

GEORGIA JOURNAL OF TECHNOLOGY LAW

Technology Law Section
State Bar of Georgia

Winter 2006
Volume 2, No. 2

21st Annual Technology Law Institute

By Benjamin L. Young

The 21st Annual Technology Law Institute (TLI), co-sponsored by the Technology Law Section and ICLE, was held on October 17, 2006, at the Georgia State Bar Conference Center. The day-long program featured nationally and internationally known speakers on topics such as contract drafting from the litigation and transactional perspectives, the social and legal challenges associated with new forms of communications, and the tension between harmful anonymous activity on the Internet and First Amendment protections. This premier annual event once again proved to be a great success, and over 120 attorneys and members of the Georgia technology and business community were in attendance.

The TLI also incorporated a special, “around-the-world” wine-tasting and dinner held at McCormick & Schmick’s restaurant at the Atlanta CNN Center. Free transportation in a historic trolley bus was provided for the TLI attendees to and from the restaurant throughout the course of the evening. This unique networking event provided an opportunity



TLI attendees networking at the wine-tasting event.



TLI attendees enjoying the lunch session at the facilities at the State Bar's headquarters.

Table of Contents

Section Events & Announcements

Section Annual Meeting	1
Section Contacts	2
Editor's Notes	2
From the Chair	3
Give Your Old Computer New Life	6
Journal Contributions	6
Volunteer Opportunities	9
Join the Section	10
Future Journal Topics	10
Calendar of Events	10
Executive Committee Highlights	11
Fall Quarterly Luncheon	12

Articles

Disk Imaging - Fair Use?	4
“Exit Strategies”	7

for the Technology Law Section members and other TLI attendees to mingle and meet each other while tasting wines and foods from around the world.

The following are photos of the TLI and wine-tasting event, provided by Ben Young, Section Historian.



The panel pictured above speaking on emerging technologies included: Richard P. Keck, Duane Morris LLP; Paul H. Arne, Morris, Manning & Martin LLP; W. Richard Smith, Law Office of W. Richard Smith; and Brett Lockwood, Smith Gambrell & Russell.

Technology Law Section

Michael K. Stewart
Section Chair
Friend, Hudak & Harris, LLP
mstewart@fh2.com
770.399.9500

John P. Hutchins
Section Vice Chair
Troutman Sanders LLP
john.hutchins@troutmansanders.com
404.885.3460

Gaines P. Carter
Section Secretary
ARRIS International Inc.
Gaines.Carter@arrisi.com
678.473.8954

Suellen W. Bergman
Chair Emeritus
King & Spalding LLP
sbergman@kslaw.com
404.572.4600

Robert T. Neufeld
GA Journal of Technology Law, Editor
King & Spalding LLP
rneufeld@kslaw.com
404.572.3505

Stephen B. Combs
Website Manager
Morris Manning Martin LLP
scombs@mmmlaw.com
404.495.3655

Benjamin Young
Section Historian
Troutman Sanders LLP
ben.young@troutmansanders.com
404.885.3212

Jennifer Zeidwig
Section Graphic Designer
Powell Goldstein LLP
jzeidwig@pogolaw.com
404.572.6980

Johanna Merrill
Section Liaison
State Bar of Georgia
Johanna@gabar.org
404.527.8774

Georgia Journal of Technology Law is published four times per year (quarterly) by the Technology Law Section of the State Bar of Georgia, 104 Marietta Street, N.W., Atlanta, GA 30303. Opinions and conclusions expressed in articles herein are those of their authors and are not necessarily those of the Section. Copyright 2006 Technology Law Section of the State Bar of Georgia. All rights reserved.

Editor's Notes *By Robert T. Neufeld*

As we close out the calendar year, the Technology Law Section continues to serve its members in a variety of capacities. As the Chair's Column from Michael Stewart summarizes, the Section has completed another year of successful programs and events for its members. In your review of this issue of the Section newsletter, I encourage you to heed the Chair's suggestion and think about how you might get involved in the Technology Law Section in the new year.

