

Computer Law News

A Publication of the Minnesota State Bar Association Computer Law Section

Spring 2002

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Report From the Chair

By: Sandra Sedo

As this edition of the Newsletter goes to press the activities of the Computer Law Section are beginning to wind-down for the summer. Through the hard work of our members we've had another busy and successful year of Section activities. On behalf of the Section I'd like to thank all who helped make this possible. My personal thanks go out to all who served as Section officers or committee chairs this past year.



Since the Computer Law Section only remains vibrant and active if its members participate, I'd like to encourage anyone who is interested in becoming more active in the Section – either by serving as an officer or Council member – to volunteer by contacting John Taft, Chair of the Nominating Committee.

Our last Section activity before summer break will be the Annual Meeting at Brit's Pub on June 19 from 3:30-6:30 pm. I encourage all Section members to come socialize and network with their colleagues! ■



2002 Schedule of Events

4-03-02	On-Line Contracts/Prof. Kunz	Noon MSBA Headquarters, City Center
4-17-02	CLE on ASP Agreements 3 CLE credits applied for.	9:00 A.M. Minn. CLE Conf. Center, Mpls. \$50 members, \$75 nonmembers.
5-14-02	Section Council Meeting	11:30 at MSBA Headquarters, City Center
6-19-02	4:00 p.m. Annual Meeting	3:30 – 6:30 p.m. Brit's Pub, Mpls. \$15
10-15-02	Annual Technology Law Institute	Minn. CLE Conf. Center, Mpls.



Calling All e-mail Addresses!

If you received a hard copy of this issue instead of a copy via the Internet, it means that the MSBA does not have your e-mail address. Less than 10% of our members still receive this newsletter via the quaint 'snail mail' method. Don't be left behind! Newsletters sent via e-mail arrive one to two weeks earlier than those sent via surface mail. Submit your e-mail address to the MSBA by contacting Anne Barrett at:

**MSBA, 600 Nicollet Mall - #380
Minneapolis, MN 55402
PH: 612-278-6329, Fax: 612-333-4927
email - abarrett@statebar.gen.mn.us**

Editor's Report

By: Dianne Plunkett Latham

I would like to thank **Sandra Sedo** for her excellent leadership this past year. Her concept of noon CLE's, which were paired with the monthly Section Council meetings provided a new dimension for our meetings.

Please consider serving on the Section Council or serving as an officer next year. Being active in the section provides many opportunities to broaden your Intellectual Property knowledge and professional contacts. Contact **John Taft** at 651-733-1750 if you are interested in being on the Section Council, or serving as one of its officers.

The Annual Meeting and election of officers will be held on June 19th. **Barb Grahn** is the Chair of the Annual Meeting Committee. If you would like to assist, please contact her at 612-607-7325. Barb is planning a unique evening of lawn bowling at Britt's Pub in Minneapolis on June 19th for our annual meeting and election of officers. You won't want to miss opportunity to socialize with your friends. See Barb's committee report elsewhere in this issue for more details. Thank you Barb for planning this imaginative Annual Meeting.

We have had some wonderful CLE's this year. Thanks much to our contracts committee for planning the April 14 CLE on ASP agreements. **Chris Schulte, Christine Brick, Katheryn Andresen** and **Peter Zirbel**, a non-lawyer consultant who was with Deloitte-Touche and now is independent, all did a marvelous job putting together the program. **Tom Sheran** also arranged several noon CLE's which were coupled with the Section Council meetings, resulting in greater attendance at these meetings. The 16th annual Technology Law Institute held last October had a near record breaking attendance. For this we owe our thanks to **Charles Johnson, Jim Blomquist, Dan Tysver** and **Miguel Azar**.

Our case law reports have been extensive this year, largely due to the efforts of **Gillian Uecker Rosenquist, Kim Shepherd, Mike Atlass** and **Dan Tysver**.

Carla Condiff Schaumann is well underway with the planning for our 19th annual Technology Law Institute. Mark your calendars for Oct. 15, 2002 and plan to attend this exciting event. Please contact her if you have an interest in speaking or would like to propose speakers or topics.



Christine Brick has done a wonderful job with our Law Student Outreach committee by attending and coordinating events at the local law schools.

William Hefner and **Mike Atlass** did a great job updating and maintaining our Web site this year. Their work is so important to keeping our membership up-to-date on our activities, as well as attracting new members.

Unfortunately, Unisys transferred **Mike Atlass** from the Roseville facility to their Blue Bell facility on March 16th. We thank Mike for all the work he has done for the Section in the past and hope that he will remain active with our Section, and will keep in touch with our members. His contribution to the Section and his friendship will be missed.

Our Section could not have accomplished all of the above activities were it not for the talented MSBA staff, which supports us. **Mike Trittipio** attended all our Section meetings and acted as our liaison to the MSBA as well as doing electronic trouble shooting for us. **Dick Ericson** provided our digital photography and web site support. **Tina Jalivay** provided newsletter support and noon meeting support. **Liz Patel** of the Minnesota CLE, provided support for our Annual Technology Law Institute. Thanks much – you are a great staff!

Please say a prayer for former Section Chair, **John P. Sumner**'s wife, Betty, who is in her 4th year of a struggle with ovarian cancer. John has not been able to be as active this past year as he had hoped to be because of Betty's illness.

Newsletter Submissions – Please e-mail newsletter submissions to **Dianne Plunkett Latham** at PlunkettDi@mn.rr.com. These can include articles, photographs, committee reports, CLE notices and other information of interest to the members of the Computer Law Section. ■

Treasurer's Report

By: Kim Shepherd

Treasurer's Report. As of December 31, 2001, the section had an ending balance of \$9,568.79. During December, the section received \$61.50 in membership dues and incurred \$8.00 in expenses, which are directly associated with dues collection.

As of January 31, the section had an ending balance of \$8,752.42. The section collected \$112.50 in membership dues during the month of January 2002. January expenses were \$928.87. ■

Computer Law Section Meeting Minutes

January 8, 2002

Attendees: Sandra Sedo, Mike Trittipio, Miguel Azar, Christine Brick, Dianne Plunkett Latham, Charles Brink, Michael Atlass, Katheryn Andresen, Charles Johnson, Carla Condiff, Christopher Schulte, Rebecca Comstock, Emily Fox Williams, Gillian Rosenquist, Kendra Rubbright, and Steve Buckingham.

