

Computer Law News

A Publication of the Minnesota State Bar Association Computer Law Section

Spring 2000

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MSBA Computer Law Section Website:
www.mnbar.org/sec/computer_law/index.htm

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Report From the Chair

By: Daniel W. McDonald

Outreach to Law Schools

This spring your Computer Law Section is conducting an outreach to area law schools. We hope to visit all three schools— Minnesota, Hamline, and William Mitchell— to discuss legal careers and trends in the computer/e-commerce area, socialize, and let students know that the Section is a great way to get to know other lawyers. I am pleased to report that volunteering among Section Council members to speak at the schools was instantaneous, enthusiastic, and more than enough to wow the students of all three schools. Let me know if you are interested in attending any of these events, which will begin in mid-April.



e-copies are easy to print if hard copies are needed. E-copies can be saved easily for later reading. They do not get coffee stains, nor do they wind up on the bottom of a pile of documents and whisked away by an unsuspecting administrative assistant or associate. While it may take a little getting used to, odds are that in

a few months we will wonder how we did without e-copies for so long. If you received a hard copy version, that means we do not have an e-mail address for you. Please forward your e-mail address to: ekeyes@statebar.gen.mn.us.

Since this is a ground-breaking effort, a few kinks might be expected. Let me, or Dianne Plunkett Latham, our Newsletter Editor, know if you have any problems, issues, or ideas. Thanks to Dianne for undertaking the investigation needed to convert the distribution to electronic format. Thanks also to Elizabeth Keyes, Heather Sia, Janny Grice, and Mike Trittipio of the MSBA as well as to Dan Tysver, our trenchant Treasurer, for their assistance in gathering the information necessary to make the decision. We hope you enjoy the articles.

Notice Anything Different?

This issue marks the dawn of a new era for the Section Newsletter. It will be distributed by e-mail to those who have provided e-mail addresses to the MSBA. The member survey produced an overwhelmingly positive reaction to this proposal. It will save hundreds of dollars every issue on postage and printing. Moreover,

Year 2000 Schedule of Events



- 4-12-00 Computer Law Section presentation to U. of Minn. Law School
FFI Dan McDonald, 612-332-5300
- 4-12-00 Computer Law Section presentation to WMCL Law School
FFI Charlie Johnson, 651-635-7702
- 4/29-5/3-00 INTA Annual Meeting – Denver CO
- 5-1/2-00 MIPLA /AIPLA - Advanced PCT Seminar - Marquette Hotel
FFI Todd Delzer, 612-278-6326
- 5-17/19-00 AIPLA Spring Meeting – Pittsburgh PA
- 5-24-00 MIPLA Stampede CLE
FFI John Gresens, 612-332-5300
- 5-11-00 Section Annual Meeting – Four Points Hotel, Mpls
FFI Kim Shepherd, 612-895-6786
- 6-21/23-00 MSBA Annual Convention – Duluth
FFI Janny Grice, 612-278-6305

Editor's Report

By: Dianne Plunkett Latham

As those of you with e-mail addresses have already noted, this is the first issue of the MSBA Computer Law Section's electronic Newsletter. The Computer Law Section is the first section in the Minnesota State Bar Association to distribute their newsletter electronically. If you received a hard copy of this newsletter, it means that you have not provided your e-mail address to the MSBA. If you have an e-mail address, please provide it to the MSBA at your earliest convenience, as meeting and CLE reminders will be distributed electronically in the future. There will continue to be a hard copy of the original notice, however.



package can be downloaded from the Internet by going to the following site: <http://www.adobe.com/products/acrobat/readstep.html>

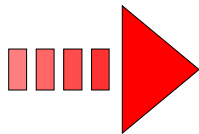
If you have any difficulty reading the electronic newsletter or if you have any suggestions, do not hesitate to contact me at 952-941-3542 or e-mail me at PlunkettDi@MSN.com Electronic distribution is estimated to save our section about \$1,000 an issue. It will enable us to provide more information to you in less time.



If you do not have an e-mail address, please consider getting one plus Internet access, as there are many valuable legal resources available on the Internet today. You will note that much of this issue is devoted to Internet legal topics.

All information technology attorneys should consider submitting articles to the Computer Law News. You do not need to be a Section member to submit an article. Everything from case summaries to law review articles are welcome. Information on CLEs or other events of interest to our membership are also appreciated. If you have any questions about submissions, feel free to contact me at the above phone number or above e-mail address.

