

Section Spring Networking Event

By Benjamin L. Young

On May 15, the Technology Law Section of the Georgia Bar hosted its annual spring happy hour event at the Gordon Biersch Brewery in Midtown Atlanta. The event drew a diverse group of attorneys, practitioners, and summer associates from various law firms, in-house legal and technology positions, and government agencies. The event gave the crowd a chance to mingle and discuss technology related issues over a cocktail. Several members of the Section's executive committee were in attendance, including the newest member, Melloney Douce, who is an attorney with IBM. If you are interested in becoming more involved in the Technology Law Section, please see the calendar of upcoming events in this issue of the Journal.



Technology Law Section members enjoying the Spring Networking Event.



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Editor's Notes *By Robert T. Neufeld*

The Summer issue of the Georgia Journal of Technology Law marks the close of the formal year for the Technology Law Section. At the Annual Meeting, on June 27, 2007 at Troutman Sanders, the new Section officers for the 2007-2008 year will assume their new positions. As described in greater detail in Michael Stewart's column on the following page, the Section has had another outstanding year of providing programming and professional development opportunities for its members. This quarter's issue of the Journal is an example of one of those opportunities the Section provides.

In this issue, we have informative articles from both our regular contributors and new contributors. First, we have Larry Kunin's column summarizing recent court decisions addressing electronic discovery issues. As Larry's article indicates, this continues to be an area where the courts are rapidly developing the law as they interpret and apply the recent amendments to the Federal Rules of Civil Procedure. The significant activity in the electronic discovery arena is illustrated by the fact that we also have an article on this topic from Ronni Solomon Abramson.

In addition, we have an article from Janine Bowen, former Chair of the Section, setting forth an analytical framework for addressing the use of instant messaging technology in the work place. This issue is rounded out by an article from Dennis Gerschick, one of our regular columnists on venture capital and financial issues relating to technology companies.

As a final point, please join me in congratulating Michael Stewart on a successful year as the Section Chair. In addition to the formal beginning of the new year for the Section, the Annual Meeting will also include a presentation involving a hypothetical technology deal with perspectives from both in-house and outside counsel. Details about the meeting can be found on page 5 - I hope you will consider attending.

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.



Congratulations

to the entire Technology Law Section on receiving a Section Award of Achievement at the State Bar of Georgia Annual Meeting in June

From the Chair *By Michael K. Stewart*

(The following is the Annual Report for the 2006-2007 fiscal year, which was prepared by Section Chair Michael K. Stewart and presented to the Board of Governors of the State Bar of Georgia. Based upon the accomplishments of the Section detailed in this Report, the Technology Law Section was awarded a Section Award of Achievement at the State Bar of Georgia's Annual Meeting, held June 14-17, 2007.)

ANNUAL REPORT FOR THE 2006-2007 FISCAL YEAR *Michael K. Stewart, Section Chair, 2006-2007*

The 2006-2007 fiscal year has been a very dynamic and exciting time of forward momentum for the Technology Law Section of the State Bar of Georgia. With over 500 members (the largest Technology Law Section membership in the past several years), the Technology Law Section owes it to those members to ensure that the members are getting maximum value from the Section in exchange for their annual dues. As such, during the 2006-2007 fiscal year, the Section not only built upon the already-substantial set of benefits it offers to its members, but also undertook several new initiatives to increase access to the Section by its members.

I. Continuing Legal Education.

A high caliber of continuing legal education presentation on timely, complex topics has long been a hallmark of the Technology Law Section, and, in fiscal year 2006-2007, that tradition was carried forward with great success.

The Section's flagship annual event, the daylong Technology Law Institute, was held in October 2007; with 122 attendees, this was the best-attended Technology Law Institute in several years, which attests to the breadth and value of the continuing legal education offered by the Section to its members. And, in addition to the Technology Law Institute, the Section offered a series of more intimate seminars; attendance was similarly encouraging, even for those seminars that were held during the notoriously unpredictable holiday and spring break seasons. A complete recap of the four continuing legal education presentations held so far during fiscal year 2006-2007 is set forth below; in June 2007, the Section will host another such event in conjunction with the Section's Annual Meeting.

Event	Date	Attendees	Event Organizers	CLE Credits
Fall Quarterly Meeting - "What Every Lawyer Should Know About the Sale of a Distressed Technology Company" (lunch seminar)	September 12, 2006	59	Robert Mercer	1 hour
21 st Annual Technology Law Institute (1 day seminar)	October 17, 2006	122	Michael Stewart, Section Chair	1 Ethics 2 Trial Practice 7 total hours
Winter Quarterly Meeting - "Overview of the New E-Discovery Rules in the Federal Rules of Civil Procedure" (lunch seminar)	December 6, 2006	18	Larry Kunin	1 hour
Spring Quarterly Meeting - "Antitrust vs. Proprietary Rights: Ripe for Supreme Court Review?" (lunch seminar)	April 19, 2007	16	Erinn Robinson	1 hour

In addition to conducting seminars on a variety of timely topics, the Section also provides a valuable resource to its members in the form of the quarterly publication, *The Georgia Journal of Technology Law*, which has been ably captained by Bob Neufeld in his second year as editor. It must be noted that the *Journal* is not the typical light “Section newsletter” so often published by other State Bar sections; each issue of the *Journal* comes packed with informative, scholarly articles which keep Section members apprised of the latest developments and issues arising in technology law. There is no better testament to the quality of the content of the *Journal* than the fact that, for the past several years (including fiscal year 2006-2007), nearly every issue of the Georgia Bar Journal has included an article originally written by a Section member for publication in *The Georgia Journal of Technology Law*.

II. Social Activities.

Of course, one of the primary benefits any section can offer its members is serving as a forum to meet and develop personal ties with other practitioners. To that end, in addition to the legal education seminars described above, the Section played host to social networking events during the 2006-2007 fiscal year, including the “Around The World” wine tasting event (held in October 2006 in conjunction with the Technology Law Institute) and the annual “Spring Happy Hour” held at the Gordon Biersch Brewery in May 2007.

III. New Initiatives.

In fiscal year 2006-2007, the Executive Committee of the Technology Law Section made a concerted effort to look for new ways to maximize the value of the Section to the members. All of the following initiatives are, at this writing, either in the investigatory or implementation phase:

- New types of social networking events to allow members of the Section to forge professional relationships with other practitioners;
- The creation of a series of audio seminars (in the form of Internet-distributed “podcasts”) on various legal issues important to technology law practitioners, to be distributed via the Section website; and
- Enhancement of the Section website - options under discussion include: an RSS feed, for timely delivery of Section news; a “listserv” (a discussion group conducted by e-mail) to facilitate discussions and collaboration among Section members; and an overall revamp of the website to increase usability.

V. Community Involvement.

In fiscal year 2006-2007, the Technology Law Section continued to play an active role in the Georgia community. In October 2006, the Section donated \$1,270 in proceeds from the Technology Law Institute to Tech Corps Georgia, a non-profit organization dedicated to increasing the availability of information technology to the less-fortunate. In addition, the Section continued its involvement with the Atlanta Pro Bono Partnership, an organization dedicated to securing *pro bono* legal assistance for non-profit corporations and similar organizations.