Call to Order: The meeting was called to order by the Chair, Sandra Sedo, at 11:40 a.m.

Minutes: The minutes from the November meeting were approved.

Treasurer's Report: No Treasurer's Report was available.

Contracts Committee Report: Katheryn Andresen reported on the progress for developing the Contracts Committee's half-day CLE. Charlie Johnson moved to allocate \$250 for refreshments and require a nominal fee for attendees of the half-day CLE. Chip Brinks seconded, and the motion carried.

Newsletter Committee Report: Dianne Plunkett Latham reported that Tina Jalivay distributed the newsletter before Christmas. Dianne indicated that April 1, 2002 is the deadline for May newsletter articles.

Law Student Outreach: Christine Brick reported on how she is attempting to track down representatives from each of the law schools for the outreach effort.

Noon Time CLE: The Chair indicated that the Noon Time CLE committee is working on asking one of the

attorneys from the Attorney General's Office, who is working on the Microsoft antitrust case, to speak in the near future.

2002 Computer Law Institute Report: Carla Condiff had no report at this time. Kim Sheppard, Sandra Sedo and Christopher Schulte volunteered to work on the Committee.

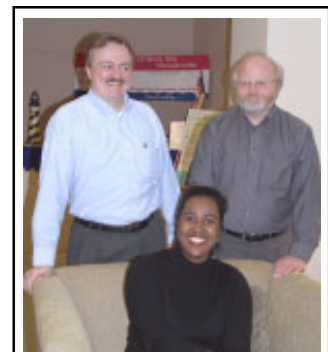
Case Law Committee Report: Gillian Rosenquist and Michael Atlass gave case law reports.

Web Site Committee Report: Michael Atlass indicated that the website was not as up-to-date as much as he would like, but it is operational.

Old Business: The Chair indicated that the Section needs to work on offering more CLEs as part of our commitment to the 10% Club. The Chair discussed publicizing additional CLEs through e-mails to bar members and indicating that the CLEs are free through June 2002.

Motion to Adjourn: Katheryn Andresen moved to adjourn the meeting, which was seconded by Michael Atlass. The motion carried and the meeting was adjourned at 12:30 p.m.

Christopher Schulte
Secretary



*Computer Law Section
MSBA support staff -
Tina J., Mike T., Dick E.*

March 12, 2002

Attendees: Barbara Grahn; John Taft; Charles Johnson; Steve Buckingham; Carolyn Sandberg; Gillian Uecker Rosenquist; Dianne Plunkett Latham; Sandra Sedo; Mike Trittip; Katheryn Andresen; Julie Finch; Charles Brink; Ron Marmo; James Blomquist; Tom Sheran; Bill Hefner; Emily Fox Williams; Christine Brick; Carla Condiff Schaumann; and Daniel Tysver.

Call to Order: The meeting was called to order by the Chair, Sandra Sedo, at 11:40 a.m.

Minutes: The minutes from the February meeting were not available for approval.

Treasurer's Report: The balance is \$8,752.42 after \$928.87 in expenses and receipt of \$112.50 in membership dues.

Contracts Committee Report: Katheryn Andresen reported on confirmation of the Minn. CLE auditorium for the April 17, 2002 CLE by the committee. The committee will meet March 21, 2002 for final preparations of the CLE materials. The CLE will be free to new members in support of the 10% club. The CLE will offer 3 credits and Mike Trittip confirmed that 3 credits or less do not need to go through the Minn. CLE office. Anticipated price will be \$50.00 with the exception of new members.

Noontime CLE: Tom Sheran reported that the next CLE will be scheduled for April 3, 2002 with Professor Kunz from William Mitchell speaking on internet commerce. This CLE along with the February CLE and upcoming Contracts Committee CLE should complete the 10 % club requirements.

Newsletter: Dianne Plunkett Latham reported that April 1, 2002 is the deadline for the May newsletter. Dianne requested a copy of the speech from Mike Jacobs, Attorney General's office, from his February CLE on the Microsoft case. Dianne has an article on the *Festo* oral hearing at the Supreme Court, with an expected opinion in June.

Law Student Outreach: Christine Brick reported that she and Sandra Sedo attended the February 21, 2002 MSBA law student event. In addition, Gillian Uecker Rosenquist, Christine and Kendra attended the March 6, 2002 William Mitchell Career Fair and referred students to the computer law section.

Web Site Committee Report: Bill Hefner reported that an update has been posted to the website and the committee is reviewing some clean-up on the site. Bill also reported that Michael Atlass has been attempting to build interest in the chat room. Sandra asked all council members to try and post to the chat room before the next meeting.

2002 Computer Law Institute Report: Carla Condiff Schaumann reported that she had a meeting with Liz Patel from the MSBA offices on the institute. Carla reported that the few inputs she had from council members were topics from all over the place.

Legislation: Becky Comstock's report was read by Sandra Sedo. Becky attended an MSBA legislation meeting on February 26, 2002. The group met to discuss the lobby activity funded by the MSBA, by Lloyd Grooms. The lobbyist has difficulty in prioritizing lobby requests from various sources. The group discussed increased funding for lobbying and was asking sections if they would approve increased fees to offset increased funding for lobbying. Although Betsy Keyes is the current legislation liaison for the MSBA, she's leaving shortly and will be replaced.

Elections Committee: John Taft agreed to chair the elections committee this year. The committee will coordinate ballots prior to the annual meeting as required in the section bylaws.

Annual Meeting: Barbara Grahn agreed to chair the organization for the annual meeting.

Old Business: The Chair indicated that the Section needs six additional members to reach the 10% club requirements.

New Business: The Chair called for volunteers for the Habitat for Humanity project.

Motion to Adjourn: The meeting was adjourned at 12:30 p.m.