To read this electronic issue, you must have the Adobe Acrobat reader installed on your system. This free



Annual Meeting May 11, 2000

Four Points Hotel
1330 Industrial Blvd., Minneapolis

The MSBA Computer Law Section Annual Meeting and election of officers will be held on May 11, 2000 at the Four Points Hotel (formerly Sheraton) in the St. Paul Room at 1330 Industrial Blvd., Minneapolis. The meeting will begin at 5:30 pm with the election of officers, hors d'oeuvres and a cash bar. The cost is \$10. The topic will be "Network Security Issues in E-Commerce." Mike McGuire from Ryder Bennett will speak on denial of service attacks. Come join your

Computer Law Section colleagues for food, refreshments and conversation with old friends and new ones. Registration information will be mailed shortly.

Directions -Take 35W northbound from downtown Mpls. Exit on Industrial Blvd and turn right. It is the first building on the right. Many people know where the Anchorage Restaurant is located, which is part of the hotel. FFI Kim Shepherd - 612/783-3562; e-mail yahas2@aol.com.

Advanced PCT Seminar

May 1-2, 2000

Sponsored by MIPLA and AIPLA
IDS Center, Minneapolis

The faculty includes *Isabelle Boutillon*, *Yolande Coeckelbergs*, and *Louis Maassl* from WIPO, *Colin Philpott* from the EPO, and a yet unnamed representative from the USPTO. The two day seminar will provide approximately 10-15 CLE credits and cost only \$395 for AIPLA or MIPLA members (the cost is \$450 for non-members). Although the final program has not yet been set, it is anticipated that the program will include these topics:

- An overview of the PCT System
- Recent and future developments of the system
- The PCT-EASY system (the electronic filing of PCTs)
- Strategies and benefits of the system
- Why, when, & where to file the application and demand
- Choice between the USPTO and EPO for search and exam
- Amendments of the application – why, when, and how
- Effects of the International Publication from the viewpoint of the applicant
- Access by third parties to the file – what is available and how
- The EP Regional Phase
- Unity of invention and protest procedures
- Procedural safeguards
- Cost savings
- Fees payable under the PCT
- Background material - Selected portions of the USCA and Paris Convention
- National phase entry into the US (371 v. 111)

Space is limited to about 100 persons. Register now to reserve your place at this seminar.

To receive a registration form, contact Todd Delzer at 612-278-6326 ,
tdelzer@statebar.gen.mn.us

Computer Law Section Committee Reports

Contracts Committee

I have been appointed to Chair the Contracts Committee, and I look forward to contributing to the Section with this position. My immediate goal is to orient myself to the wishes of the Section as a whole with respect to this committee. In that regard, I would very much appreciate any input you might have as to what the committee should undertake. I expect we will begin with developing checklists and templates for contracts that members regularly deal with, such as licenses, domain name transfer agreements, linking agreements and web development agreements. Perhaps we should consider annotating some of the contracts and using them for the CLEs. We will also probably have to discuss how and where to archive these materials so that the members have access. Please let me know your thoughts and if you would like to become a member of the committee. After we form up, I will likely be bothering a good number of you for a sample of your favorite contract. I can be reached at 612-371-1314 and at cschulte@meagher.com. Thanks!
Chris Schulte

Annual CLE

Steve Buckingham is the chair of the annual Computer Law Section CLE which is planned for next fall. Anyone who would like to participate in planning the CLE, or who has suggestions for speakers should contact Steve at 651-733-3379 or swbuckingham@mmm.com



*Dan McDonald Chairs the March 7
Section Council Meeting.*



*Paul Van Valkenburg Chaired the november 19
UCITA Noontime CLE.*

Computer Law Section Meeting Minutes

November 9, 1999



Attendees: Dan McDonald; Charles Johnson; Sandra Sedo; Dan Tysver; Cheryl Smith; John Taft; Steve Buckingham; Paul Van Valkenburg; Dianne Plunkett Latham; John Sumner; Dennis Weirens; Dan Kluth; Barb Grahm; Kim Shepherd; and Denise Plachecki from MSBA.

The meeting was called to order by Dan McDonald at 12:15.

The minutes from the September 7, 1999, meeting were approved as read.

The Treasurer's report was presented by Dan Tysver, showing a balance of approximately \$9,200. A discussion followed regarding the various expenses of the Section during the prior year, and the expected expenses during this upcoming calendar year. Dan was asked to review the Section's expenses in connection with the newsletter more closely so that the Section Council may discuss alternative (and cheaper) forms of publication.