Best regards, Michael Stewart

Michael K. Stewart is a Partner with Friend, Hudak & Harris, LLP, where he advises clients on technology, intellectual property and e-commerce-related issues. Mr. Stewart earned his J.D., magna cum laude, from the University of Georgia in 1998, and a B.A. in History from Emory University in 1990. Mr. Stewart may be reached at (770) 399-9500 or via e-mail at mstewart@fb2.com.



2007 Annual Meeting of the Technology Law Section

Wednesday June 27

11:30 - 1:15 pm

The Art of Negotiating Technology Acquisition Deals

1 hour CLE Credit

Troutman Sanders LLP

600 Peachtree Street NE, Suite 5200
Atlanta, Georgia 30308-2216

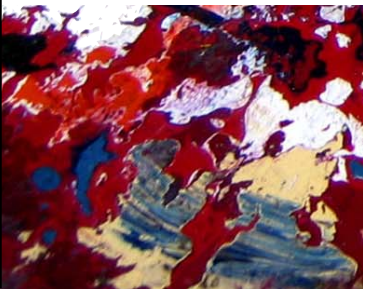
A panel discussion examining a technology acquisition deal from the differing perspectives of the various parties involved; topics include negotiation pitfalls, indemnification concerns, limitations of liability, and existing or proposed legislation that could affect a technology acquisition deal.



Moderator:
Kevin Cranman
General Counsel
Tandberg Television

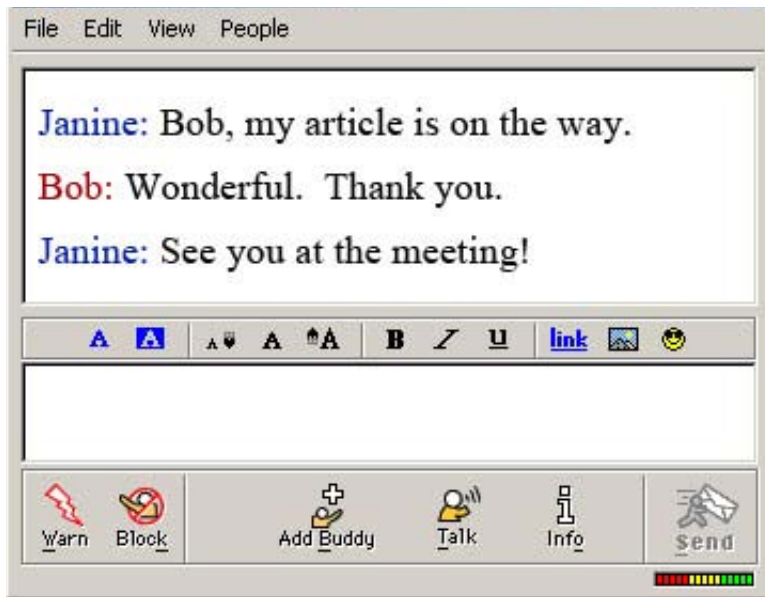
Panelists:
Lael Bellamy
Director of Legal
The Home Depot

Sandra Sheets Gardiner
Partner
Morris, Manning and
Martin LLP



Pre-registration: \$25.00 / After June 22: \$30.00 on site
Send a check payable to the State Bar of Georgia to:
Johanna Merrill, State Bar of Georgia, 104 Marietta St. NW, Atlanta, GA 30303

Name: _____ Bar No.: _____
Phone: _____ Email: _____



Instant Messaging in the Workplace: Are You Ready?

By Janine Anthony Bowen, Esq.**

Instant Messaging, or “IM” for short, has slowly begun getting a foothold in the workplace. IM allows real-time chat communications between individuals who use it. Since IM is not limited to a company, those who IM during the workday may be “pinging” colleagues, clients, friends, etc., inside and outside the company in the same way employees email those groups today. IM is truly instant. Once one types a message and hits enter, the content of the message appears virtually instantly on the screen of the party to whom the IM was sent. Many employees

say it improves their productivity because it allows instant access to colleagues and clients, and improved collaboration and teamwork. Naysayers assert that IM is simply another workday distraction that keeps employees from, well, working.

A company most likely has an employee handbook that contains an email policy, perhaps an internet usage policy, and probably a document retention policy. But many companies do not have policies in place regarding IM. Should they? Here is a quick list of some points for companies to consider as they get their arms around IM usage within their organizations:

1. IM Generally Requires a Software Download from Third Party Websites

ICQ, Yahoo!, AOL, Google* and other providers, all have their own proprietary IM technology. Though there are exceptions, generally speaking, to use IM one must download software to a computer. The download is free of charge. Employers may be unaware of the download, which is presumably made without an employer’s knowledge or authorization, and perhaps is in violation of company policy.

2. IM Leaves a Paper Trail

Just as email leaves an electronic record of the communication even if deleted, IMs are not necessarily deleted or erased and the records or “chat logs” may be on the employee’s computer, somewhere on the company’s network, or on the third party provider’s servers. In the event of litigation, IM logs are generally considered to be discoverable in the same way as email and other electronic documents.

3. There are Security Risks

IM networks are subject to hacking, viruses, worms, and other attacks just as e-mail is. A well-orchestrated attack via IM can destroy computers and the data that resides on them.

4. There are Legal Risks

Because of the casual nature of IM communications, employees may inadvertently reveal confidential or proprietary information to individuals outside the company. Additionally, employees may engage in inappropriate communications over IM, including exchange of disparaging remarks, or of sexually inappropriate chat, for example.

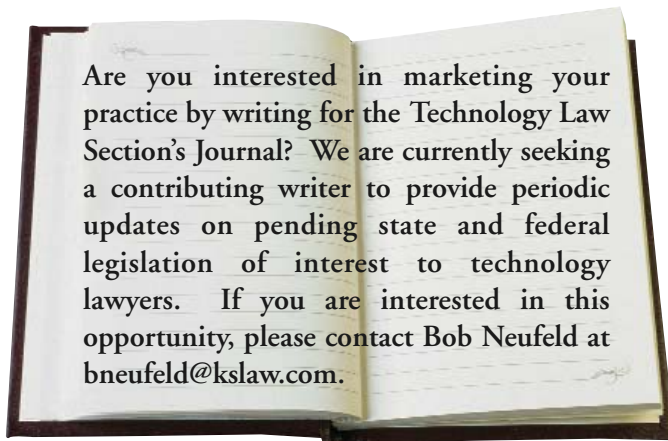
* ICQ, Yahoo!, AOL, and Google are the trademarks and registered trademarks of their respective owners.

5. The New IM Risk Frontier

With the growing popularity of IM on portable devices such as Blackberries and Treo's, employees engaging in company-related IM chat on company-paid-for devices may subject companies to additional, unplanned-for risk and liability in the event an employee is, for example, in an auto accident caused in part because the employee was IMing while driving. Recognizing the threat caused by driving while sending text messages (of which IM is one type) the Washington State legislature has introduced a legislation this year prohibiting DWT – Driving While Texting. Other states may follow in the near future.

