, Larry Kunin, Melissa Yost
- **Review of June Meeting Minutes** – Gaines Carter. Minutes were accepted.
 - Beginning in August, Minutes will be mailed out; corrections should be sent to Secretary. The Minutes will be automatically approved if not objected to.

■ **Old Business**

- Annual Meeting Recap – Chuck Ross

The meeting was held at Troutman Sanders on June 27, and there were 39 Attendees. The topic was, “Negotiating a Software Agreement.” Panelists, Lael Bellamy of Home Depot and Sandra Sheets of Morris, Manning & Martin, were moderated by Kevin Cranman of Tandberg. The Section netted an \$8.00 profit. Speaker Gifts (mugs) were distributed. It was decided that the current speaker release form is too broad. John Hutchins has modified the form. Thanks to Marisha Steward for planning.

- TLI 2007 – John Hutchins: No issues, speaker packets have been mailed.
- Pod-Cast – Chuck Ross: Lael Bellamy of Home Depot and Sandra Sheets Gardiner of Morris, Manning & Martin have both agreed to do Pod-casts. Chuck will follow –up.



- Journal Update – Bob Neufeld: The Georgia Bar Journal is publishing Tom Traylor’s article about copyright. The deadline for our next issue is the 1st week of September. Everyone needs to find someone in their firm or agency to write an article
- Website Development Update – Stephen Combs: No report
- In-House Committee – Marisha Steward: It was agreed that there needs to be a push to make this committee happen. A meeting needs to be scheduled in the immediate future. If there is not enough interest in such a standing committee, it will be dissolved.
- Litigation Committee – Larry Kunin: The Litigation Committee is planning the Summer Quarterly Meeting. They are finalizing the date to be September 19 and will most likely be at the Buckhead Club. The topic will be, “On-line Hacking,” from both criminal and civil perspectives. They are trying to get Aaron Danzig or another representative from the US Attorney’s Office. Chuck Ross will serve as a backup speaker if needed. Advertising strategy and e-mail blasts were discussed. The committee is also planning on distributing a quarterly discovery update.



■ New Business

- Upcoming Meetings
 - Fall Meeting
 - Spring Meeting/Social
- Section initiatives
 - John emphasized the need to Section. Advertising was discussed
 - Everyone should be prepared to this issue to the August meeting.
 - Everyone should continue to the Executive Committee



increase membership in the briefly.

bring some new ideas on

recruit new members to

- Next Meeting Date/Location – August 17th at Troutman Sanders.
- There will not be an Executive Committee meeting in October due to TLI.

Meeting adjourned at 8:20 a.m.

AUGUST 17, 2007

John Hutchins opened the meeting at 7:33 a.m.

- **Attendees** – John Hutchins, Gaines Carter (via teleconference), Chuck Ross, Stephen Combs, Mari Myer, David Keating, Melanie Douce.

- **New Member** – Suzannah Lipscomb, was introduced. Suzannah, is with the Georgia Department of Community Health.
- **Old Business**
 - TLI 2007 – John Hutchins:
 - Gretchen Bennett from Carole Parks catering provided menus for the Luncheon and the Reception. It was decided that the Luncheon will consist of a red meat and a fish. The reception will last 1 ½ hours and will consist of a heavy hors d'oeuvre station as well as a passing tray. There will be beer and wine and non-alcoholic alternatives. Real glassware will be utilized. It was also decided that a courier will be used to bring in the alcohol, which will allow for unused alcohol to be purchased back.
 - The Speaker's Dinner will be held at the City Grille, the night before TLI. The Speakers and the members of the TLI Planning Committee will be invited.
 - Mugs: Gaines has one box. Arrangements will be made to get the other mugs.
 - Pod-Cast – Chuck Ross: Stephen Combs will try to get Paul Arne to speak about Web 2.0 as well as getting Sandra Sheets to record her presentation from the past quarterly meeting for a podcast. Stephen is also mentioning the podcast in an article for the Journal. John suggested that we also place a solicitation for podcasts in the next issue of the Journal
 - Journal Update – Bob Neufeld: John reported that Bob has a number of articles already for the next issue. Stephen indicated that he would like to announce the podcasts and RSS feeds addition to the Website in the next issue.
 - Website Development Update – Stephen Combs

The State Bar of Georgia
Technology Law Section

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ANNOUNCEMENTS

Welcome to the web site of the Technology Law Section of the State Bar of Georgia.

Overview of Web Site Features

- **Calendar**--This page provides a quick reference for important events, meetings, deadlines and other special dates.
- **Publications**--All of the Technology Law Section newsletters and other publications will be available on this page.
- **Events**--Members can locate detailed information about upcoming and past events. If available, materials from such events will be available for download here.
- **Membership**--Information on how to join the Technology Law Section is available on this page.
- **Committees**--The various committees of the Technology Law Section are described on this page. Contact information is available for each committee.
- **Other Features**--There is a search feature on the left navigation bar.

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- The Media Gallery is up and RSS Feeds are working. Stephen would like to add pictures of the officers from their respective websites. He is also working on having events pushed out as RSS content and will have a “Members in the News” feed.
 - The Bar sent a notice that all section websites must get prior approval before posting any content. Stephen is contacting the Bar’s Counsel, and investigating how other sections are reacting to this notice and how they are interpreting the notice.
 - In-House Committee –Marisha Steward: Stephen reported that Marisha will be chairing the Committee. She has put together a RSVP list of members and believes that the Committee is still viable.
 - Litigation Committee –Larry Kunin: The Summer Quarterly Meeting (which is really in the fall) will be September 25, at the Buckhead Club. The topic will be on-line hacking, from both criminal and civil perspectives. Aaron Danzig and Larry Kunin will be presenting.
- **New Business**
- Upcoming Meetings – Fall Meeting: Melanie Douce volunteered to plan the meeting.
 - Section initiatives
 - John would like everyone to be thinking about things to improve the Section. He would like to do this at the next meeting after the TLI.
 - Stephen suggested a sailing day on Lake Lanier.
 - John is trying to get the new financials from Johanna.
 - Next Meeting Date/Location – September 14th at Troutman Sanders.

Meeting adjourned at 8:15 a.m.

Gaines Carter is Intellectual Property Counsel for ARRIS International, Inc. in Suwanee, Georgia. He is a member of the bars of the State of Georgia and State of Michigan and is a registered patent attorney. Gaines currently serves as the Section Secretary for the Technology Law Section. He may be reached via e-mail at Gaines.Carter@arrisi.com.



W. Charles "Chuck" Ross is a Senior Assistant District Attorney in the Gwinnett Judicial Circuit. Although he handles all manners of felony criminal cases, his specialty is technology related crime. Mr. Ross was recently featured on Dateline NBC for his role in the prosecution of Dr. Barton Corbin, a Georgia dentist convicted of committing two murders fourteen years apart. Mr. Ross received his JD from Ohio Northern University, where he served as the Lead Articles Editor of the Law Review. He received his Bachelor of Science from the University of Kentucky and also holds a Master's Degree in Political Science from Eastern Kentucky University.