Katheryn Andresen
Acting Secretary



April 9, 2002

Attendees: Carla Condiff Schuamann, Dan Tysver, Carolyn Sandberg, Dianne Plunkett Latham, John Taft, Steve Buckingham, Miguel Azar, Julie Finch, Bill Hefner, Katheryn Andresen, Christopher Schulte, Chip Brink, Barbara Grahn, Mike Trittipio, Christine Brick.

Call to Order: The meeting was called to order by Dan Tysver at 11:39 a.m.

Minutes: The minutes from the March 12, 2002 regular meeting were approved as amended.

Treasurer's Report: No Treasurer's Report was available.

Contracts Committee Report: Christine Brick and Katheryn Andresen reported on the upcoming half-day CLE on ASP Agreements. Katheryn reported that the committee was unable to receive approval in time from other sections to send the meeting notice outside of the Computer Law Section. The Council discussed whether to waive the registration fee for new members so as to comply with the 10% Club initiative. However, the consensus was that since the Section only needs one more member to meet its goals under that initiative, waiving the registration fee was not necessary.

Newsletter Committee Report: Dianne Plunkett Latham reported that she is editing the current newsletter and is waiting on the Chair's report. She is also waiting on an article from Mike Jacobs at the Attorney General, the nomination slate and information regarding the annual meeting.

Law Student Outreach Committee Report: None.

Web Site Committee Report: Bill Hefner reported that his committee continues to revise and update the website. Case law reports now appear on the website and dead links have been removed. He also reported his co-chair, Michael Atlas, has moved to Pennsylvania.

Noon Time CLE Committee Report: No report except that the Council noted that the Professor Kunz CLE was well received.

2002 Computer Law Institute Report: Carla Condiff Schuamann reported that her committee met recently and finalized the date for the Institute as October 15, 2002. The committee held its first meeting with Liz Misiaveg-

Patel of Minnesota CLE, which included discussion of a budget and time line, as well as narrowing down the topics and possible speakers.

Case Law Committee Report: Katheryn Andresen reported on recent cases of service by e-mail.

Annual Meeting Committee Report. Barbara Grahn reported that her committee is still looking into a date to have the annual meeting at Brits Pub with lawn bowling. Based on the fact that the Section must guarantee a minimum of a \$1,000 spent on food and beverages, Barbara moved to charge each attendee of the annual meeting a \$15 fee, to hold the event at Brits on June 19, 2002 with a cash bar and food and agree to Brits' \$1,000 guaranteed minimum. Miguel Azar seconded the motion. After discussion the motion passed unanimously.

Nominations/Elections Committee: John Taft reported that he is collecting information as to who is interested in becoming or remaining a member or officer of the section. He indicated the ballots would be out by the May Regular Meeting.

New Business: None.

Old Business: None.

Motion to Adjourn: Carolyn Sandberg moved to adjourn the meeting; Miguel Azar seconded. The motion passed. The meeting was adjourned at 12:12 p.m.

Christopher Schulte
Secretary

Computer Law Section Annual Meeting

Wednesday, June 19, 2002
3:30 p.m. - 6:30 p.m.
Brit's Pub
1110 Nicollet Mall, Minneapolis

*Come to the Annual Meeting
and enjoy food, fun and conversation
with old friends and new ones!*



Agenda:

- 3:30 p.m. Network and socialize
- 4:00 p.m. Annual Meeting and election of Officers & Council
- 4:30 p.m. Adjourn to Brit's English Garden for hors d'oeuvres, lawn bowling (lessons provided) and cash bar

If you cannot attend the annual meeting, you may still vote in the election. Please see the enclosed ballot for details.

The cost of the meeting is \$15.00. Reservations are due no later than Monday, June 17, 2002. No refunds after that date.



Registration: Computer Law Annual Meeting June 19, 2002

Method of Payment:

- Check made payable to MSBA/Computer in the amount of
 - \$15.00
- Visa/MasterCard # _____
Exp. date _____

Name: _____
Company: _____
Phone: _____
E-mail: _____

HOW TO REGISTER:

- **Mail** (send check or credit card #)
MSBA Attn: Tina Jalivay
600 Nicollet Mall #380
Minneapolis MN 55402
- **Fax** (send credit card #)
612/333-4927
- **E-mail** (send credit card #)
tjalivay@statebar.gen.mn.us

Committee Reports

Contract Committee Report

By: Katheryn Andresen and Christine Brick

The Contracts Committee met on Jan 31 to begin planning the Spring CLE. The date of the CLE will be April 17. It will be a half-day CLE commencing in the morning. The topic will be ASP agreements. The agenda will include a business perspective overview of ASP's presented by Pete Zirbel of Deloitte & Touche, the introduction of a fact situation, which will result in the attendees being divided into groups of 4 (2 representing the ASP Provider and 2 representing the ASP Customer) to negotiate an ASP agreement. A sample agreement will be provided. The CLE will conclude with a group discussion on negotiation results, and a summary of the key issues and concerns that should be addressed in ASP agreements. In addition, Kate Andresen and Pete Zirbel hope to author an article on ASP's, which will be included in the materials provided to the participants. We will open up this CLE to all MSBA members, and as a result, will need to utilize the Minnesota CLE facilities including the Theater and two of the overflow rooms. It will cost \$300 (\$200 for the theater and \$50 for each overflow room). We do plan to charge for the CLE, however. We requested funding in the amount of \$300 to cover the initial cost of reserving the rooms.

The council approved funding \$300 to reserve the Minn. CLE Conference Center for the April 17, 2002 CLE. This reservation has been confirmed for the large auditorium, seating 170. The final planning meeting for the CLE will be March 21, 2002. Notices of the CLE will be e-mailed by the end of March. We will offer free membership in the Computer Law Section with a CLE reservation to assist with our 10% club obligations.