Committee reports were as follows:

Computer Law Institute. Cheryl Smith reported that the 1999 Institute was a tremendous success. There were 152 people in attendance, almost an 80% increase over last year's Institute. Attendees responses to the questionnaire distributed at the Institute also showed the wide appeal for the program presented; attendees were from all sorts of backgrounds and age groups. The comments on the content of the Institute were also very positive, with the general responses being that the program was interesting and entertaining. Cheryl also reported that Minnesota CLE will not be asking the Section to reimburse any of the fees it incurred in presenting the 1999 Institute.

Steve Buckingham reported that he is still taking volunteers for the committee to organize the 2000 Institute.

Annual Meeting. Sheryl Smith reported that .75 CLE credits have been approved in Minnesota for the Section's 1999 annual meeting. A discussion followed on planning for the Section 2000 annual meeting.

Case Law. John Taft reported that the discussion on the 9th Circuit decision in Avery Dennison v. Sumpton will be postponed until the January 4 meeting of the Council.

Contracts. Dennis Weirens reported that no activity has occurred since the last report.

Newsletter. Dianne Plunkett Latham reported that there is a December 1 deadline for the next newsletter. A discussion followed regarding the best and most cost effective means to distribute the newsletter to Section members.

Noontime CLE. No report.

Legislation. Dan Kluth reported that no activity has occurred since the last report.

New Business

UCITA CLE. Paul Van Valkenburg reported that plans are being finalized for the noontime CLE on UCITA that will be co-sponsored by the Business Law and Computer Law Sections on November 19.

Other Items. Dan McDonald reported on three issues that the MSBA is requesting comments on from the Section; he also requested that individuals contact him with their comments on these issues. The first is a proposed policy change that will permit CLE credits to be obtained for classes/presentations in your office. The second is a proposed rule change that will limit the ability of lawyers to recuse judges in state court. The third issue for which comments were solicited by the MSBA is multi-disciplinary practice; both the MSBA and ABA website have helpful information on this

topic.

Upon motion duly made and seconded, the meeting was adjourned at 1:10 pm.

Sandra Sedo
Secretary

January 4, 2000

Attendees: Dan McDonald; Charles Johnson; Sandra Sedo; Dan Tysver; Cheryl Smith; John Taft; Steve Buckingham; Paul Van Valkenburg; Dianne Plunkett Latham; John Sumner; Kim Shepherd; Rich Rolfs; Michael McGuire; Jim Blomquist; Julie Finch; visitor Chris Schulte; and visitors Mike Trittipio and Elizabeth Keyes from the MSBA.

The meeting was called to order by Dan McDonald at 12:20.

The minutes from the November 9, 1999 meeting were approved as amended.

The Treasurer's report was presented by Dan Tysver, showing a balance of approximately \$9,100 as of the end of November 1999. Dan presented spreadsheets showing the various expenses of the Section during the prior year, and a discussion followed regarding those expenses.

Committee reports were as follows:

Computer Law Institute. Steve Buckingham reported that he is still looking for volunteers for the committee to organize the 2000 Institute, and that he is soliciting suggestions for topics and particular speakers that would be of interest to the members.

Essay Contest. No report. A discussion followed whether the essay contest should be continued in spite of the small number of entries in the past few years, or whether the Section's efforts should be rechanneled towards other methods of student outreach.

Case Law. Due to the Council meeting running long, the presentation on the 9th Circuit decision in Avery Dennison v. Sumpton was postponed until the February meeting.

Contracts. No report.

Newsletter. Dianne Plunkett Latham reported that the latest issue of the newsletter has been sent to mem-

bers. A discussion followed regarding the various alternatives that may be used to distribute the newsletter in order to reduce costs. Mike Trittipio discussed some of the technological alternatives that the MSBA may use to distribute the newsletter via e-mail. It was agreed that the MSBA would survey the members of the Section to determine whether e-mail distribution of the newsletter is desirable.

Noontime CLE. Michael McGuire reported that the dates, topics and speakers for three noontime CLEs have been set. They are as follows:

January 26, 2000: *Greg Ansems*, Merchant & Gould, "Domain Name Developments – Legislation and ICANN's New Dispute Resolution Policy"

February 16, 2000: *Mike McGuire*, Rider, Bennet et al. "How to Take Advantage of the Protections of the Online Copyright Infringement Liability Limitation Act – Title II of the Digital Millennium Copyright Act"

March 30, 2000: *Rob Beattie*, Oppenheimer, Wolff & Donnelly, "Facilitating E-Commerce: The Uniform Electronic Transactions Act"

Legislation. No report.

Upon motion duly made and seconded, the meeting was adjourned at 1:15 pm.