This issue of the Section's newsletter features an interesting piece from a new contributor and an article from one of our regular writers. Our new contributor, Tom Traylor, lends his expertise from his work as a technology lawyer for the Hartsfield-Jackson Atlanta International Airport. Tom's article analyzes a recent decision from the Ninth Circuit concerning the copyright implications of certain methods of distributing software over a network. Tom's article is timely and should be of interest to both in-house and outside counsel that provide advice about software licensing in a network environment.

Our regular columnist, Dennis Gerschick returns in this issue with an article discussing exit strategies for businesses. Dennis leverages his considerable business and legal experience to share insights on the benefits and burdens associated with being a publicly traded company and alternatives to "going public."

Also included in this issue are two articles from our Section Historian, Benjamin Young. Ben's articles capture two recent events the Section sponsored. As Ben's articles describe, the Section continues to offer insightful programs that are of interest to the members. If you are interested in organizing or speaking at a future Technology Law Section event, please reach out to the Executive Committee and share your thoughts.

I hope that our Section members have a great New Year.

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 rneufeld@kslaw.com.



From the Chair *By Michael K. Stewart*

GREETINGS! As 2006 draws to a close, I am proud to look back on all that the Section has accomplished this year, especially in the last few months.

As is its tradition, the Section brought its members a variety of high-quality, informative seminars about issues which are important to technology law practitioners. In September, the Section's quarterly meeting focused on buying and selling distressed technology companies; this seminar, hosted by Robert Mercer and featuring James D. Decker of Alvarez & Marsal Corporate Finance and Paul K. Ferdinands of King & Spalding LLP, was a big success, with 60 people in attendance.



In October, the Section hosted (and co-sponsored, along with ICLE of Georgia) the 21st Annual Technology Law Institute, kicking off the third decade for this Section institution. I am happy to note that there were over 120 attendees at the Institute, making it the highest-attended Technology Law Institute in several years. The individual presenters were very well-received and the presentations praised as "extremely timely", and I personally thank all of the presenters for their hard work. However, technology

lawyers were not the only ones who benefited from this event, as the event's success permitted the Section to donate over \$1200.00 to TECH CORPS Georgia, a local non-profit organization that works to increase the access to information technology for underprivileged students and families.

By the time you read this, the Section will have also held its Fall Quarterly Meeting, which is scheduled for December 6. This program will be hosted by Larry Kunin, Chair of the Section's Litigation Committee, and will feature co-presenters John M. Bowler of Troutman Sanders LLP and Steven W. Hardy of Friend, Hudak & Harris, LLP. The presentation will provide an overview of the new electronic discovery rules in the Federal Rules of Civil Procedure.

But the key thing to remember about each of these events - and all of the other events the Section hosts each year, such as CLEs and social networking events - is that they are planned *by* the members of the Section *for* the members of the Section. These events simply would not happen without the hard work of members of the Section who have decided to get involved and maximize the benefit of the Section to all of its members. If you would like to become more active in planning future events and Section projects, I urge you to contact me about joining the Section's Executive Committee, or at least contact me with any thoughts or ideas as to ways to make the Section more worthwhile for its members.

I look forward to seeing you at the next Section event.

Best regards,
Michael K. 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 he earned 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.





Disk Imaging - Fair Use?

By Thomas Traylor

Many IT departments use “disk imaging” to efficiently distribute uniform software packages to client computers. A “disk image” is created by installing the entire set of software (including the operating system, word processor, spreadsheet, and other applications) onto one template machine. Using special software, a disk image is created of the computer’s hard drive – essentially

a binary snapshot of the data. The disk image then can be uniformly and efficiently distributed to all computers on the network. Automating the installation process saves a tremendous amount of time over the traditional method of installing applications individually on each computer.

