

Internet Research for Legal Professionals in New Mexico

- Jeffrey D. Myers; Peacock, Myers & Adams, P.C.; jmyers@PeacockLaw.com; <http://www.PeacockLaw.com>
- Patrick Fry; Patrick Fry Consulting Services; pfry@nm.net

Introduction to the Internet

- Fundamentals of the Internet
- Basic Internet Terminology
 - World Wide Web (WWW or “The Web”)
 - Electronic Mail (Email)
 - Listserv
 - Internet Relay Chat (IRC or Chat)
 - News (or Usenet News)
- Domain Names, Addresses, ISPs

Fundamentals of the Internet

- Simply a world-wide group of interconnected computers
- Originally DOD sponsored, was military and academic (and so non-commercial)
- ARPA -> DARPA -> NSF -> Private Mix
- Significant commercial activity only in last decade

Basic Internet Terminology -- Handy Online Resources

- Learning Tree @
[http://people.ne.mediaone.net/walthowe/
ilrntree.html](http://people.ne.mediaone.net/walthowe/ilrntree.html)
- Internet Glossary @
[http://www.delphi.com/navnet/faq/
glossary.html](http://www.delphi.com/navnet/faq/
glossary.html)

Basic Internet Terminology -- World Wide Web (WWW)

- The multimedia portion of the Internet
- Internet computers deliver “pages” of HTML (Hypertext Markup Language) documents universally translatable
- E.g., URL (Uniform Resource Locator):
<http://www.PeacockLaw.com>
- Usually see text and graphics; Look behind the scenes at the HTML

Basic Internet Terminology -- Electronic Mail (Email)

- Send messages to an “email address”
- Send to one or more recipients
- May send with documents attached, such as a brief in Microsoft Word Office97 format
- Success rate high but keep important messages in “Sent” folder
- Errors may or may not be reported

Basic Internet Terminology -- Listserv

- An automatic device which receives messages and delivers to user list
- Usually topic oriented: e.g., patent law, pugs, or your favorite author
- Moderated or unmoderated
- Similar to news or topic-oriented web pages with discussion area, but usually more on-topic and with less “spam”

Basic Internet Terminology -- Internet Relay Chat (IRC)

- Live topic-oriented typed discussions
- Held in a “chat room”
- Can be 24-hour always same location
- Can be one-time only event (such as chat with the Rolling Stones)

Basic Internet Terminology -- News (or Usenet News)

- Every topic under the sun
- Each “newsgroup” is purportedly devoted to a single topic (e.g., alt.music.gdead)
- In practice, lots of spam
- <http://www.deja.com>

Domain Names and Addresses

- Computers organized in hierarchic structure
- Top level -- com, org, gov, edu, net, uk
- Second level -- often descriptive, rt66.com, uspto.gov, unm.edu
- Third level -- often individual computer, mack.rt66.com, hydra.unm.edu
- Address -- username@domain-name

Internet Service Providers (ISPs)

- Local -- swcp, rt66, technet, roadrunner
- National -- aol, compuserve, junos
- Provide an email address
- Provide hookup to internet / web
- Can provide software, if needed
- Can provide additional capabilities, such as personal domain (PeacockLaw.com)

Special Issues and the World Wide Web

- Security and Privacy Issues
- Advertising Guidelines
- Ethical Use of Email
- Trademark Issues
- Copyright Infringement
- E-Commerce Patenting

Security and Privacy -- Topics

- Privacy Threats and Countermeasures
- Computer Crimes
- Trade Secrets
- Rights of Privacy and Publicity

Privacy Threats & Countermeasures (1)

- Unsolicited Email
 - No different than junk mail? Use filters . . .
- Computer Hacking; Viruses and Worms
- Ease of Copying Materials
- Access of Web Sites recorded
 - Assume you are identifiable
 - Use <http://www.anonymizer.com>

Privacy Threats & Countermeasures (2)

- Get Virus scanning software, such as Norton Antivirus Corporate Edition
- Scan all email, executables, and documents; update pattern files regularly
- Cookies unlikely threat, but provide limited information about your browsing habits

Privacy Threats & Countermeasures (3)

- Check for SpyWare (which collect browsing habits for advertising resale purposes) using OptOut at <http://www.grc.com>
- For Intranets, employ firewalls; quick check with ShieldsUp at <http://www.grc.com>
- Lock up sensitive computers; perhaps detach from all networks
- Have a security audit performed

Privacy Threats & Countermeasures (4)

- Encryption -- Pretty Good Privacy (<http://web.mit.edu/network/pgp.html>)
- Certificates (<http://www.verisign.com>)
- Knowledge
 - Information Technology Association of America (<http://www.ita.org>)
 - Electronic Privacy Information Center (<http://www.epic.org>)

Privacy Related Computer Crimes (1)

- State
 - Computer Abuse -- NMSA § 30-45-4
 - Willfully and without authorization altering, changing, damaging, disrupting, or destroying any computer, network, software, database, . . .