IM is probably in the workplace to stay. There are pros and cons of IM in the workplace and some internal decisions will need to be made concerning the allowance, or disallowance of IM access. Companies are well-advised to get a handle on, and establish policies around employee IM usage.

*** Janine Anthony Bowen is an attorney with the firm of McKenna Long & Aldridge LLP where she advises clients on commercial contracting, technology, privacy, Internet and Intellectual Property related issues. Ms. Bowen is a former chair of the Technology Law Section. She earned her J.D. from Georgia State University in 1998 and earned both a B.S. and M.S. in Industrial Engineering from Clemson University. She can be reached at jbowen@mckennalong.com or (404) 527-4671.*



The Venture Capital Model – Issues for Entrepreneurs & Investors©

*By: Dennis J. Gerschick, Attorney, CPA, CFA **

Many entrepreneurs and others simply assume that venture capitalists (“VCs”) make lots of money. They often don’t understand why VCs impose onerous investment terms on them and sometimes become resentful of the VCs and may refer to them as “vulture capitalists” as if they were preying on the entrepreneurs. This attitude is unfortunate because a good VC can help the entrepreneur realize their dream. Many entrepreneurs and others simply do not understand how VCs operate and the issues raised by the VC model. This article will explore some of the issues.

Assume that a \$100 million venture capital fund is created. The “standard fee” paid to a general partner (“GP”) of a VC fund is an annual management fee of 2% and a 20% carried interest – that is, a 20% share of the profits from the investments made by the fund. Why is a 2% management fee standard? Money managers who manage a portfolio of publicly traded securities may be paid .75% - 1% of the fair market value of the portfolio. Financial planners who often

just select mutual funds for clients may get 1% or more. In contrast, managing a portfolio of private companies is harder and much more time intensive so a higher fee is justified. When VC funds were smaller, the 2% fee was designed to pay a reasonable level of compensation for the GP and cover the overhead (office rent, secretary, telephone, etc). With a \$50 million fund, a 2% fee is \$1 million. The GP may have 2 or 3 employees and an office. However, due to the dot.com craze, the size of VC funds got much larger; many are now \$1 billion or larger. Unfortunately, the 2% fee was never adjusted downward to take into account the size. With a \$1 billion fund, the 2% fee is \$20 million. LPs did not complain as long as they were getting high returns. It may be appropriate to consider the 2% fee and adjust it depending on the size of the fund. However, people often find comfort in using a "standard" and many will not challenge conventional practices. In New York, some lawyers bill at \$750.00 per hour. Is that reasonable? Why do personal injury lawyers take a 33% contingency fee? Why isn't it 20% Shouldn't the lawyer's percentage decrease as the amount of the recovery increases? Is the simple answer, you can charge whatever someone is willing to pay?

Why is the GP's carried interest 20%? Shouldn't that vary depending on the actual results realized by the limited partners ("LPs)? Some funds provide that the GP receives 20% of the profits of any investment sold at a profit. In contrast, others provide that the GP receives 20% only after the LPs have received aggregate distributions equal to the amount of capital they contributed to the fund. Should LPs be entitled to receive some minimum return on their investment (e.g 8%) before the GP receives any carried interest? How can the GP's interest and the LPs' interest be better aligned?

Many VC funds last ten years or more. Consequently, 20% (2% fee x 10 years) of the invested capital is often set aside to pay the management fees. The remaining 80% or \$80 million is then invested in a number of different privately-held companies. I'm using ten years to be conservative. I've read only 7% of the VC funds last ten years or less; 20% last 11 or 12 years; 27% last 13 or 14 years; 22% last 15 or 16 years; 14% last 17 or 18 years; and 10% last 19 years or more. Should more be set aside to pay the 2% annual management fee and less be invested?

Assuming \$80 million is invested by the GP, there are no absolute fixed rules as to how the \$80 million will or should be invested. Many funds may prohibit the GP from investing more than 10% of the fund in any one company. The GP will invest the \$80 million in a number of companies to obtain some diversification and to expose the fund to more opportunities. The exact number of investments made will vary depending on the current market conditions and the GP's preferences. However, it is unlikely that any GP would make eighty \$1 million investments or even forty \$2 million investments. With \$80 million to invest, most GPs would invest in 12 – 20 companies. The reason is that VC investments are more time intensive than investments in publicly traded stocks. The GP often obtains a board seat in each company in which they invest.

How can GPs pick "winners" when the private company may have only recently been formed? Many private companies seeking VC may not even have revenue. What does the GP see to justify investing? Obviously, potential. However, what GP has the crystal ball that allows them to accurately predict the future on a consistent basis? Will the portfolio company's potential be realized? There are many reasons why a company can fail to realize its potential, many of which are beyond the GP's control – new technology, competition, markets change, management makes the wrong tactical decisions, etc.

How does the GP add value to the fund and its portfolio companies to justify receiving their 2% annual management fee and 20% carried interest? Good VCs distinguish themselves by the help they provide to the company. The help provided varies and can include help in recruiting management, advice about future financing and help in finding new investors, operations, marketing, etc. It is in the GP's interest to give the best advice they can. A good VC can help entrepreneurs address a wide variety of issues, consider the pros and cons of options available to them company, act as a sounding board, and a calming influence. Good VCs spend time and money investigating a potential investment. They will consider the product or technology, the market, the management team, and other factors. Entrepreneurs would also be well advised to ask around about the VC fund's GP. A good GP can

be a valuable asset to an entrepreneur, while the wrong GP may be viewed as a liability. Many companies will raise capital in multiple rounds. Good, well connected GPs can help the company by introducing it to other good GPs. Does the GP's personality and values mesh well with the entrepreneur's? Will everyone put their egos aside and their heads together to build the company?

The results obtained by VC funds vary considerably. The best performing VC funds obtain outstanding results; annualized returns over the long term in excess of 30%. In contrast, investing in a diversified portfolio of publicly-traded stocks over the long-term provides a return of about 11%. Many VC funds, however, actually fail to return all of their LPs' invested capital or they provide single digit returns. One investment made by a VC fund can make the difference. I've read two VC funds each invested \$12.5 million in Google and the stock they received became worth more than \$1 billion; both funds are in Silicon Valley, California. I've also read that a \$5 million investment in eBay, by another Silicon Valley fund, became worth \$4.2 billion. The GP's 20% share may have been worth about \$850 million (20% of \$4.2 billion)! Outstanding returns like this is what drives both GPs and LPs. Was the GP who invested eBay brilliant or a blind squirrel who got lucky and found one acorn? How did that GP really add value to eBay? I've read the same VC fund that invested in eBay also invested \$70 million in WebVan and lost all of it. The great investments are obviously extremely rare and provide unusual returns. However, the best VC funds do well because entrepreneurs want to get VCs involved who have been successful in the past. The best known VC funds, that have great reputations, usually get the first look at the companies with the best prospects run by experienced and competent entrepreneurs. Kleiner Perkins Caufield & Byers may be the best known VC fund because it invested in well known successful companies over the past thirty-five years including Sun, Amazon, Intuit, Genentech, Verisign and Google. If you were an entrepreneur, wouldn't you want Kleiner Perkins, with its track record and experience, to invest in your company?