Recently, this practice by the Los Angeles Sheriff’s Department (the “Sheriff’s Department”) became the subject of copyright infringement litigation. In *Wall Data Inc. v. Los Angeles*, 447 F.3d 769 (9th Cir. 2006), the Sheriff’s Department purchased a total of 3,663 licenses to use two different versions of Wall Data’s RUMBA software product. This software needed to be installed on computers at the county’s new detention facility. After 750 manual installations of the software on detention facility computers, it became clear that the opening of the detention facility would be delayed unless the Sheriff’s Department found a more efficient way to install the RUMBA software. Compounding the problem, it was not clear at the time of installation which computers needed the RUMBA software because employee workstation assignments varied.

As a result of these issues, the IT department created a disk image of a baseline set of applications for installation on the computers, which included the RUMBA software. When the software deployment using the disk image was complete, 6,007 computers had the RUMBA software installed. However, the Sheriff’s Department had purchased only 3,663 licenses to use the RUMBA software. In an attempt to limit the number of users of the RUMBA software, the Sheriff’s Department configured a password system so that the number of RUMBA software users could not exceed the number of licenses at any given point in time.

Wall Data filed suit against the Sheriff’s Department for copyright infringement (and several other claims that did not make it to trial). Wall Data contended that the Sheriff’s Department had over-installed the RUMBA software and violated the licensing terms of the shrink-wrap, click-through, and volume licensing agreements. The Sheriff’s Department relied on two affirmative defenses: (1) the disk imaging of the RUMBA software was a “fair use” under 17 U.S.C.A. § 107; and (2) the disk imaging of the RUMBA software was an “essential step” to executing the software code under 17 U.S.C.A. § 117(a)(1). The trial court granted partial summary judgment to Wall Data on the Sheriff’s Department’s fair use defense. After a jury trial, the Sheriff’s Department was found liable for copyright infringement. Wall Data was awarded more than \$750,000 in damages, attorneys’ fees, and costs.

On appeal, the Ninth Circuit reviewed the grant of summary judgment against the Sheriff’s Department on its fair use defense, evidentiary rulings related to the fair use and essential step defenses, the jury instructions regarding the essential step defense, and the award of attorneys’ fees and costs. The scope of this article is limited to the fair use enumeration of error.

The court balanced four factors in making a *de novo* evaluation of whether the use of the copyrighted material was fair. The user of the fair use defense does not need to prevail on all four factors; rather, the

court will balance them. The factors are: (i) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; (ii) the nature of the copyrighted work; (iii) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (iv) the effect of the use upon the potential market for or value of the copyrighted work.

The court found that the first factor weighed in favor of Wall Data because the nature of the Sheriff's Department's use of the RUMBA software was not transformative; rather, exact copies of the software were created for an identical use as the original software. Also, the disk imaging of the RUMBA software was found to not promote the ultimate goals of copyright law. The Sheriff's Department's argument that the use was commercially insignificant was not persuasive, despite the fact that not all of the copies of the software were actually used and that the Sheriff's Department did not compete commercially with Wall Data. Ultimately, the court found that the purpose and character of the Sheriff's Department's use was commercial because the use was designed to avoid either the expense of purchasing more licenses or the expense of purchasing a less rigid license. The court notably did not find the efficiency component of using a disk imaging deployment method a *per se* problem. The Sheriff's Department could have used disk imaging permissibly to efficiently deploy the RUMBA software, if the Sheriff's Department had limited the deployment to 3,663 computers.



The second fair use factor weighed against the Sheriff's Department because Wall Data established that development of the RUMBA software was a multi-year and multi-million dollar effort. The third factor also weighed against the Sheriff's Department because the disk imaging of the RUMBA software created verbatim reproductions of the original work for the exact purpose as the original work.