Privacy Related Computer Crimes (2)

- Federal - Miscellaneous
 - Wire Fraud, 18 U.S.C. § 1343
 - Scheme or artifice to defraud
 - Obscenity, 18 U.S.C. § 1465
 - What is the applicable community standard?
 - Copyright Infringement, 17 U.S.C. § 506
 - Willful infringement, retail value above \$1,000
 - Must be for purpose of “commercial advantage” or “private financial gain”

Privacy Related Computer Crimes (3)

- Federal - 18 U.S.C. § 2701 et seq.
 - Electronic Communications Privacy Act (ECPA)
 - Intentional access without authorization a facility through which an electronic communication service is provided; or
 - Exceeds authorization and obtains, alters, or prevents authorized access to e-mail
 - Civil Action, may receive attorney's fees and punitive damages, 18 U.S.C. § 2707

Trade Secrets (1)

- Trade secrets protected by state and federal statute and common law
- Uniform Trade Secret Act; NMSA Chapter 57, Article 3A
- Federal Act; 18 USC Secs. 1831 et seq.

Trade Secrets (2)

- In short, anything held secret which grants a competitive advantage over competitors
- Technological processes, formulas, customer and supplier lists, etc.
- Watch for accidental exposure over Internet via Web Site or security glitch

Appropriation of Name or Likeness (1)

- Restatement (Second) of Torts § 652C
- Occurs when one's name or likeness is appropriated for another's benefit
- Dispute as to whether benefit must be commercial
 - Blends into Right of Publicity if so
 - Restatement (Second) of Torts § 652C comment d supports commercial requirement

Appropriation of Name or Likeness (2)

- Sub-tort sometimes called simply “Appropriation” or “Misappropriation”
- Relationship to right of publicity
 - Some courts treat identically
 - Some distinguish on damages available (commercial value of persona v. mental injury)
 - Others point to non-commercial benefits may be covered by appropriation tort

Related Right of Publicity (1)

- Involves control over legal right to exploit name, image, or character traits of a living (and in some states, dead) person
- Prevents unauthorized commercial use of:
 - name;
 - likeness (including lookalikes (Vanna White));
 - voice (soundalikes (Bette Midler)); or
 - other identifying feature (“Here’s Johnny!”).

Related Right of Publicity (2)

- Varies widely between jurisdictions
- Usually a matter of state common law (NM)
- Some states have statutes of varying scopes (e.g., CA, FL, KE, MA, NY, TN, TX, VA, WI)
- OK to have incidental use in content (e.g., panning crowd in public places)
- But best to get waiver, if possible

Related Right of Publicity (3)

- Usually joined with right of privacy claim
- Advertising v. Protected Uses
 - Advertising is per se commercial use
 - Reporting of news considered not and is protected by First Amendment
 - Multitude of gray areas

Related Right of Publicity (4)

- Survival
 - Some states, expires like privacy rights at death (e.g., New York and Ohio) (NM??)
 - Others, continues after death
 - Common law, NJ (Elvis Presley)
 - Statute, CA (50 years), FL (40 years), TN (10 years)
- Transferability
 - Usually freely assignable and licenseable

Advertising -- Designing and Maintaining a Home Page

- Learn HTML
 - L. Aronson, *HTML Manual of Style*
 - <http://www.ncsa.uiuc.edu/General/Internet/WWW/HTMLPrimer.html>
- Look at How Other Web Pages Work (In Browser, View - Source)
- Use auto-HTML formatting options of Word
- Don't Copy Without Permission

Advertising -- Ethics

- **LAWYER ADVERTISEMENT** at top of each page
- Submit to Legal Advertising Committee of the Disciplinary Board; Filing Fee = \$50.00
- Form on page 171 of 2000-2001 New Mexico Bench & Bar Directory
- Treat like other advertising to non-lawyers
- Label general info as “not legal advice”

Ethical Use of Email (1)

- Short answer is that no more dangerous than other communication media, including phone, fax, mail, courier
- Watch recipient addresses and carbon copy addresses; state name of recipient
- Again, use encryption of sensitive information such as via PGP or Verisign certificate

Ethical Use of Email (2)

- When appropriate, use statement such as:
“The attorney-client privilege and/or the attorney work product doctrine apply to this communication, including all attachments hereto. Furthermore, the communication is confidential and intended only for the named recipient.”