Sandra Sedo
Secretary

February 1, 2000

Attendees: Dan McDonald; Charles Johnson; Sandra Sedo; Dan Tysver; Paul Van Valkenburg; Dianne Plunkett Latham; Kim Shepherd; Michael McGuire; Jim Blomquist; Carolyn Sandberg; Frank Farrell; Chip Brink; and visitor Elizabeth Keyes from MSBA.

The meeting was called to order by Dan McDonald at 12:25.

The minutes from the January 4, 2000 meeting were approved.

The Treasurer's report was presented by Dan Tysver, showing a balance of approximately \$8,000 as of the end of January 2000. Dan reported that the expenses that reduced the Section's balance included the remainder of the costs of the last newsletter and the

Section's share of the cost of the November 19, 1999 CLE on UCITA, which was co-sponsored with the Business Law Section.

Committee reports were as follows:

Computer Law Institute. No Report.

Essay Contest. Charlie Johnson reported that after the last Council meeting he tried to contact Ron Marmo, the chair of the Essay Contest Committee, without success. A discussion resulted regarding whether the contest should be discontinued and some other form of law student outreach substituted instead. A motion was passed to suspend the essay contest for this year, and for the Section to instead spend approximately \$250 in order to sponsor a CLE seminar at the University of Minnesota Law School on the topic of career opportunities in the Computer Law practice area. The seminar would be designed for students of all local area law schools and other interested practitioners. Dan McDonald, Carolyn Sandberg and Charlie Johnson volunteered to coordinate the program and its promotion at the various law schools.

Case Law. No Report. The presentation on the 9th Circuit decision in Avery Dennison v. Sumpton was postponed until the March meeting.

Contracts. No report. Dan McDonald volunteered to contact the chair of the Committee to propose various topics for the committee's work.

Newsletter. Dianne Plunkett Latham reported on the findings from the MSBA regarding the cost savings that would result from primarily e-mail distribution of the newsletter. For e-mail distribution, the setup fees for the newsletter would be the same; however, about \$1,000 per issue would be saved in postage charges. The Section would also continue to incur printing charges for the copies of the newsletters that would need to be mailed to Section members without e-mail addresses. Dianne also reported that the following potential problems may occur with e-mail distribution of the newsletter: (1) since the newsletter would be sent in Adobe Acrobat format, the e-mail should link to a website from which an Acrobat reader may be downloaded for free; (2) members with older style dot matrix printers may have problems printing the newsletter; (3) members with small screens may have problems viewing the newsletter in an online format. A motion was

passed to distribute the next issue of the newsletter via e-mail to all members of the Section that have an e-mail address. For all members without an e-mail address, a hardcopy of the newsletter will be mailed out. Dianne also reported that she has yet to get any articles for the next issue of the newsletter; the deadline for its publication is March 15, 2000.

Noontime CLE. Michael McGuire reported that the first noontime CLE was held on January 26, 2000, and approximately 25 people attended. The next scheduled noontime CLEs are as follows:

February 16, 2000 Mike McGuire - Rider, Bennet et al. "How to Take Advantage of the Protections of the Online Copyright Infringement Liability Limitation Act – Title II – of the Digital Millennium Copyright Act"

March 30, 2000 Rob Beattie - Oppenheimer, Wolff & Donnelly "Facilitating E-Commerce: The Uniform Electronic Transactions Act"

Michael also reported that if there is good attendance at the next noontime CLE he may schedule an additional session(s) for April or May of this year.

Legislation. No report.

New Business

Dues Increase. Dan McDonald reported that he received a letter from the MSBA that inquired whether the Section would like to raise its dues for the next fiscal year. A discussion resulted and the Council decided not to take any action to raise dues.

Proposed Rule Change. Dan also reported that he received a letter describing a proposed rule change that would affect that ability of attorneys' licensed outside Minnesota obtaining a license to practice in Minnesota. Currently, the Minnesota rule permits an attorney to obtain a license to practice in Minnesota if he/she has been licensed to practice in one or more states for a total of 5 years. The proposed change would require the attorney to have been licensed to practice in the same state for a total of 5 years. A discussion followed on this proposed rule change.

Upon motion duly made and seconded, the meeting was adjourned at 1:10 pm.

Sandra Sedo
Secretary



Internet Intellectual Property Checklist

On this, the dawn of a new millennium, the Internet is rapidly becoming a necessity for businesses. While going “online” may appear at first blush to be a simple task, there are a multitude of intellectual property issues which require thoughtful consideration. Below is a checklist of intellectual property issues that should be considered by anyone doing business on the Internet. The checklist was prepared by Fish & Richardson. If you have further questions, please call Steve Shumaker, Mathias Samuel, John Dragseth, or Jon Powers, who work in the Minneapolis office of Fish & Richardson and are members of the firm’s Internet practice group.