Noon CLE Committee Report

By: Tom Sheran

On April 3 William Mitchell Professor Chris Kunz will present a talk on on-line contract formation, including the efficacy of "click through" methods as evidence of buyer assent. I would like to have another notice go out to the Internet Section and Business Law section (as well as Computer Law) sometime around the middle of this month. I am still hoping to schedule a presentation

on the general issue of network and/or Internet security. Security has received increased attention with the occurrence of 9/11. Unfortunately, I do not have any leads on a good speaker. I would welcome any input I can get from the Council. The possible topics include (1) technical and policy implications of mandating security requirements on "public" infrastructure, or on private systems, (2) the legality of restricting access to encryption by potential terrorists and other wrongdoers and/or (3) the legal implications of the DOJ's expanded surveillance access request now pending in congress. If this is done it will probably have to be moved to late April early May.

Web Master Report

By: Bill Hefner and Michael Atlass

Website Committee Report for February 2002 Meeting

1. Once again, the URL for the refurbished Computer Law Section webpage is:
http://www2.mnbar.org/sections/computer_law/index.htm
2. The Minutes and Case Law Updates received and approved at the January Council meeting have been posted, as has the Winter 2002 Section Newsletter.
3. The Chatroom is once again up and running. There is currently more "room" than "chat," however. This is likely due to the disappearance of the chatroom link for a period of time at the end of last year. The link for the chatroom is in the title bar, just below the words "Computer Law Section." Section members are encouraged to chat and chat often.
4. We will discuss with Dick Ericson the fate of the "Substantive Articles" link. There currently is no way to access the articles listed in this section. We will likely scrap the link altogether and rely on the "Newsletter" link and archive to give visitors the opportunity to search for past articles published there.

Website Committee Report for March 2002 Meeting - Dick Ericson has posted the Case Law Updates approved at last month's (February) meeting. We are still waiting for Dick to do some of the other

“housecleaning” requests we made of him at that time, such as removing the “Substantive Articles” link entirely. Michael and I will renew this request when we send him this month’s postings. Despite Michael and Chris Schulte’s valiant efforts, the chat room continues to reverberate with the sound of silence.

Annual Computer Law Institute

By: Carla Condiff Schaumann

The committee met on Feb. 7th to discuss the initial planning. The Annual Computer Law Institute CLE will be held in October again. The exact date will be set after consultation with Liz Patel at the CLE center, and after the availability of a few speakers is confirmed. The committee discussed proposed topics and speakers and will ask the section for proposed topics and speakers as well. The general format was also discussed, and the committee will coordinate with Liz at regarding the particulars including timing, funding some of the speakers, topics, marketing, accommodations, materials, etc. The next meeting of this committee will occur prior to the next monthly meeting of the Computer Law Council.

I have a potential speaker list. Before I do much with that I need to check dates with Liz Patel. We’re meeting this week to go over some preliminaries. I will then contact potential speakers. I may be working very soon at a place where doing much committee work at work will be very difficult, but it is downtown, so perhaps meeting occasionally will work out better. Anyone with speaker suggestions, or with a willingness to serve on the committee should contact me at 612-869-6805.

Law Student Outreach Committee Report

By: Christine Brick

William Mitchell is holding a Career Fare on March 6th from 5:00 to 7:00. We have reserved space to represent the MSBA Computer Law Section. The Career Fare is being advertised to law students as an opportunity to meet with lawyers from various practice areas. In addition, we have tentatively scheduled a meeting in February with the law student contacts for the new MSBA Law Student Section and hope to discuss some ideas re: Computer Law communications and events with the law students/law schools.

Sandra Sedo and Christine Brick attended the MSBA Law Student Section Reception on February 21st. Kendra Rubbright and Christine Brick attended the

William Mitchell Career Fair on March 6th and represented the MSBA Computer Law Section.

Future Plans - Set up a meeting with the Law Student liaisons to discuss other events/activities to promote the benefits of the Computer Law Section to law students.

Annual Meeting Report

By: Barb Grahn

I have reserved a room and an outdoor location at Brit’s Pub, 1110 Nicollet Mall, Mpls on June 19th from 3:30 to 6:30 p.m. The annual meeting will be held from 4:00 to 4:30 p.m. At 4:30 we will adjourn to Britt’s English Garden Park for hors d’ oeuvres and lawn bowling (lessons provided). The cost is \$15 with a cash bar. The April 9th Council meeting voted to absorb some of the cost, as has been done in the past. There is a \$1000 food and drink guarantee, which includes the lawn bowling and lessons. I estimate that if we charge \$15 per person, we can recoup about half of the guarantee. Members will be charged \$15, which will apply to the food. There will be a cash bar.

Election Committee Report

By: John Taft

John Taft reported that he is canvassing the current members of the Section Council to determine their desire to continue in their leadership positions. He also indicated that he would like to identify other Section members who are interested in becoming members of the Section Council. Any Section member who is interested in running for a position on the Section Council should contact John Taft no later than April 30, 2002. John can be reached at 651-733-1750, or at jataft@mmm.com.



Michael Jacobs, Asst. A.G. in the Antitrust Division of the Minn. A.G.'s office speaks at the 2-12-02 Section Council meeting on the Microsoft case. On the right is Noon CLE Chair, Tom Sheran.

List of Candidates Endorsed by the MSBA Computer Law Section Elections Committee

Pursuant to Article V of the Bylaws of the MSBA Computer Law Section the following persons have been endorsed by the Elections Committee for their respective positions for 2002-2003:

Officers

Chair:	Daniel A. Tysver
Vice Chair:	Chris Schulte
Secretary:	Katheryn Andresen
Treasurer:	Christine Brick

Council Members

Miguel Azar	Charles Johnson
James A. Blomquist	Dianne Plunkett Latham
Charles P. Brink	Ronald P. Marmo
Stephen W. Buckingham	Gillian Rosenquist
Rebecca Comstock	Kendra Rubbright
Carla Condiff	Carolyn M. Sandberg
Frank S. Farrell, Jr.	Tom Sheran
Barbara J. Grahn	John P. Sumner
William Hefner	John A. Taft
Mehmet Konar-Steenberg	Sandra Sedo, Immediate Past Chair

Perception is Reality

By: John P. Sumner, Merchant & Gould

Like everything else in life, perception is often the reality of patent protection. For example, I often find that venture capitalists looking for start-up capital are oblivious to the scope of patents or patent applications that a start up has. In such instances, the creation of potential for patent protection by filing one or more patent applications can be enormous. Typically, a law firm or its client will not disclose the intended scope of

patent applications to venture capitalists. Instead, it is often best to merely list the patents that have been applied for. To do otherwise can be interpreted later by unhappy investors as tantamount to having warranted the scope of rights being sought. Thus, although the venture capitalists will push for qualitative description, it can be dangerous for a law firm or its clients to disclose more than the quantity or perhaps the title of related patent applications that have been filed. ■

Update on January 8, 2002

Festo Oral Arguments

By: John W. Bateman, Kenneth R. Corsello and Kristina M. Castellano*

On January 8, 2002, the United States Supreme Court heard oral argument in *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.* A number of the Kenyon & Kenyon attorneys attended the oral argument, and have provided their observations. The reader is cautioned, however, not to place undue weight on the discussion at oral argument.