Assuming \$80 million is invested by making sixteen \$5 million investments, what will be the VC fund's results? It would not be unreasonable to expect five investments

to be written off – zero return and five to return less than the amount invested. Let's assume that five \$5 million investments return a total of \$15 million. This means that the remaining six \$5 million investments (\$30 million invested) must produce enough of a return to allow the limited partners ("LPs") to get a return of their remaining \$85 million capital contribution (\$100 million contributed - \$15 million returned from five poor investments) plus some return on their invested capital. If the LPs expect a 20% annual return, they



have to get the \$100 million back plus another \$20 million for each year their money is invested. From the time a VC makes an investment until the time it exits the investment, five or more years may pass; again the period varies. It takes time to build a successful company; especially when starting from a start-up or early stage company. It is unrealistic, in the near future, to expect another dot.com craze to allow companies to go public without significant revenue or profits.

When the GP of the VC fund obtains the LPs' invested capital, the clock starts ticking. In larger VC funds, the LPs may contribute their capital in installments when the GP makes a capital call. This allows the LPs to keep their money invested elsewhere. It takes time to find appropriate investments, perform due diligence,

negotiate investment terms, and close the deal. Consequently, GPs may also prefer to let the LPs keep their money until the GP is ready to invest it. There is pressure on the GP to put the money to work as soon as possible. LPs do not want their capital invested in a money market fund obtaining a low return; they are enticed by the potentially much higher returns provided by a VC fund and the only way to get those higher returns is to get into the game and start swinging for the fences! This is part of the problem. The GP feels this pressure and they often invest too fast without doing their due diligence properly. They often make an investment and realize later that they made a mistake. What is “effective due diligence”? How much time and money should be spent on due diligence? These are questions for another day.

Using our example above, the remaining six \$5 million investments (\$30 million total) must produce \$85 million just to provide the LPs a return of their invested capital. More money has to be distributed if the LPs are to receive any return on their investment. This is the challenge. In the southeast region of the United States, how often do VC investments produce returns, on average, of almost 3 times the amount invested by the fund? The VC fund must do this five times just to get back to the starting line.



Let's consider this example a step further. If a VC fund invests \$5 million in a company, another issue is: at what pre-money valuation? What percentage of the company will the VC fund obtain? Most VC funds purchase preferred stock so they get paid back first before the common shareholders receive any amount upon an “exit event” – typically a sale of the company. The pre-money valuation used often depends upon market conditions. If a \$15 million pre-money valuation is used, after the \$5 million investment is made, the company will have a post-money valuation of \$20 million. The VC fund's \$5 million investment may be made for preferred stock with a 25% ownership interest. Entrepreneurs and their advisors often want a higher pre-money valuation so the existing shareholders will be diluted less by the issuance of stock to the new investors.

Now the company has a capital infusion of \$5 million. How will the money be used? Will such use of the invested capital increase the company's value? What must be done to increase the company's value from \$20 million to \$60 million or more? How much time will that take? How many VC backed companies in the southeast have been sold for more than \$60 million since 2000? What are the odds that the company the VC fund just invested in will be one of those rare companies? What are the odds that the obstacles will be overcome? Is that a bet you would make? What can be done to increase the odds in your favor? This is another topic for a future article.

Part of the problem with analyzing the VC market is that VC funds are private. Many VC funds do not want to disclose to the public how they have performed in detail. Many people love to talk about their successful investments but don't like to discuss their failed investments. Some insights can be gained from reading the newspapers, industry newsletters, attending VC conferences, etc. There has not been a plethora of successful VC backed companies in the southeast since 2000. This is, in part, due to the culture. The southeast is simply not Silicon Valley; the reasons for this might be explored in a future article.

What does all of this mean? I believe the implications include the following:

- 1 Entrepreneurs should understand better the pressure being exerted on the GP of a VC fund to select not only successful companies but to structure very successful investments in those companies.

- 2 It is important to understand that there is a significant difference between investing in a successful company and having a successful investment.
- 3 If the VC fund invests in a company, the company must provide a good return not only on that investment, but also good enough so that when the VC fund's other unsuccessful investments are considered, the VC fund still does well enough so the fund's LPs are willing to invest in the fund.
- 4 Entrepreneurs need money to fund their dream. What will it take to entice investors to roll the dice in risky enterprises when the losses outnumber the profitable investments? Greed often overpowers logic; the dot.com proved that once again. The current buy-out craze may prove it again. Entrepreneurs must satisfy the GP of the VC fund and the GP must answer to the fund's LPs. Without the LPs money, the VC model does not work.
- 5 Would investors be better off, considering the potential return and level of risk assumed, to forget VC and invest their money in an index fund of publicly traded stocks?
- 6 I believe investing in private companies can provide very attractive returns, even considering the level of risk. However, taking a minority position in a private company managed by a young, inexperienced entrepreneur may not be the most effective way to get higher returns long term.
- 7 Luck often plays a role in a company's or individual's success. Being in the right place at the right time is one element. However, being prepared to take advantage of opportunities is a big part of it too. Preparation and hard work may reduce the element of luck and improve the odds of success. Taking a larger ownership position, or even 100%, in more established companies that have some real track record to evaluate and getting more involved in improving a company's operations may be a more productive way to invest.



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** Dennis Gerschick wishes to acknowledge the valuable input provided by Mike Vollmer, Esq. and Paul DiBella who manages a VC fund in Atlanta, Georgia. Dennis Gerschick can be reached at dennis@gerschick.com*

Give your old computer a new life.

Free Bytes Recycling & Reuse Program
A division of TECH CORPS Georgia
PC donations accepted from individuals and companies.

Call 404.768.9990 or www.techcorpsga.org

An illustration of a recycling bin with a green recycling symbol on it. The bin is overflowing with various old computer components, including monitors, keyboards, mice, and internal hardware. The background is a dark blue with binary code (0s and 1s) and abstract digital patterns.

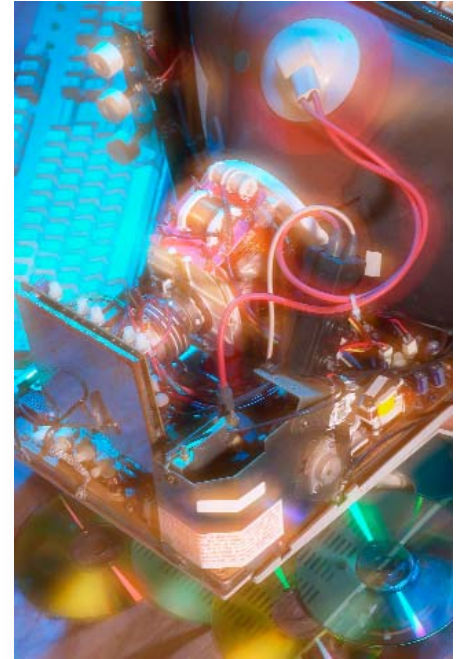
E-Discovery Case Update *By Larry H. Kunin, Chair, Technology Section Litigation Committee*

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.