Domain Name

New Domain Name Selection

Have you:

- Performed a trademark clearance search prior to selecting your domain name?
- Registered all generic versions (.com, .net, .org, etc.) and geographic country code versions of your domain name?
- Registered common misspellings of your second level domain name (the name before the dot) to protect against typo-piracy?

Existing Domain Name Protection

- Do you have a registered trademark (US or foreign) that is identical to your second-level domain name to protect against a domain dispute?

Web Page Ownership

If a contractor developed your web page, do you have:

- Ownership of the copyright on the web page?
- Warranties/indemnities from third party infringement assertions?
- Protection (NDA, etc.) in place before exposing your trade secrets and confidential information to the contractor?

If you use material (text, picture, sound/video clip) created by a third party, do you have:

- License from the third party?
- Warranties/indemnities from others’ infringement assertions; and/or
- Licenses, privacy/publicity releases or permissions from other entities if the material shows or includes other copyrighted works, recognizable individuals or others’ trademarks?

Legal Notices

Do you have the following notices:

- Copyright notice?
- Trademark notice and/or symbols?
- Patent numbers if you have patents covering processes/software operating the web page?
- Acknowledgement of third party trademarks/service marks?
- Restrictions placed by you or your licensors on the use of the web page content?
- Software license and assent check before allowing software to be downloaded?
- Disclaimers to limit liability from errors?

Advertisements

If you run third party advertisements on your web page, does your contract resolve issues arising from advertisements that may:

- Be deceptive?
- Infringe/misappropriate others’ intellectual property rights?
- Contain obscene/defamatory materials?

Cookies

- If you collect data on your European customers, have you conformed to European Union privacy regulations?

Chat Room

- Do you have a chat room agreement in place to remind each user not to post materials that may land the user and you in court over issues such as intellectual property rights, obscenity, or defamation, among others?
- Have you registered your site under the Digital Millennium Copyright Act to obtain a liability limitation safe harbor against contributory infringement claims?

Linking/Framing

- Do you have linking/framing agreements with parties whose web pages you link to or frame?
- Does the agreement provide control over whether sites with particular contents may or may not be linked to your web page?

- Does the agreement provide warranties/indemnities from third party infringement assertions?
- Is your site registered under the Digital Millennium Copyright Act to obtain a liability limitation safe harbor against contributory infringement claims?
- If you use meta tags to help search engines locate your site, have you reviewed your tags with respect to third party IP issues?

Exporting Software

- If you export software with strong encryption capabilities, have you conformed to US export restrictions?

Distributing Third Party Products

- Have you obtained written representation of non-infringement and/or indemnification against infringement liability from each third party?

General Corporate Considerations

IP Acquisition

- Do you have a system in place for identifying, procuring, maintaining and enforcing intellectual property rights generated by your company?
- Have you obtained IP assignment agreements from all employees and consultants before they begin work?
- For each assignment of IP rights, do you record the assignment as soon as possible with the PTO or Copyright Office?
- Do you periodically check for infringements of your IP assets?

Patents

- Do you require a “Beta Test Site Non-Disclosure Agreement” to be executed before releasing beta versions of your software to the public or before testing a new method of doing business?
- Do you file patent applications to protect your software, method of doing business, or any other new inventions before publicizing or offering them to the public?
- If you plan to design around a patented product, have you sought infringement and validity opinions from patent counsel?

If you have one or more pending applications, do you:

- Evaluate whether a continuation application is needed before issuance?
- Provide patent counsel with all known prior art references, especially those from related applications?
- Evaluate each application on the need to file abroad?

If you have one or more patents, do you:

- Mark your products and literature with the relevant patent numbers?

- Know when maintenance fees are due?

Trademarks

Do you:

- Conduct a trademark search before adopting a new mark or trade name?
- Register your trademark, service mark or trade name with the PTO?
- Reserve the right to a new mark or trade name with an intent-to-use application?
- Properly mark references to your trademark or service mark?
- Use your trademark or service mark as an adjective?
- Know when renewal payments are due for each registered mark?
- Maintain quality control rights on licensees, distributors and dealers of your products?
- Use a trademark watch service to detect use and registration of marks that are close to your mark?
- Monitor meta tags and hidden codes used in competitor’s Web sites to check for trademark infringements?