The oral argument focused on the two “questions presented” to the Supreme Court in the *Festo* case: (1) whether every claim-narrowing amendment designed to comply with any provision of the Patent Act automatically creates prosecution history estoppel regardless of the reason for the amendment, and (2) whether a finding of prosecution history estoppel completely bars application of the doctrine of equivalents. In an en banc decision, the Federal Circuit had previously answered both questions in the affirmative.

A central issue in determining the answers to the questions presented is the meaning of the Supreme Court’s decision in *Warner Jenkinson Co. v. Hilton Davis Chemical Co.* (1997), which held that prosecution history estoppel would apply where a claim was amended for a “reason related to patentability.” A number of the Justices expressed skepticism that “patentability” for this purpose could include issues other than those relating to whether the claimed invention was anticipated or obvious in view of the prior art.

The discussion at the oral argument often involved the underlying policy arguments for and against the doctrine of equivalents and in this regard echoed themes suggested by the various concurring and dissenting opinions issued by the Federal Circuit. Robert Bork, former Solicitor General and Supreme Court nominee, argued for Festo Corporation that the Federal Circuit’s decision drastically diminished the value of a patent in that a competitor could use the prosecution history as a template to design around a patent. On the other side, Arthur Neustadt urged the Court to affirm the Federal Circuit’s decision because the greater certainty provided by the decision would further the progress of industry.

Chief Justice William Rehnquist and Justice Antonin Scalia seemed to be the most hostile to the Federal Circuit’s decision. They appeared to be troubled, for example, by the retroactive application of the decision on patents that were prosecuted before the decision was issued by the Federal Circuit, a point that Mr. Bork raised a number of times. By contrast, Justice John Paul Stevens and Justice Stephen Breyer seemed to be the most sympathetic to arguments supporting the Federal Circuit’s decision.

One-third of the argument time was allotted to Deputy Solicitor General Lawrence Wallace, who argued as *amicus curiae* on behalf of the United States that prosecution history estoppel should not bar equivalents where the equivalent was not foreseeable, when the claim was first filed. The court also asked questions about the *amicus curiae* brief of the Institute of Electrical and Electronics Engineers, which suggested a similar approach. There was also discussion of the arguments made in a few other of the more than twenty *amicus curiae* briefs that were filed.

On balance, the Kenyon & Kenyon attorneys who attended the oral argument were left with the impression that the Supreme Court would modify the Federal Circuit’s decision in some fashion. We would not be surprised if Justice Clarence Thomas writes a decision in this case. He wrote the majority opinion in *Warner Jenkinson* and in *J.E.M. AG Supply, Inc. v. Pioneer Hi-Bred International, Inc.* (2001), where the Court held last month that newly developed plant breeds are patentable subject matter under 35 U.S.C. § 101. Although Justice Thomas did not ask any questions at the *Festo* oral argument, he rarely asks questions at oral argument.

The transcript will be available two to three weeks after the oral argument. If you send an email to <mailto:jmaier@kenyon.com>, a transcript will be forwarded to you. A decision by the Supreme Court for the *Festo* case is expected before the end of June 2002. ■

* John W. Bateman is a partner with Kenyon & Kenyon. Kenneth R. Corsello and Kristina M. Castellano are associates with Kenyon & Kenyon. Please feel free to contact us if you have any questions.

Case Law Summaries

Patent

By: Dan Tysver

Report from mid November through December 2001

Space Systems/Loral Inc. v. Lockheed Martin Corp. - Mere conception does not make an invention “ready for patenting” for purposes of the on-sale bar, even though the conception was written in a form that included all elements shown in the claims and eventually is shown to be workable. It was relevant that the inventor did not know whether the concept could be made to work.

Smith & Nephew Inc. v. Ethicon Inc. - A method step that is disclosed in the specification but not claimed is not automatically dedicated to the public under the 1996 *Maxwell* case. This Federal Circuit decision held that *Maxwell* is limited to an analysis under the doctrine of equivalents. Here, the claimed method was infringed literally. The defendant’s inclusion of an additional method step that was disclosed, but not claimed in the patent, did not help them avoid literal infringement. This issue is before the Federal Circuit, *en banc*, in *Johnson & Johnston Assoc. Co. v. R.E. Service Co.*, which has not yet been decided.

Bose Corp. v. JBL Inc. - Amending a claim to include new language that was inherent in the existing language was not a narrowing claim amendment, and therefore was not affected by the *Festo* decision. The original claim disclosed “an ellipse.” The amendment described the ellipse as “having a major diameter,” which is an inherent characteristic of all ellipses. *Festo* affects a narrowing claim amendment made during a reexamination proceeding. Moreover, to the extent that the same claim limitation is found in unaltered, original claims, these claims are also covered by *Festo* and are not susceptible to analysis under the doctrine of equivalents.

J&M Corp. v. Harley-Davidson Inc. - Means-plus-function language must be interpreted according to the structure revealed in the specification and the file history. “Gripping means” does not cover a single clamp where only a double clamp was revealed in the Specification.

Novartis Corp. v. Ben Venue Labs Inc. - A computer model used by an expert to show that a patented pharmaceutical was present during the defendant’s

manufacturing process was insufficient to avoid a summary judgment motion for non-infringement. The computer model was not supported by factual foundations or assumptions that had been established in the record.