Perhaps, the most damaging fact for the Sheriff's Department under the analysis of the fourth factor was an email written by a Sheriff's Department

employee to Wall Data in which he admitted that he, "did not know how to tell which [computers] RUMBA is used on and on which ones it has never been used." *Id.* at 783. Not surprisingly, this email was the subject of a motion in limine that the Sheriff's Department lost. The court found that the lack of precision in the Sheriff's Department's attempt to limit users of the RUMBA software made infringement easier and detection of over-use more difficult. This led the court to find that the Sheriff's Department's use of disk imaging could seriously impact the market for Wall Data's products. Having lost on all four factors, the court easily found that the Sheriff's Department was not entitled to a fair use defense and the grant of summary judgment on this issue was affirmed.

Certainly, the lesson to take away from this case is that better software deployment technology, such as disk imaging, can accelerate the speed that your client can get into copyright trouble. This is true even where the user is trying to "do the right thing" as the Sheriff's Department apparently attempted to do by creating its own access limitation system for the software. However well intentioned, the Sheriff's Department's use of the software did not fit the reality of the software license's use limitations.

The Sheriff's Department could have negotiated a different license structure. One approach is to negotiate an enterprise license where there are an unlimited number of license "seats," within a specific numerical range (i.e. 1 - 5,000). Some variations of these types of licenses have an annual reconciliation to true-up the actual number of users, while others do not require reconciliation. Another alternative license structure is

a concurrent license structure whereby a server would limit the number of simultaneous users of the software. Under this approach, the software is installed on a server that allows multiple users to have concurrent access to the software. Essentially, the software's application logic runs on the server, while presenting the software to the user as if it were installed locally on their computer. Software such as Presentation Server™ by Citrix® or Windows® Terminal Services by Microsoft® is commonly used for this purpose. Or, the Sheriff's Department could have negotiated the right to install the RUMBA software across the organization, while certifying that it would limit the number of users to the number of licenses purchased (a finite number of employees would use the software, although access to the software would be available from any department computer). In the end, this litigation could have been avoided by carefully tailoring the licensing structure of the software to the day-to-day realities of use.



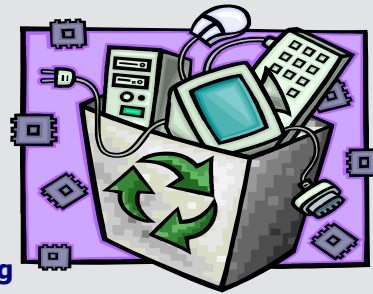
Tom Traylor is technology counsel for the Hartsfield-Jackson Atlanta International Airport. He handles technology transactions, intellectual property issues, and telecommunication matters for the airport. Tom attended the University of Georgia where he earned a B.B.A. in Management Information Systems. After college, he earned a J.D. from Mercer University School of Law. Tom can be reached at 404-530-2371 or thomas.traylor@atlanta-airport.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



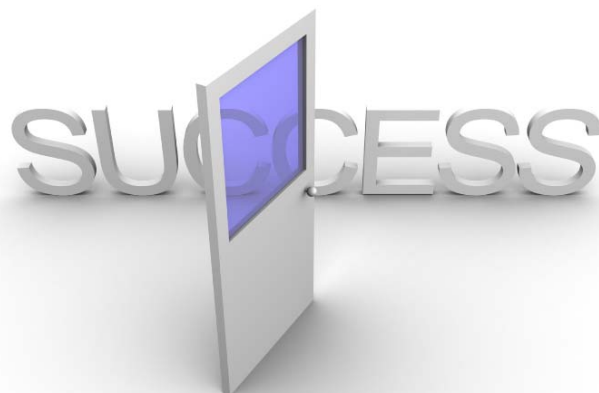
Technology Law Journal Contributors Move On To Bigger Ponds!

Would you like to be published in the *Georgia Bar Journal*? Would you like to give your article a "test drive" first? If so, CONTRIBUTE AN ARTICLE to the Technology Law Journal. The Technology Law Section's Executive Committee nominates one article from each issue of the Sections's quarterly publication for submission to the *Georgia Bar Journal*. Several of our recent nominations have been published.