Trade Secrets

Do you:

- Have a written employee policy relating to the proper handling of confidential information (internal as well as third party)?
- Mark all confidential documents/items with a confidential notice?
- Restrict access to areas containing confidential documents or items (keep your sign-in sheets)?
- Have each new employee sign a written acknowledgement that no trade secrets or copyrighted or patented technology from his/her prior employer will be used in developing your products or supporting processes in your business?
- Do you have a standard NDA to accompany any disseminated source code or design?

Copyrights

Do you:

- Place a notice on each work (including web page, source code listing, resulting software, advertisements and literature, etc.)?
- Seek copyright registration for each work?
- Archive a copy of each version of the work?
- Obtain written assignments from vendors and independent contractors when a copyrightable work becomes identifiable?

Insurance

Have you:

- Purchased IP Insurance to cover IP Risks?

Spam Remedies:

Individual Investor Group, Inc. v. Anthony Howard

By: *Dianne Plunkett Latham*¹

Nearly everyone has received unwanted e-mail solicitations, or spam². This “junk e-mail” accounts for 30% of all incoming mail on the Internet. A major spam attack can bog down or crash a server, resulting in the loss of much time and money. Concealing their identities, spammers often avoid paying for the expensive network resources they use. Using falsified domain names they either broadcast from bulk-friendly domains, or search for open relays in another’s mail server and “hijack” them, usually during non-peak hours when operations are at lower staffing levels. The unauthorized use of another’s domain name as a spammer’s return address results in responses which clog up the legitimate network with returned e-mail from inactive accounts, as well as with flames (irate recipient’s messages). Internet Service Providers (ISPs) and individuals often respond to spam by blacklisting – filtering out the domain names, which are the apparent source of the spam. Blacklisting causes mail bound for the hijacked legitimate ISP’s domain to be rejected.

The laundry list of potential offenses spammers commit includes deceptive trade practices, defamation, fraud, forgery, harassment, theft, liable, trespass, etc. Tracking down spammers in cyberspace is difficult. Crime remedies are not adapted to new technology nearly as fast as crimes are adapted to new technology.

The case of Individual Investor Group, Inc. v. Anthony Howard a/k/a Tony Howard, CV-S-99-00437-DWH (RLH)³ is one of the first actions commenced under Nevada’s Electronic Mail Statute. The Individual Investor Group operates and publishes the *Individual Investor* magazine as well as other Internet and print publications that collectively reach more than 2,000,000 investors and financial professionals monthly. Howard’s spam contained Individual Investor Group’s trademarks and Internet domain names, thus giving the impression it had come from the Individual Investor Group. It also contained an inaccurate return address designed to appear as if it was sent from a foreign country, to discourage efforts to track down the spammer. Using the I.P. address information in the spam header, Individual Investor Group was able to consult public databases and identify the entity that provided the spammer with ultimate access to the Internet. Originally the Individual Investor Group action was brought

against an unnamed ‘John Doe’ defendant. Using a Federal subpoena, however, the message ID was traced to the source of the unsolicited e-mails. In January 2000, a settlement was obtained which included a permanent injunction, a \$5,000 payment, a public apology, and an agreement to assist the Individual Investor Group with clearing its name from various spam blacklists.

The more experienced spam generators routinely use dummy return addresses such as that of the Individual Investor Group to bounce replies. Their real address, however, may be somewhere within the body of the message or better yet, in the spam header. To trace the source of spam, whether for the purposes of sending a complaint to an ISP’s abuse handler⁴ in an effort to have the spammer’s e-mail access terminated, or to file litigation, one should do the following. The spam e-mail header is less likely to have been altered than the “From” address. Assuming the header has not been altered, display the header and find the message ID. Take the domain name of the server from which the message was sent, and consult the Network Solutions Inc. (NSI) registry to locate the owner of the originating domain. The Message ID in the header can be used to identify the specific sender.

For example, for Outlook 2000, open the e-mail message. Under the View menu, select Options, and the Internet Headers window will be displayed. If you do not know how to cause your e-mail reader to display an e-mail Header, you can find specific instructions for the major e-mail readers at <http://spamcop.net/fom-serve/cache/19.html>.

Once the Internet header has been opened, find the domain name of the server from which the message was sent. The domain name is the .com (or .net, or .edu etc.) plus the previous level name, for example, “anywhere.com”. The domain name’s counterpart I.P. address consists of four groups of numbers, which define where the server is on the Internet, for example, 207.46.181.47. Once you have the domain name you can locate the domain owner using the NSI “Who IS” search engine found at: <http://www.networksolutions.com/cgi-bin/whois/whois>. If the NSI search engine doesn’t find a listing for what appears to be a valid domain name, it is probably bogus. If the domain name is valid, find the

From left: Jim Blomquist, Frank Farrell Jr., Barb Grahn, and John Sumner attend the March 7 Section Council meeting.