Court rejects request to production of mirror images. *Calyon v. Mizuho Secs. USA Inc.*, 2007 WL 1468889 (S.D.N.Y. May 18, 2007): In this lawsuit alleging misappropriation of confidential information by former employees, the court denied a request by plaintiffs to inspect hard drive mirror images that were created for purposes of preservation for the lawsuit. Although the parties agreed to the imaging, they could not agree on a protocol for review of the images. The plaintiff argued that because the hard drives contained evidence of misappropriation, its forensic expert should be entitled to examine the images. Defendants argued that such unfettered access was overbroad and invaded privacy. Defendants thus proposed that its expert conduct a search based on terms provided by plaintiff. The court stated that although new Federal Rule 34(a) proves a right to access electronic information, it does not provide "a routine right of direct access to a party's electronic information system, although such access might be justified in some circumstances." The court held that plaintiff failed to show the need for extraordinary relief, such as showing discrepancies in production, destruction or loss of evidence, and failed to identify specific information to be recovered from the images. In denying the motion without prejudice, the court ordered defendant's expert to consult with plaintiffs' expert to agree to a search protocol, that counsel confer on an on-going basis, and that defendants preserve the images.

Court orders production of mirror images. *Thielen v. Buongiorno USA, Inc.*, No. 1:06-cv-16, 2007 U.S. Dist. LEXIS 8998 (W.D. Mich. Feb. 8, 2007). In this case, the court did order that plaintiff produce mirror images of its hard drives. Here, the plaintiff alleged that unsolicited test messages were sent to his cell phone, and defendant sought evidence that plaintiff initiated the contact. The court ordered the production, which may also be relevant to whether transactions between the parties were deleted. The court also directed that a forensics expert conduct the review pursuant to a specific protocol, and that the resulting report must first be given to plaintiff for purposes of moving for protection against disclosure of irrelevant information.

Printouts from "Wayback" machine are inadmissible. *Novak v. Tucows, Inc.*, No. 06-cv-1909, 2007 U.S. Dist. LEXIS 21269 (E.D.N.Y. Mar. 26, 2007). The "Wayback" machine is an Internet archive service that shows prior versions of websites. The court held that such printouts are inadmissible absent a showing of personal knowledge on which the court could determine that the printouts were authentic.



Defendant ordered to partially restore backup tapes. *AAB Joint Venture v. United States*, 2007 WL 646157 (Fed. Cl. Feb. 28, 2007): To resolve a dispute weighing cost and burden against relevance, the court ordered a partial restore of backup tapes. The defendant conceded that it was unable to locate emails for certain individuals, but resisted restoring backup tapes because of the cost and because production from other witnesses already included emails to and from the subject individuals. The court noted: (i) it would be unfair for a party to reap the benefits of technology while simultaneously using the technology as a shield to production; (ii) it would be unfair for producing party to pay the cost of restoration because backup tapes are created for disaster recovery, not to store information for business purposes; (iii) the cost of restoration was small in comparison to the value of the lawsuit; and (iv) plaintiff did not provide evidence to indicate that relevant documents were likely on the backup tapes. Under this mix of factors, the court ordered that defendant at its own cost restore one-fourth of the backup tapes from time periods specific from plaintiffs, which restoration can then be used to test for the existence of relevant evidence. Following such test restoration, the parties could return to court to argue whether further restoration was necessary.

Another court holds that litigation hold notices are privileged. *Capitano v. Ford Motor Company*, 2007 WL 586 (N.Y. Sup. Ct. Feb. 26, 2007): In response to defendant's inability to produce certain documents, plaintiff sought production of litigation hold notices, which would help the plaintiff determine if the subject documents were intentionally or negligently destroyed. Consistent with other decisions, the court held that litigation hold notices are privileged attorney-client communications.

Sanctions issued for spoliation. *Padgett v. City of Monte Sereno*, 2007 WL 878575 (N.D. Cal. Mar. 20, 2007): At a hearing on a motion to compel in April 2006, the court ordered counsel to preserve evidence, which included computers and backup tapes. Several months later, the court ordered the inspection of several computers, but one of the relevant hard drives had been discarded in the meantime. The defendant alleged that it was discarded by an employee without knowledge of the lawsuit after a hard drive crash. The court held that the defendant failed to take adequate steps to preserve the evidence and issued monetary sanctions to reimburse plaintiff for costs related to the motion, fees for plaintiff's expert witness, and to pay for a Special Master retained to manage electronic discovery.

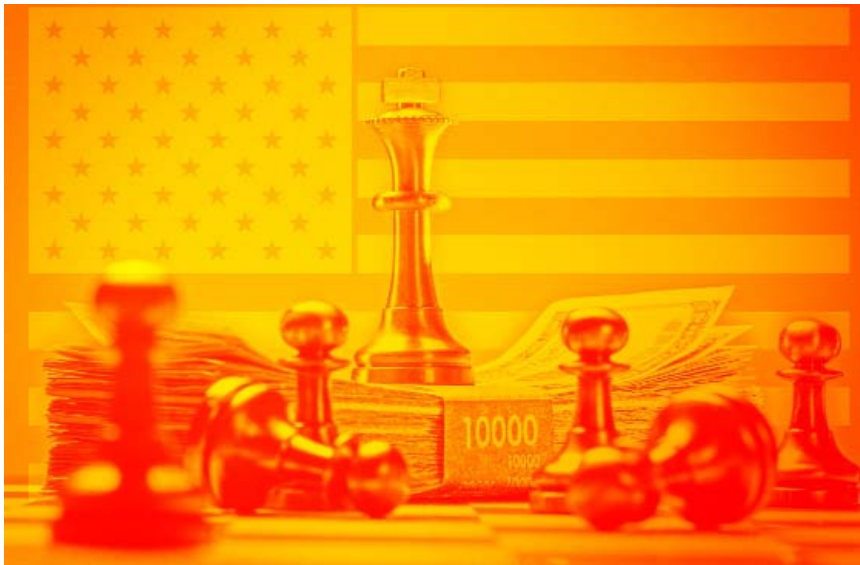


Larry Kunin practices in Morris, Manning & Martin's Litigation Department with a concentration in technology and intellectual property litigation, including software performance, trade secret, trademark and copyright litigation, as well as general commercial and reinsurance litigation. Larry received 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.

Interested in Joining the Technology Law Section?
 Send your name, Bar number and address, along with a \$25 check made payable to the State Bar of Georgia to:
**State Bar of Georgia
 Technology Law Section
 104 Marietta Street, NW
 Atlanta, Georgia 30303**

The image shows the cover of the Georgia Journal of Technology Law, Summer 2006, Volume 7, Number 2. The cover includes the title, a 'Quarterly Technology Luncheon' announcement, a 'Table of Contents' listing, and a 'Participate in the Technology Law Section!' call to action. The cover also features a small photo of a group of people and a logo for the Technology Law Section.