Rexnord Corp. v. Laitram Corp. - Claim meaning is not limited to the specification’s description of the preferred embodiment, even where there was no description in the specification of the broader claim meaning. The SDNY held that the best mode included in the specification can be used to limit a claim when the invention is nothing more than the best mode itself. The court basically held that the plain meaning of the patent claim is that shown in the best mode. *Brookhill-Wilk I L.L.C. v. Intuitive Surgical Inc.*

Superior Fireplace Co. v. Majestic Products Co. - Certificate of correction cannot be used to correct any mistake that broadens a claim.

Interactive Pictures Corp. v. Infinite Pictures Inc., Fed. Cir. No. 01-1029, 12/20/01 patent (5,185,667). *Festo* is distinguished by the CAFC panel. Amazingly, the panel (Lourie, writing for a unanimous panel) held that changing the claim term “output signals” to “output transform calculation signals” was not a narrowing amendment that created prosecution history estoppel, as in *Festo*. “Thus, the amendment was not made for a ‘substantial reason related to patentability,’” the court stated. They affirmed a jury verdict of equivalents infringement based on this finding. The court explained that the added words did nothing more than make express what had been implicit in the claims as originally worded. The court also upheld a finding of no literal infringement under 35 U.S.C. Section 112 Paragraph 6 for lack of an identical function in the accused product, thus specifically implicating the doctrine of equivalents as the legal basis for the result. This decision follows closely after *Bose Corp. v. JBL Inc.*, Fed. Cir., No. 01-1054, 12/17/01 in which a claim amendment that added a term inherent in the existing language merely provided an antecedent for later claim language without narrowing the claim for *Festo* estoppel. In *Bose*, affirming a denial of a summary judgment, the court would not apply prosecution history estoppel to an amendment that added at the end of the original claim language “said boundary being defined by an ellipse” the phrase —having a major diameter—. The

court said that a mathematically inherent characteristic of an ellipse is a major diameter, so nothing was apparently changed.

Trade Secret

By: Gillian Uecker Rosenquist and Kim Shepherd

DVD Copy Control Assn v. Bunner (No. H021153, Cal. App. 11/01/2001). The Preliminary injunction of the posting of DeCSS code is held to be prior restraint of free speech. The California Appeals Court overturned a preliminary injunction ordered by the lower court as the prior restraint of speech. The Court reasoned that the code posted by Bunner on his website called DeCSS, which provides a method for playing encrypted DVDs on players not equipped with CSS (content scramble system) technology, was a written expression of ideas. Protection of trade secrets (Plaintiff claims CSS technology is their trade secret) must bow to the protection of free speech, the Court reasoned, and therefore, it overturned the lower court's injunction.

The Plaintiff is a trade association of film industry businesses, which control the CSS technology, licensing it to manufacturers of DVD hardware and software and maintaining it as a trade secret. A teenage resident of Norway Jon Johansen developed and posted the DeCSS code on his website in 1999, and soon it was posted on other sites, including that belonging to Andrew Bunner, the Defendant. The Plaintiff sued Defendant and others for posting the DeCSS code and/or linking to sites posting the code for violation of trade secrets by "willfully hacking and/or improperly reverse engineering" CSS. After a hearing, the lower court granted the Plaintiff a preliminary injunction enjoining defendants from posting or distributing the DeCSS code, finding that the CSS code was a trade secret and that there was a reasonable probability that Bunner knew that the code and the master key for CSS technology had been improperly obtained, but noting the problem that the Plaintiff had no direct evidence that Johansen reverse engineered the CSS code to create DeCSS, and if so, did so improperly and in violation of a license.

The Appeals Court discussion first turned to whether the DeCSS code was a form of expression, and therefore the preliminary injunction should be reviewed with a higher level of scrutiny. The Plaintiff argued that code is functional in nature and is not sufficiently expressive to be considered speech. While the Court agreed that object code is not expression, it found that source code was a form of expression amongst computer programmers and thus is a form of "pure speech." Furthermore, it is a form of speech that does not fall into

a class of established exceptions that can be restrained, such as obscenity, libel or "fighting words." The Plaintiff's analogies to injunctions upheld in copyright cases were rejected because copyright law is a federal law with a constitutional basis and provides for "fair use" exceptions that allow for a balanced co-existence of First Amendment and copyright protections.

After finding that DeCSS was a form of pure speech, the Court reasoned under its "independent review" of the issuance of the preliminary injunction that the lower court's order was an improper prior restraint on free speech. The rights that the Plaintiff has to trade secret protection under state law were not more fundamental than freedom of speech, and certainly not on the same level as a threat to national security, or other vital interests, which are usually the only justifiable reasons for prior restraint of speech.

The Court, at the end of the opinion, suggested the following options for the Plaintiff and/or other DVD content providers: to sue for a permanent injunction after a full trial on the merits; to sue for damages based on Bunner's conduct rather than speech; to sue for breach of contract; or to sue for copyright infringement.

On February 20, 2002, the California Supreme Court agreed to hear the appeal of the Appeals Court decision in *DVD Copy Control Assn v. Bunner*. The Appeals Court had reasoned that the code posted by Bunner on his website called DeCSS, which provides a method for playing encrypted DVDs on players not equipped with CSS (content scramble system) technology, was a written expression of ideas. Protection of trade secrets (Plaintiff claims CSS technology is their trade secret) must bow to the protection of free speech, the Court reasoned, and therefore, it overturned the lower court's injunction. The DVD Copy Control Assn argues that intermediate, not strict, scrutiny should have been applied as the Appeals Court failed to consider the functionality of code which makes code a mix of conduct and speech, not pure speech.

Criminal Procedure

By: Gillian Uecker Rosenquist and Kim Shepherd

United States v. Bach, D. Minn Crim., No. 01-221 (12/14/01) A state law enforcement officer must be present when a state warrant to search a suspect's e-mail account is being executed by the internet service provider. In this case, a police officer obtained a warrant based on probable cause that the suspect had evidence of child pornography in his e-mail account and later faxed a copy

of his warrant to the suspect's ISP. Employees of the ISP searched the account and seized evidence. Judge Magnuson acknowledged that while state officers are not bound by 18 U.S.C. §3105 (which requires that federal officers are present for third party searches), nonetheless, he reasoned that the Fourth Amendment required that a state officer be present at a search by a third party to make sure that constitutional protections are in place during that search when state warrants are executed. The evidence was thus ordered suppressed at the defendant's trial.