Message ID in the header to pinpoint the sender of the offending message. As the message ID is only a string of letters and digits, you may need a court order cause the originating domain owner to unmask the sender.

If the ISP originating the spam is a bulk-friendly site specializing in spam, confronting the operator of the site will be to no avail. You may instead need to complain to the originating domain's up-stream provider. You can find out who the up-stream provider is by using the TraceRoute feature which is on-line at: <http://cities.lk.net/traceroute.htm> This feature traces the route from your server to the server you have specified, displaying all the "hops" along the way to a maximum of 30 hops. The last hop will be the domain, and the I.P. address of the source of the spam you received. The next to the last hop is the up-stream provider. Unlike the return address, the Internet message route cannot be falsified by a spam generator.

The Individual Investor Group availed themselves of Nevada's Electronic Mail Statute. At least four additional states, California, Colorado, Virginia and Washington State, have passed spam legislation. At least 13 other states have pending spam legislation⁵. Most state legislation has penalties for falsely identifying the sender. State legislation, however, varies widely; what is urgently needed is Federal legislation similar to that applicable to "junk faxes". At least five bills are currently pending in the House of Representatives and Senate, though nothing yet has been enacted.⁶

Legislative efforts have attempted to balance freedom of speech with Opt-in/Opt-out provisions. Opt-out provisions, for example, permit users to forgo receiving spam. ISPs, however, generally oppose such provisions and their burdensome administration, preferring instead a complete ban of spam. ISPs argue that a spammer's freedom of speech does not include the right to force

someone to pay to read it. Spammers do not pay for the network resources they use, instead recipients pay for the resources through their monthly access fees.

If one is not prepared to sue a transgressing spammer, one cannot expect to look to the Minnesota Attorney General's office for much assistance. When Minnesota's Attorney General Mike Hatch was asked about the spam issue at the October 19, 1999 MSBA Computer Law Section Annual CLE, he responded, "It's not one I would put in the top ten ... compared to prostitution, gambling... We're not going to get money damages.... We can get an injunction.... So what - They'd set up another web site.... It would be interesting if some enterprising person would want to take a class action on that." - Any takers??

¹ Dianne Plunkett Latham is a patent attorney in Edina, Minnesota.

² SPAM® in upper case letters is the registered trademark of Hormel Foods. Spam in lower case letters is the term associated with junk e-mail.

³ The law firm representing the Individual Investor Group, Inc. was Brown, Raysman et al. of New York.

⁴ Many of the larger Internet Service Providers have created accounts called "Abuse" to receive mail specifically dealing with abuses of the net by their users. To address mail to such accounts, the general format is abuse@ISP.com For example, MSN's abuse handler is abuse@MSN.com Forward the original unsolicited message to the Domain's abuse handler, including all of its Header. Legitimate ISP's usually will terminate the spammer's account when informed of their activities.

⁵ For further information on state spam legislation refer to: <http://www.jmls.edu/cyber/statutes/email/state.html>

⁶ For further information on Federal spam legislation refer to: <http://www.chauce.org/legislation/index.shtml>

Useful URLs: Domain Name Management Service

This issue's column on Useful URLs focuses on domain name management services. The Editor expresses appreciation to Mike McGuire and Barb Grahn for providing this month's Useful URLs. If you have encountered useful URLs which you believe would be of interest to the Computer Law Section members, please forward them to Dianne Plunkett Latham at PlunkettDi@msn.com for publication in subsequent newsletters.

[Marksman](http://www.marksmen.com) – Many trademark investigation firms handle domain name purchases anonymously. They usually charge a flat fee and, sometimes, a percentage of what they save on the budget.
<http://www.marksmen.com>

[National Arbitration Forum](http://www.arb-forum.com/index.htm) – Provides dispute resolution services for other organizations, like the Internet Corporation for Assigned Names and Numbers (ICANN)
<http://www.arb-forum.com/index.htm>

[Great Domains](http://www.greatdomains.com) – Buy, Sell, Register, Trade, Appraise Domain Names
<http://www.greatdomains.com>

[AfterNic](http://www.afternic.com) – Buy, Sell, Appraise, Manage Domain Names
<http://www.afternic.com>