Technology Section Spring Quarterly Luncheon



By Ben Young

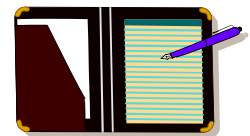
On Thursday, April 19, 2007, the Technology Law Section held its Spring Quarterly luncheon at the offices of Arnall Golden Gregory LLP. The Seminar, titled “Antitrust and Proprietary Rights: Ripe for Supreme Court Review?” was presented by M. Russell Wofford, Jr., a partner in the Litigation Practice Group of the law firm Kilpatrick Stockton LLP.

The presentation covered the nuts and bolts of antitrust law and included a summary of the primary antitrust laws, including the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act. Mr. Wofford further discussed the history of the Sherman Act in great detail, with a particular focus on the differences in the substance and application of Section 1 and Section 2 of the Act. The presentation also highlighted the differing roles of the government and private individuals in the context of potential plaintiffs, civil remedies, and criminal penalties under both Sections of the Sherman Act.

In the second half of the presentation, Mr. Wofford analyzed two recent court of appeals decisions that have affected the application of antitrust principles on proprietary rights such as patents and copyrights: (1) *Eastman Kodak Co. v. Imagine Technical Services* (“Kodak”) (9th Circuit 1997) and (2) *In re ISO Antitrust Litigation* (“Xerox”) (Federal Circuit 2000). Mr. Wofford reviewed the similarities between the cases, including the similar status and position of the plaintiffs and defendants. In both cases, the courts analyzed a previous footnote in a previous Supreme Court decision involving Kodak, which read: “The Court has held many times that power gained through some natural and legal advantage such as a patent, copyright, or business acumen can give rise to [antitrust] liability if ‘a seller exploits his dominant position in one market to expand his empire into the next.’” Despite the Supreme Court’s guidance, the circuits interpreted this footnote differently and ultimately split on the result, with the 9th Circuit upholding a near \$72 million antitrust verdict against Kodak, and the Federal Circuit upholding summary judgment for Xerox. Mr. Wofford concluded with comments on the implications of the circuit split and emerging trends in the scope of a court’s review and interpretation of antitrust principles.

The Section would like to thank Mr. Wofford for his participation and expertise and Arnall Golden Gregory LLP for hosting the seminar.

Calendar of Events



Annual Meeting and Lunch Presentation

Troutman Sanders LLP

600 Peachtree Street NE, Suite 5200, Atlanta

June 27, 2007

11:30 am

Next Executive Committee Meeting

Troutman Sanders LLP

600 Peachtree Street NE, Suite 5200, Atlanta

July 13, 2007

7:30 am



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.

Judges Rule on Hard-to-Discover Data

By Ronni Solomon Abramson

Federal judges have published opinions for more than 50 e-discovery disputes since the landmark amendments to the Federal Rules of Civil Procedure governing the discovery of electronically-stored information (“ESI”) went into effect on December 1, 2006. These cases give - in almost real time - a valuable insight into how judges are interpreting the amendments. These cases provide direction on how to handle the identification, preservation, collection, review and production of ESI in litigation going forward. One commentator noted that these district court decisions serve an important role in providing *de facto* national standards for e-discovery disputes.¹

This article will focus on two such cases, *Best Buy Stores, LP v. Developers Diversified Realty Corp.*,² and *Ameriwood Industries, Inc. v. Liberman*.³ These cases tackle a recurring problem - the discovery of information stored on computer systems and sources that are not reasonably accessible. These difficult-to-access sources include back up tapes used for disaster recovery that are not catalogued or indexed and legacy data from systems that are currently unreadable. These sources may contain information responsive to a particular discovery request, but it would take considerable time and money to access, cull or produce data from them.

Newly amended Rule 26(b)(2) creates a two-tiered procedure to limit the burden imposed by discovery of this type of information. Under this procedure, a party responding to a discovery request must, as an initial matter, produce reasonably accessible responsive ESI to its opponent and then identify, by category or type, the sources of potentially responsive ESI that it believes are not reasonably accessible. After this identification, a requesting party may move to compel the production of the not reasonably accessible data. The burden then shifts to the responding party, who must offer proof of the undue burden or cost. The burden then shifts back to the requesting party to show that good cause exists to order production notwithstanding the burden and cost.

In the *Best Buy* and *Ameriwood* cases, the producing parties obtained different results in their attempts to block production of not reasonable accessible data under the new procedure spelled out in Rule 26(b)(2). The producing party in *Ameriwood* was successful in avoiding the production of over 50,000 potentially responsive emails, over 4,000 Microsoft Office files, and possibly hundreds of thousands of additional documents, on the grounds that this data was not reasonably accessible because of undue burden. Contrast this result to the *Best Buy* case where the producing parties were not successful and had to restore and review emails and electronic documents from 345 back up tapes in less than a month at an estimated cost of nearly \$500,000, not including attorneys’ fees for review of the documents for privilege and responsiveness. Below is a discussion of both cases and the lessons they teach.



¹Thomas Allman, IE-Discovery in the State Courts: Uniform Rulemaking (or Lack Thereof) and the Ongoing Role of the Sedona Principles,” *The Computer and Internet Lawyer* (February 2007).

²2007 WL 333987 (D. Minn. Feb. 1, 2007).

³2007 WL 496716 (E.D. Mo. Feb. 13, 2007).

Best Buy Stores, LP v. Developers Diversified Realty Corp.

Best Buy was involved in a lease dispute for alleged overcharges for insurance and maintenance. Best Buy sought documents showing how the insurance charges were calculated. Defendants failed to respond to Best Buy's requests for documents and thus waived any objections.

When Best Buy thereafter filed a motion seeking to compel defendants to produce responsive archived emails and electronic documents, defendants offered no proof, by affidavit or otherwise, to support their argument that the information sought was contained on back up tapes that were not reasonably accessible. Defendants merely argued in their brief that the estimated cost of processing the tapes would exceed \$125,000. They also argued that the issue of whether the back up tapes should be restored was not ripe for determination because the parties had not yet sorted through all of the issues.

Magistrate Judge Jeanne J. Graham held that defendants failed to show that the electronic data on the back up tapes was not reasonably accessible. Judge Graham cited amended Rule 26(b)(2) and stated, "the Defendants offer no proof, aside from conclusory statements, about the cost to obtain documents from electronic archives. So this concern cannot shield the defendants from discovery here."⁴ Defendants were ordered to produce the responsive electronic documents in 28 days.