If you would like to showcase your practice for the Technology Law Section and the entire Georgia Bar, consider submitting an article for publication to: Robert Neufeld, Editor, at rneufeld@wcsr.com or 404.879.2460.

“Exit Strategies” *By Dennis J. Gerschick, CPA, Attorney, CFA*

Savvy investors think about not only what companies they should invest in, but also how they will liquidate their investment in any private or closely-held company. For such a company, whose stock is not publicly traded, this presents a challenge. Before discussing potential exit strategies, the company’s founders and investors should discuss what their future goals and plans for the company are. Some founders want to build a company, which they will control for many years, while others want to sell it as soon as possible. Consider whether the shareholders have a conflict in their goals for the company?



While many people think of “going public” as a glamorous event that adds value to a company, there are also many disadvantages to being a publicly-traded corporation and “going public” is not appropriate for every company. The expense and “hassle” of complying with Sarbanes-Oxley is undoubtedly causing some companies to consider “going private.” However, since most investors want to liquidate their investment at some point in the future, it makes sense to consider how they will liquidate their investment in a private company.

The option that is considered most frequently is whether the company will “go public.” The parties should focus on whether it is feasible for the company to “go public.” If it is, the investor may then want to focus on registration rights – both demand and piggyback. An IPO was not a viable strategy for most companies during the years 2000 – 2003. Prior to the dot com bust, companies were going public with no profits. Amazon.com was an example of this and in its prospectus it noted that it was not profitable and it could not even predict when it would become profitable. In spite of this, Amazon.com went public and had a multi-billion dollar market capitalization. An investment professional, who was interviewed on TV, in December, 2003, noted that the average revenue for a company that went public in 1999 was \$17 million but the average revenue for a company going public in 2003 was more than \$220 million. Obviously, the current market is demanding more substance of the companies that go public. Recently, the IPO markets started to have more activity so “going public” might be considered a viable exit strategy again.

Going public is a very time consuming and expensive process. Companies and investors should not fool themselves. Many companies will not be able to go public. However, if going public is a realistic possibility, then it is prudent to plan for the IPO. The company should conduct itself so that the IPO process goes as smoothly as possible. Planning for an IPO involves many steps and a detailed discussion is beyond the scope of this article. However, the company should have: (1) audited financial statements; (2) try to keep the capital structure as simple as possible and require various classes of preferred stock to convert to common stock upon an IPO; and (3) have a balanced, competent management team.

One alternative to “going public” is merging a private company into a publicly-traded “shell” corporation. There are some publicly-traded corporations that have little or no activity and are referred to as “shells.” The idea is to merge the private company into the public shell so then you have a publicly-traded company without all of the disadvantages of “going public.” Of course, as with most things in life, there are also disadvantages to doing a reverse merger. The disadvantages include:

1. The public shell already has shareholders and by merging the private company into the public shell, the shareholders of the private company are, in effective, transferring part of the value of the private company to the existing shareholders of the public shell. In other words, the existing shareholders of the public shell will continue to own part of the company after the private company is merged into it. The key question is what percentage of the combined company's should the previously existing shareholders of the public shell own?



2. While many people may claim that the public shell is “clean”, the shareholders of the private company may never know for sure until it is too late. In other words, the public shell may have undisclosed liabilities, undisclosed litigation, or lawsuits may be filed in the future for acts taken by representatives of the public shell corporation prior to the merger. In short, there is a risk in dealing with another entity, which the private company did not control or have dealings with before the merger.
3. While going public is a time consuming and expensive process, there are also advantages to it. Doing the “road show” in effect advertises the company and promotes it. Certainly more attention will be paid to the private company going public than it would otherwise receive through a reverse merger.