U.S. v. Ivanov, D. Conn., No. 3:00CR00183(AWT)(12/6/01) The federal District Court could exercise subject matter jurisdiction over a computer hacker located in Russia under the Computer Fraud and Abuse Act (CFAA, 18 U.S.C. § 1030(a)(4)) because his actions effected and were intended to effect computers in Connecticut. The hacker, Alexsey Ivanov, was thus found to have "obtained...value" within the meaning of the CFAA by this exercise of control over computers which contained valuable data and attempting to extort money from their owner. Ivanov had hacked into the computers of the Online Information Bureau, Inc., a facilitator of financial transactions for e-businesses, which contained data such as credit card numbers of customers and merchant account numbers. He then sent e-mails to OIB indicating that he had found out their key passwords and insisting that they hire him to "check security" for approximately \$10,000. Merely viewing data in computers is not a crime under the CFAA, but the fact that Ivanov obtained information from OIB's computers over which he exercised control was sufficient to find the "value" needed to charge him under the CFAA and confer jurisdiction.

Wireless Technology

By: Gillian Uecker Rosenquist and Kim Shepherd

National Cable & Telecommunications Assn, Inc. v. Gulf Power Co., S. Ct. No. 00-832 (1/16/02) The U.S. Supreme Court ruled that the Federal Communications Commission (FCC) has the power under the Pole Attachments Act (47 U.S.C. § 224(b)) to set reasonable rates, terms and conditions for the attachment of high speed internet access cable lines and wireless telecommunications devices onto utility poles. The Court read the Act closely, noting that it provides for FCC controls when any attachment is made *by* a cable television provider, regardless of whether that attachment is for cable or internet services. Furthermore, the Court reasoned that a "telecommunications provider" under the Act includes wireless carriers.

Generally, the Court acknowledged its willingness to give deference to a federal agency such as the FCC where statutes are silent or vague, and in this case, upheld both FCC determinations of its authority to regulate internet attachments by cable providers and attachments by wireless carriers to utility poles.

Copyright

By: Gillian Uecker Rosenquist and Kim Shepherd

Softman Products Co. v. Adobe Systems Inc., C.D. Cal. No. 00-04161 DDP (10/19/01) Despite a clause in Adobe's shrinkwrap agreement prohibiting it, this California District Court ruled that Softman Products may resell Adobe Collection software (originally sold bundled) as single products under the first sale doctrine. The court reasoned that the sale of the software was a sale of a good—personal property—under the Uniform Commercial Code, rather than a license of the intellectual property. Furthermore, as Softman never loaded the software, it had not agreed to abide by the terms of the shrinkwrap agreement. Finally, as far as the shrinkwrap agreement directly conflicts with the statutory first sale doctrine, the agreement must yield. The judge stated that a "system of 'licensing' which grants software publishers this degree of unchecked power to control the market deserves to be the object of careful scrutiny."

Random House, Inc. v. Rosetta Books LLC, 150 F.Supp.2d 613 (S.D.N.Y. 2001) Authors' contracts with Random House giving it the rights to "print, publish and sell [their] works in book form" did not cover the new use of publishing the works in a digital, electronic form. Therefore, the Court refused to enjoin defendant Rosetta Books from publishing the works as e-books. In the 1960s, authors including Kurt Vonnegut and William Styron entered into publishing contracts with Random House that gave the publisher rights to print and sell certain works in book form and license them in limited circumstances, but reserving rights such as foreign language translations to the authors. In 2000, these authors entered into contracts with Rosetta Books, which permitted Rosetta Books to publish digital e-book editions of the works that had interactive features. Random House sued for copyright infringement, but the Court found that because the author's contracts with Random House were not broad and e-books were not the same "medium" as printed books, e-books were a "new use" that did not fall under their agreements. Therefore, Rosetta Books' publication of the works in digital form as e-books was not copyright infringement. ■

ANALYSIS: *Tasini* — Online Publishers Beware

By: Rob Kalinsky, Merchant and Gould

Last summer the Supreme Court, in *New York Times Company v. Tasini*, 121 S.Ct. 2381 (2001), held that § 201(c) of the Copyright Act, governing copyright interests in collective works, did not shield publishers from liability when the publishers took freelance articles, stripped them from the publications the articles originally appeared in, and provided them to LEXIS/NEXIS and other content providers for individual inclusion in large database archives. The articles at issue in *Tasini* were sold by freelance authors to publishers without written agreements in place that assigned copyright interests or electronic publication rights ownership in the articles.

Under § 201(c), copyright in each contribution to a collective work, such as the *New York Times* newspaper, remains with the original author of the contribution and is distinct from copyright in the collective work itself. The owner of the copyright in a collective work has only the right of reproducing “*the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series,*” 17 U.S.C. § 201(c), unless the contribution qualifies as a work made for hire or there is a contract in place assigning rights to the owner of the collective work.

A key issue in *Tasini* involved interpretation of what constituted a permitted “revision” to a collective work. The legislative history for § 201(c) provided examples of permitted revisions to collective works. One example involved including an unedited contribution in a later issue of a magazine or edition of an encyclopedia.

The General Periodicals OnDisc (GPO) and the New York Times Online (NYTO) were among the databases implicated in *Tasini*. The GPO is an image-based database, including full-page images of hundreds of periodicals. GPO retrievals show the page on which a freelance article originally ran without the surrounding pages. The NYTO includes articles from previous editions of the newspaper. Using data provided by LEXIS/NEXIS, the articles are archived in a text-searchable format. The court held that articles in both instances were stripped and disconnected from their original collective works, and that the inclusion of a freelance article within the implicated databases was not a permitted revision under § 201(c).