Defendants then filed an objection with U.S. District Court Judge David Doty, seeking an extension of the deadline because it was technologically impossible to comply. Defendants sought permission to produce data on a rolling basis. In support, defendants submitted an unsworn email from a third-party vendor, Kroll On-Track ("Kroll"), advising that it would take approximately 102 to 122 days to restore all of the back up tapes and then cull and process the data. Defendants also submitted an affidavit by their director of technology specifying the number of tapes, that these tapes were used solely for disaster recovery, and that an outsider vendor was required to restore and cull the data. This affidavit was filed a day late because the director of technology was ill and could not be reached on the filing date deadline.

Defendants also submitted letters exchanged between counsel after Best Buy's motion to compel was filed but prior to the hearing before Judge Graham. One of defendants' counsel's letters included cost estimates from Kroll for the restoration, filtering and processing of the data from the back up tapes. The estimates in the letter doubled the prior cost estimates in the motion paper and now indicated that it would cost between \$288,300 and \$468,100 to restore the back up tapes and then filter and process the emails and electronic documents.

U.S. District Court Judge David Doty was unpersuaded by the untimely evidence. Although he acknowledged that a modification of the deadline might be warranted if compliance with the deadline was in fact technologically impossible, Judge Doty stated that Magistrate Judge Graham's order was thorough and well reasoned, based on the information and arguments presented to her. The court upheld the order requiring production within 28 days.

The defendants did not stop their challenges. Defendants filed a motion for reconsideration of Magistrate Judge Graham's order requiring production of the responsive electronic documents within 28 days. Magistrate Judge Graham denied the motion. Judge Graham rejected defendants' arguments that they did not know of costs or delays earlier and thus could not have presented evidence in support of their objections to electronic discovery until they filed their objection with Judge Doty. Six days later, defendants filed another motion seeking to extend the time to produce data from back up tapes. This motion has not yet been ruled upon.



⁴ See January 4, 2007 Order, at page 12.

Ameriwood Industries, Inc. v. Liberman

In *Ameriwood*, plaintiff alleged that defendants improperly used confidential information while in plaintiff's employ to sabotage plaintiff's business relationships. Defendants asserted that plaintiff's lost sales were due to plaintiff's own mismanagement. They served a request for production of documents designed to elicit evidence showing plaintiff's mismanagement. Prior to the adoption of the federal rule amendments, plaintiff produced some documents but objected that the requests were overly broad and unduly burdensome.

In their ensuing motion to compel, defendants claimed that plaintiff failed to provide all responsive emails and electronic documents concerning a period between October 2005 and March 2006.

Plaintiff argued in response that defendants' requests were overbroad and compliance would impose an enormous burden of reviewing hundreds of thousands of electronic documents. Plaintiff submitted a supporting affidavit from an associate at a forensics firm hired specifically to assist plaintiff with its electronic discovery obligations. The affidavit stated that the associate had collected from plaintiff emails sent or received by 23 former and current employees during the months of October 2005 through March 2006 and put them in a database. The associate calculated that the emails contained in the database numbered in the hundreds of thousands. Even limiting the database to 6 employees identified by defendants resulted in a subset of 52,124 emails and 4,413 additional Microsoft Office files.

Based on plaintiff's evidentiary showing, U.S. District Judge Donald Stohr found that the requested information was not reasonably accessible. The court so found, even if the request was limited to six employees identified by defendants and involved only the smaller subset of 52,124 emails and 4,412 Microsoft Office files, and even though the documents were already available in a database. The court also found that defendants did not show good cause to order disclosure of the data because they did not narrowly tailor their requests to seek only information relevant to the affirmative defense that plaintiff's lost sales were due to its mismanagement of its business.

Lessons Learned

There are two main lessons lawyers can learn from these decisions.

- 1 **Do Not Assume.** The *Best Buy* case is a startling reminder that there is no automatic designation of back up tapes or other difficult-to-access sources as "not reasonably accessible" data under amended Rule 26(b)(2). A procedure should be followed whereby a party first objects to the request and then engages in dialogue with its opponent through correspondence. The procedure does not end there. Parties always have to make an evidentiary showing. Second chances may be rare. The producing parties in *Best Buy* either were not prepared to make such a showing or mistakenly assumed that Magistrate Judge Graham would not order the production of data from hundreds of back up tapes. The producing parties also mistakenly assumed that they would have more time to meet and confer on these issues with opposing counsel. Their attempt to fix the problem after Magistrate Judge Graham had already ruled by offering new and improved evidence was a day late and a dollar short.
- 2 **Be Prepared and Develop a Protocol for Handling E-Discovery Issues.** One of the main goals of the federal rule amendments is to focus attention on e-discovery issues at the beginning of litigation. Had the producing parties in *Best Buy* had a handle on their backup tape procedures prior to this litigation and had they thought about what proof they would need in the event of a dispute, they would not have been playing catch up. Indeed, the dispute might have never arisen.

⁵ It remains to be seen which party will actually pay for the costs of e-discovery relating to the back up tapes. Less than two weeks after Judge Doty rejected the extension, defendants filed a motion for protective order with additional, more detailed affidavits seeking to shift to Best Buy all costs relating to the back up tapes. The hearing on this motion was scheduled to occur on March 15, 2007, but on March 1, 2007, defendants withdrew their motion for protective order without prejudice to renewal of the motion at a later date.

In contrast, in *Ameriwood*, Plaintiff accompanied its argument of undue burden with an affidavit from a forensic firm that calculated the volume of electronic documents at issue. This showing carried the day, notwithstanding that the electronic documents at issue were accessible in a database.

The bottom line is that, due to the amendments, many corporations will need to develop a protocol *before* litigation to help them become “litigation ready” and compliant with the new amendments. Now is the time to develop the playbook for handling the preservation, identification, collection, review and production of ESI from the time litigation is reasonably anticipated through the discovery phase of the case.

Ronni Abramson is an attorney with the law firm of King & Spalding LLP. Please send questions or comments about this article to rabramson@kslaw.com. A version of this article was previously published in the Fulton County Daily Report on May 10, 2007.



Highlights from the Executive Committee *By Gaines P. Carter*

The Executive Committee has met three times since publication of the Spring issue of the Georgia Journal of Technology Law - on April 13, 2007, May 11, 2007, and June 8, 2007. Highlights of the March, April, and May Executive Committee meetings follow. The minutes of the June meeting will be reviewed and revised (if necessary) at the July 13, 2007 Executive Committee meeting and published in the Fall issue of the Journal.

March 9, 2007

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

Attendees M. Stewart, M. Yost, M. Steward, G. Carter, B. Young, L. Kunin, D. Keating, M. Myer, K. DeCarlo, C. Ross and S. Combs

Review Ross moved to accept, Hutchins seconds. All approved.

Old Business

- **February Meeting Recap:** Stewart – no business issues remained.
- **Spring Social Event:** Stewart – Possible venues: Gordon Biersch, C. Ross to organize.
- **Planning Discussions re: TLI 2007:** Hutchins – Oct. 30. Reception to follow. Topic List narrowed. Possible Technology Vendor – Black Duck – scans web to determine if contains Open Source. Confirmed – Ian Ballon topic – internet litigation, Ian McGuinness - Virtual Communities (business modeling). Lawrence Lessig (Stanford professor) has been invited. Other topics – SOX – Revenue recognition, etc. International Technology. IP Rights in Asia. Off-Shore outsourcing. Digital Rights Management – need to differ from previous presentation. Open Source Update. Contracts & Drafting. eDiscovery (Southern Company). Government Licensing Issues. Lunch speaker is undetermined at this point.