Domain Names; Trademarks; Meta-Tagging -- Topics

- Domain Names
- Domain Name Registration System
- Domain Name Dispute Resolution
- Trademark Rights
- Meta-Tagging and Framing in Web Pages

Domain Names and Addresses

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- Email Address = username@domain-name

Domain Name Administrative Organizations

- Generic Top Level Domain Memorandum of Understanding (gTLD-MoU) -- <http://www.gtld-mou.org>
- Internet Assigned Numbers Authority (IANA) -- <http://www.iana.org>
- Internet Corporation for Assigned Names and Numbers (ICANN) -- <http://www.icann.org>

Domains in Other Jurisdictions

- Foreign domains such as .to (Tonga) and .cc (Cocos Islands) becoming popular
 - <http://www.nic.to/tonga/>
 - <http://www.nic.cc/>
- Interface between national trademark laws and domain name policies very much in the air

ICANN Domain Name Disputes

- Policy (copy attached) at <http://www.icann.org/udrp/udrp.htm>
- Can initiate arbitration proceeding to seek to have domain transferred
- Issue usually boils down to presentation of “Evidence of Registration and Use in Bad Faith”, see subsection 4(b)

Trademark and Related Rights (1)

- Trademark
 - Name or phrase used to associate goods and/or services with company; e.g., McDonalds
- Unfair Competition
 - Cause confusion as to source
- Dilution
 - Nationally “Famous” trademark gets defamed
- Cybersquatting

Trademark & Related Rights (2)

- Trademarks and Dilution
 - Federal Lanham Act; 15 USC Secs. 1051 et seq.
 - Dilution; 15 USC Sec. 1125(c)
 - State; NMSA Chapter 57, Article 3B
 - Best to register marks with U.S.P.T.O.
- Unfair Competition / Unfair Practices
 - Federal; 15 USC Sec. 1125(a)
 - State; NMSA Chapter 57, Article 12

Trademark & Related Rights (3)

- Cybersquatting
 - P.L. 106-113 (Dec. 1999), 15 U.S.C. § 1125(d)
 - Civil action for registering, trafficking in, or using a domain name with bad faith intent to profit from mark of another
 - Statutory damages of up to \$100,000 per domain name, plus attorney's fees (15 U.S.C. § 1117)

Meta-Tagging; Frames

- Web sites can infringe trademark rights or unfairly compete in new ways
- Meta-Tagging -- placing a keyword within source code for a web site, the keywords being picked up by search engines
- Framing -- technique that can make it appear that info on another web site is on yours; disclaim and ID when switch occurs

Right to Copyrights

- Title 17 of the United States Code
- For certain “works of authorship”, grants exclusive rights to the author to make and distribute copies of the work
- Limited “Fair Use” exception provided for extracts -- issue often boils down to effects of copying on market for original work
- NOT extracts of unpublished Ford letters

Copyrights On Internet Like Elsewhere

- Basic point to remember is that Internet is like the rest of the copyright world
- Copyrights apply on Internet as elsewhere
- Web sites automatically copyrighted -- assume can't copy anything unless express permission (or federal documents)
- But Internet has made infringement much easier to accomplish

Music on Internet

- With advent of MP3 compression and high access speeds, easier to distribute music
- Record companies are having to adjust (encryption / watermarking)
- Usually need to license from both songwriters (ASCAP / BMI / SESAC) and publishers (NMPA / Harry Fox Agency)

E-Commerce Patenting

- Federal Circuit opened door to “business method” patents, historically unpatentable
- An example is Amazon.com’s U.S. Patent No. 5,960,411 on its “one-click” checkout
- Barnes and Noble recently enjoined in *Amazon.com Inc. v. Barnesandnoble.com Inc.*, 1999 U.S. Dist. LEXIS 18660 (W.D. Wash.)

Educating Yourself

- Just play (e.g., explore bookmarks in diskette provided at seminar)
- Browse Internet magazines
- Review Internet law specific journals (generally pricey) such as *The Internet Lawyer*