Perhaps, the most likely exit strategy for most companies is a sale of the company. An important issue to consider is the extent an investor can dictate or influence whether the company is sold. Most VC funds acquire minority interests in companies. Consequently, in the absence of some contractual provision, they will not be able to dictate the sale of the company. This is often a critical issue because most investors want to liquidate their investments at some point, especially if they can realize a profit. There are many stories in which companies could have been sold for millions of dollars but the founder-majority shareholder vetoed the sale claiming that the proposed sales price was too low and they held out for a much higher price. However, many of those companies declined in value and could not be sold. In short, the founder's greed prevented the investors from realizing a profit. The way to resolve this problem may be with the use of a “put” option discussed below.

Some investors may request or demand a “put” option. The put option would allow the investor to demand that the company redeem the investor's interest in the company. There are several issues that arise with a put option. One, what is to be the purchase price if the put option is exercised? Can the parties agree in advance, upon some valuation formula? Is a valuation to be prepared by an independent valuation expert? If so, who selects the valuation expert? Who pays the expert's fee? Two, what will be the payment terms? Lump-sum or installment payments? Three, will the company have the cash or ability to borrow money, in order to pay the redemption price, when the put-option is exercised? Four, what will be the penalty if the company fails to comply when the investor exercises the put option? Five, when can the put option be exercised? Typically, it can be exercised only after some specified period of time such as three years.

To address the potential problem noted above, where the majority shareholder blocks a sale, the investor might have the right to exercise the put option at that time. In other words, the put option can be exercised only if the minority shareholders want the company sold at the offered price but the majority shareholder

declines the offer. If the majority shareholder fails to pay the exercise price of the put option, the penalty may be that the majority shareholder forfeits their right to vote on the proposed sale to a third party.

If a sale of the company is contemplated, the company would be well advised to prepare itself for such sale. Such preparation may include: (1) having its financial statements audited; (2) making sure that its books and records are up to date and in good order; (3) minimizing expenses and maximizing net profits because the sales price is often a multiple of net profits; and (4) making sure that its intellectual property and other valuable assets are properly protected.

In conclusion, raising capital is a “two way street.” Companies want the investors’ money but should consider what they have to provide to obtain it. Are the terms reasonable or too onerous? Companies seeking capital should consider their investors’ goals and try to take them into account in planning for the company.

© 2004 All Rights Reserved. Dennis J. Gerschick



Dennis Gerschick is an attorney, CPA, and chartered financial analyst. Gerschick practiced law for 16 years before starting a VC fund; Gerschick is President of VenCap Advisory Group, Inc., which is the general partner of VenCap Opportunities Fund, L.P., a venture capital fund in Atlanta, Georgia. He can be reached at 770.792.7444 or at DGerschick@aol.com.



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.techcorp.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.

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**

If you have any suggestions for future topics you would like to see addressed in the Journal relating to financing a company or issues that arise with startups or early stage companies, please email them to **Dennis Gerschick at dennis@gerschick.com**



GEORGIA JOURNAL OF TECHNOLOGY LAW

Technology Law Section Networking Event

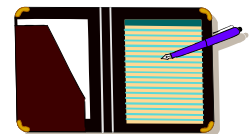
Table of Contents

Participate in the Technology Law Section!

Learn About Emerging Companies (P) Portfolio From The Experts. See Pg. 10 for details.

Visit the Technology Law Section website at www.computerlaw.org

Calendar of Upcoming Events



Executive Committee Meeting
Troutman Sanders LLP
600 Peachtree Street, NE, Suite 5200, Atlanta

January 12, 2007
7:30 am

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

The Executive Committee has met once since publication of the Fall issue of the Georgia Journal of Technology Law - on November 10, 2006. Highlights of the September 8, 2006 Executive Committee meeting follow. The minutes of the November 10th meeting will be reviewed and revised (if necessary) at the January 12, 2007 Executive Committee meeting and published in the Spring issue of the Journal.

September 8, 2006

Mike Stewart opened the meeting at 7:45 a.m..