- **Planning for Next Quarterly Meeting (March/April):** Robinson - We have a speaker (Russ Wofford of Kilpatrick) and a topic (antitrust and the circuit split regarding how to handle the conflict between antitrust and proprietary technology, and how he thinks it is prime for resolution by the Supreme Court; also a short discussion of the antitrust law on competitor cooperation in technological development. This would touch on standard-setting, licensing, etc.) Russ is open the last week of March; right now the tentative date I have is the 29th, but I am just trying to iron out the logistical details. Stewart wants to push out so that we can publicize the event.
- **Elections:** Stewart – Committee consists of Ann Moceyunas, Suellen Bergman, Melissa Yost, Ben Young, Janine Bowen - Requesting nominations for Secretary. Window is still open. Nominations have been received.
- **Pod-Cast:** Ross/Hutchins – speaker (Hutchins & Young) determined but only equipment available is in Gwinnett. Should be done before the April Meeting. Need for the Section to get its own equipment. Carter will check to use the ARRIS equipment.
- **Journal Update:** Neufeld – Spring issue will be published in about 2 weeks; deadline for articles for Summer issue is first week of June. Looking for people interested in serving as an editor of the Journal.
- **Website Development Update:** Content Management Tool – Adobe *Contribute* is being tested. Cost ~\$150. Search engine enhancement – developer working on Google search interface. Listserv – work continuing, Combs to complete – OpenSource tool available – can interface to the website..
- **Litigation Committee:** Litigation Committee report – Myer gave report. Planning for August Quarterly meeting. Moving forward with informational requirements – i.e. each person brings a topic.
- **In-House Committee:** Combs & Marisha – new participant added. Hope to have quarterly sessions. Stewart suggest In-House take over a quarterly event (Winter event?).

New Business

- **Tech Law Section Sponsorship of Opening Night:** Budget is a bit tight. Copper or max Bronze. Hutchins moved to decline their kind offer. Stewart motioned. Carter seconded. budget is a bit tight. Copper or max Bronze. Hutchins moved to decline their kind offer. Stewart motioned. Carter seconded.
- **Next Meeting Date/Location:** Stewart/Hutchins - April 13th at Troutman Sanders.
- **Closing:** Meeting adjourned at 8:14 AM.

April 13, 2007

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

Attendees M. Stewart, M. Yost, G. Carter, B. Young, L. Kunin, C. Ross, S. Combs, E. Robinson, B. Neufeld.

Review Ross moved to accept, Kunin seconds. All approved.

Old Business

- **January Meeting Recap:** Stewart – no business issues remained.
- **Spring Social Event:** Ross –venue set: Date: May 15, 2007, Gordon Biersche, 40 drink tickets, Tapas platter, located in upstairs area. Total cost \$716.80 (unless drink tickets are used up).
- **Planning Discussions re: TLI 2007:** Misc. – follow-up reception at the Bar this year. Diversity has been improved. Speakers are mostly confirmed.

- **Planning for Next Quarterly Meeting (March/April):** Robinson – Thursday at AGG, Wofford is speaker – Anti-Trust is topic.
- **Elections:** Stewart. Chuck Ross is the nominee. Ballots have been sent to members. Currently in the lead.
- **Pod-Cast:** Ross/Hutchins – speaker (Hutchins & Young) determined but only equipment available is in Gwinnett. Carter will check to use the ARRIS equipment. Hutchins & Young will do first podcast on employee blogs. First will be either at ARRIS or after next Exec meeting. Need to make this the lead of next newsletter. Send general notice to the EC.
- **Journal Update:** Neufeld – Spring issue was published around April 1, 2007; deadline for articles for Summer issue is first week of June. Trying to contact Ron Jackson. Need to put ad in the newsletter asking for a new person to update the Legislative issues.
- **Website Development Update:** no update.
- **In-House Committee:** no update.
- **Annual Meeting:** need ideas for the next event (normally last week of June). Stewart to look for items.
- **Litigation Committee:** Litigation Committee report – Kunin – meeting will be educational event. E-Discovery Update – decisions are starting to come out on the new rules. Need new members. Need to place ads in the newsletter.

New Business

- Need new ideas for remainder of this year and next year.
- Need better procedure for getting mugs to speakers.
- Next Meeting Date/Location – Stewart – May 11th at Troutman Sanders.
- Meeting adjourned at 8:13 AM.

May 11, 2007

Mike Stewart opened the meeting at 7:43 a.m.

Attendees M. Stewart, M. Steward, J. Hutchins, G. Carter, B. Neufeld, E. Robinson, B. Young, Larry Kunin, S. Combs, M. Myer.

Review Hutchins moved to accept, Robinson seconds. All approved.

Old Business

- **April Meeting Recap:** Stewart – Thanks to Erinn Robinson for planning – event covered current issues & cases (Erinn to provide the presentation material for the web site).
- **Spring Social Event:** Ross – Date: May 15, 2007, to be held at Gordon Biersch, 40 drink tickets purchased by Section, food provided will be Tapas platter and pizzas, located in upstairs area. Estimated total cost \$716.80.
- **Planning Discussions re: TLI 2007:** draft agenda has been circulated. Faculty has been confirmed. Reception to be organized by Gaines Carter, travel arrangements in progress. Need to send out the releases to the speakers. TLI has adopted the ABA Litigation travel policy for costs.

- **Elections:** Stewart. Chuck Ross is the nominee. Ballots did go out to all Tech Section members and were due back.
- **Pod-Cast:** Ross/Hutchins – speaker (Hutchins & Young). Young and Hutchins to prepare and coordinate the creation of the first Podcast. Need to plan future podcasts – Hutchins to discuss with C. Ross.
- **Journal Update:** Neufeld – Seeking volunteers interested in serving as editors for the Journal.
- **Website Development Update::** Adobe *Contribute* being used to update the website. MMM purchased license being used by Combs. Podcast page to be added to the section website. Web designer updates – search engine in progress, photographs from events to be added (B. Young to supply the photographs). Estimate \$150 for adding Listserv to web site.
- **In-House Committee:** Combs – seven confirmed members: Earthlink, ING, ADP, MMM, Checkfree. Combs has program for recruiting new members. Luncheon to be scheduled within the next two weeks.
- **Annual Meeting:** Topic will be negotiating technology licenses/software acquisitions. No date established – possibly last week in June.
- **Litigation Committee:** Kunin –will handle the Summer Quarterly Meeting (to be August/September).

New Business

- Recruiting new members to committee.
- Stewart reviewed the budget.
- Need better procedure for getting mugs to speakers.
- Next Meeting Date/Location – Stewart – June 8th at Troutman Sanders.
- Meeting adjourned at 8:31 AM.



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.