[URL Merchant](http://www.urlmerchant.com) – Buy, Sell, Auction and a Who Is LookUp for Domain Names
<http://www.urlmerchant.com>

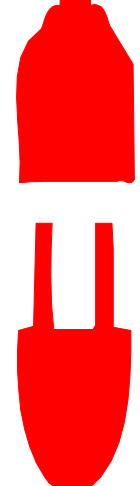
[FirstDomain](http://www.firstdomain.net) – Domain Name Registration
<http://www.firstdomain.net>

[eWebSites For Sale](http://ewebsitesforsale.com/default.asp) – Monitor Domain Name Bidding, Watch Domains for Sites that Match your Interests, Appraise Domain Names
<http://ewebsitesforsale.com/default.asp>

[Hit Domains](http://www.hitdomains.com/) – Buy, Sell, Rent, Appraise and Auction Domain Names
<http://www.hitdomains.com/>

[Best Domains](http://www.bestdomains.com/) – Buy and Sell Domain Names
<http://www.bestdomains.com/>

[Domain Broker Newsletter](http://www.domainnamenews.com/) – Buy, Sell, Lease, Market, Promote and Appraise Domain Names
<http://www.domainnamenews.com/>



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2000-2001 Computer Law Section New Member/Committee/Officer Interest Form

- Enclosed is my check in the amount of \$35 payable to the MSBA. (Send to Section Services, c/o MSBA, 600 Nicollet Mall, Suite 380, Minneapolis MN 55402.)
- I am a current Computer Law Section member. The following information is address change information only. (Address information can be faxed to 612/333-4927; or e-mailed to eriley@statebar.gen.mn.us)

Name _____

Employer _____

Street _____

City/State/Zip _____

Phone _____ Fax _____

E-mail _____

- If you are interested in joining one of the following committees for 2000-2001, or are willing to be considered for an officer or committee chair, please check below and send to Dan McDonald, Computer Law Section Chair, Merchant & Gould, 90 S. Seventh St. #3100, Minneapolis MN 55402-4131.

| | Chair | Join |
|--|--------------|-------------|
| <input type="checkbox"/> 2000 Annual Meeting | _____ | _____ |
| <input type="checkbox"/> 2000 Computer Law Institute | _____ | _____ |
| <input type="checkbox"/> Case Law | _____ | _____ |
| <input type="checkbox"/> Contracts | _____ | _____ |
| <input type="checkbox"/> Essay Contest | _____ | _____ |
| <input type="checkbox"/> Newsletter Editor | _____ | _____ |
| <input type="checkbox"/> Noontime CLE Programs | _____ | _____ |
| <input type="checkbox"/> Legislative Liaison | _____ | _____ |

I would like to participate in the Section in the following ways:

___ Speak at a CLE ___ Contribute an article to the Newsletter

___ Other: _____

Check any of the following officer positions you would consider in the future:

___ Chair ___ Vice Chair

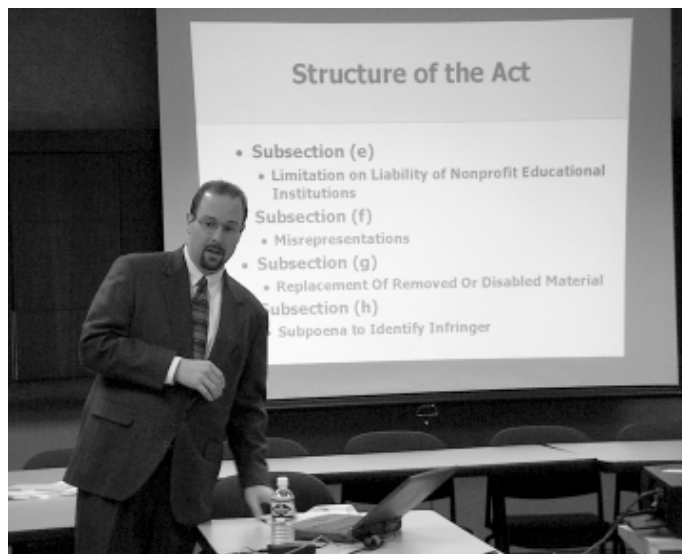
___ Secretary ___ Treasurer

___ Council member

I would like to see the Computer Law Section undertake the following: _____



Charles Johnson, Section Vice Chair, and Kim Sheperd, 2000 Annual Meeting Chair.



Mike McGuire speaks at the February 16 Noontime CLE on “How to Take Advantage of the Protections of the Online Copyright Infringement Liability Limitations Act – Title II of the Digital Millennium Copyright Act.”

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