Attendees Gaines Carter, John Hutchins, Mike Stewart, Bob Neufeld, Suellen Bergman, Chris Chan, Mari Myer and Mike Volmer

Review August Meeting Minutes. Suellen Bergman motioned to approve August Minutes subject to corrections, John Hutchins second. All voted in favor.

Old Business

- **TLI 2006 Update** – Mike Stewart. Some papers received. Marketing materials reviewed. Corporate Counsel & General Practice will distribute the new material. Johanna to distribute to Technology Law Section. Speakers confirmed. Cost now \$165/\$185 (on-site).
- **TLI Networking Event Update** – John Hutchins. Plans complete. Cost paid by the Technology Law Section: Trolley will cost \$495 (prepaid). Event will cost approx. \$3,800 depending on alcohol consumed.
- **Marketing Committee report** – Chris Chan and Mike Vollmer. Chris Chan - Marketing TLI to law firms & in-house (Bell South, Coca Cola, etc.) emails to be sent in next 2 to 3 days. Minor typo changes in marketing material. General Marketing – no updates.
- **Pod-Cast** – Ross by Hutchins – topic is Blogging. Hutchins to be interviewed by Ben Young.
- **Journal Update** – Bob Neufeld. Today (9/8/2006) is the deadline for articles. Expecting 2 more articles. Journal to be published in next 10 days.
- **Website Development Update** – tabled until next meeting.
- **Ad Update** – "dial in from beyond Atlanta" response (if any) – Chris Chan. No responses from ad.
- **Pay money** – Journal ad for "beyond Metro Atlanta" participation in EC – Chris Chan. Cost appears to outweigh benefit; EC agreed.
- **Litigation Committee** – L. Kunin absent – update via email - next meeting of Committee is set for September 22 at which time we will prepare for the December Quarterly luncheon.
- **Summer Quarterly luncheon** - "Buying Distressed Companies" Speakers set. It will be at Powell Goldstein on September 12th.

Old Business

- **Next Meeting/Date/Location** – Mike Stewart and John Hutchins. Friday, October 13, at Troutman Sanders.
- **Presentation of Superlative Awards** – Suellen Bergman.
- **Miscellaneous** – discussion regarding TLI and marketing.



Meeting adjourned by Mike Stewart at 8:08 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.



Fall Quarterly Luncheon *by Benjamin Young*

On Tuesday, September 12, 2006, the Technology Law Section held its Fall Quarterly luncheon at the office of Powell Goldstein LLP. The Seminar, titled “What Every Lawyer Should Know About the Sale of a Distressed Technology Company,” was presented by James D. Decker, Managing Director of Alvarez & Marsal Corporate Finance, Paul K. Ferdinands, Esq. of King & Spalding LLP, and Robert M.D. Mercer, Esq. of Powell Goldstein LLP.



The presentation covered the nuts and bolts of buying and selling a financially distressed technology company both inside and outside of bankruptcy. The issues were addressed from the perspective of counsel for the technology company, counsel for the purchaser, and counsel for the owner of the affected intellectual property.

The panelists first discussed the general process of perfecting the security interest in intellectual property. The discussion then moved to the impact of bankruptcy filings on IP license obligations, and highlighted the steps the licensees should take under Section 365(n) of the Bankruptcy Code to ensure that their license rights are protected. Next, rejection, assumption, and assignment issues were covered with respect to patent, copyright, and trademark law, including an explanation of a party’s options in the event a license is rejected, assumed, or assigned during bankruptcy. Throughout the seminar, the presenters touched upon the differences between the sale of a financially distressed technology company versus a financially healthy technology company, including an informative question and answer session with the audience regarding the challenges associated with buying a financially distressed technology company.

Seminar materials were prepared by Robert M.D. Mercer and J. Cleve Hill, Esq., also of Powell Goldstein LLP. There were 60 people in attendance. The Section would like to thank Mr. Decker, Mr. Ferdinands, Mr. Mercer, and Mr. Hill for their participation and Powell Goldstein LLP for hosting the seminar.