The court’s interpretation of “revision,” however, leaves a few stones unturned in the business environment. For example, it is a common practice among publishers and corporations to include an article in a variety of contexts, including both offline and online publications. What is unclear after *Tasini* is whether or not online publication of freelance articles and other contributions are permitted revisions under § 201(c). An article originally purchased for an offline, or hardcopy, publication that is later included as part of an online publication may be presented in a very different context, with different surrounding material. In this context, the presentation seems to be similar to the GPO database.

Also, under *Tasini*, the practice of creating a text-searchable archive as part of an online publication is now suspect. Many online publications found on corporate web sites include a text-searchable archive with individual articles previously provided as part of an online publication. Although it may appear more permissible when a corporation itself creates and provides an archive rather than stripping individual articles and shipping them to large database providers such as LEXIS/NEXIS, as was the case in *Tasini*, it does not appear that this action can be distinguished from the Supreme Court’s decision regarding the NYTO database, which provided a single publication text-searchable database.

Most of the online content contained on web sites today typically includes only recent articles, many of which are now probably covered by written agreements assigning to the corporation copyright interests in the articles, including electronic republication rights. Further, most corporations likely do not deal in a significant amount of freelance articles, unless the corporation is a publisher. However, it is still possible that some recent freelance articles are not covered by written agreements. In these cases, the questions left unanswered by the decision in *Tasini* may leave corporations facing liability.

The easiest and safest step a corporation can take to protect itself from liability is to develop and implement a consistent strategy regarding copyright interests in articles, including freelance articles. The strategy should include a standard agreement, signed by all authors,

granting the corporation all rights in the article, including republication rights in electronic format and all future formats yet unknown. In this manner, the corporation can protect itself when it includes a freelance article on its web

site or electronic archive, and can further assure its rights for publication of the article in the next generation media.



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Big Brother Might be Watching, but is He Reading, Too?

By: John E. Whitaker, Merchant and Gould

Sometimes trying to be Big Brother can be more than a big bother. Many employers may believe that “if an employer provides an employee with facilities, then the employer has the right to monitor the use of those facilities.” That is, simply, not always true.

A number of state and federal laws are directed at providing individuals with an expectation of privacy, specifically in the communications they have with others. For example, the federal Wiretap Act, 18 U.S.C. § 2510-2520, makes illegal the interception of telephone conversations. A later amendment to the Wiretap Act, the Electronic Communications Privacy Act of 1986 (the ECPA), prohibits the interception of electronic communications between individuals. Subsequently, one could argue that the Wiretap Act as amended by the ECPA prevents employers in some instances from reading employee e-mail or monitoring employee Internet usage.

Several courts have strictly applied the requirement that electronic communications be “intercepted” before transmission is completed in order to violate the Wiretap Act. This requirement as applied can provide some safe harbor to employers as long as they access e-mail communications after employees receive them. This has, in some cases, been sufficient to avoid liability because no interception occurred. This practice may, however, be fraught with peril for at least two reasons.

First, the courts sharing this view have created an artificial distinction between whether or not e-mail has actually been received by an employee. Technically, when an e-mail message arrives, it is stored on the employer’s e-mail server both before and after the employee reads it. The message does not move from an “incomplete transmission” portion of the e-mail server to a “completed transmission” portion of the server. In most cases, a flag indicates whether or not an employee

has read the message. However, for as long as this artificial distinction exists, employers should not access employee e-mail unless the message has been read, i.e. the transmission is complete. Otherwise, the employer risks liability under the Wiretap Act.

Second, the courts may be moving away from the view that electronic communications must be intercepted. In *Konop v. Hawaiian Airlines, Inc.*, 236 F.3d 1035 (9th Cir. 2001) the plaintiff maintained a web site where he published unfavorable information about his employer. A company vice president gained access to that web site by using another employee’s account. The plaintiff brought suit alleging, among other things, violations of the Wiretap Act.

The appellate court ruled that the Wiretap Act claim could proceed, holding that “*the Wiretap Act protects electronic communications from interception when stored to the same extent as when in transit.*” *Konop* at p. 1046. At press time, the *Konop* opinion was withdrawn for unspecified reasons, but a new opinion has yet to be issued. If the law continues to evolve in the direction of the original opinion, the “interception” safe harbor might disappear.

Monitoring actions should fall within one of the prescribed Wiretap Act exceptions in order to be permitted beyond doubt. Accessing electronic communications is allowed under the Wiretap Act if at least one party to the communication has consented to the interception. Employers should institute workplace procedures that secure employee consent.

Even without consent, it may still be possible to access the electronic communications if access is a necessary incident to the rendition of the service or is necessary to protect the property of the company, and is done with

the communications network used in the ordinary course of business.

If communications service is provided to the public, however, the service provider cannot perform random monitoring except for mechanical or service quality control checks. An employer that allows inbound e-mail messages from the public may be held to this higher standard, if not for its employees' reasonable expectation of privacy, then certainly for the public's.

Most states have laws similar to the Wiretap Act, even if many do not yet specifically apply to electronic communications. States that have not yet done so can amend their statutes to cover electronic communications just as the Wiretap Act was amended by the ECPA. Additionally, some state laws are stricter than the federal law.

A large number of states require that all parties to a communication consent to the communication being recorded. Regardless of whether or not an employee has consented to e-mail monitoring, those people sending e-mail to the employee may not have. Although the employer may have avoided liability under the federal Wiretap Act, it may be liable under several state laws.

In short, there are several pitfalls for the unwary e-mail monitor. Ensuring that an employee does not make inappropriate use of an employer's e-mail facilities can be done, but being Big Brother is a delicate balancing act.



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MSBA Computer Law Section Newsletter Article Guidelines

By: Dianne Plunkett Latham, Editor

Subject Matter – Submit any articles that would be of interest to the members of the Computer Law Section, as for example, recent issues on technology licensing, patents, copyright, trademark or Internet technology. Articles previously published in other publications are acceptable if current.

Article Length – Articles of 3,500 words or less, but not more than 5,000 words are preferred as the newsletter is limited to 24 pages and is published in multiples of 4 pages due to the constraints of the hard copy version.

Article Format – Microsoft Word is preferred. Please contact the Editor before any other format is used. E-Mail submissions are preferred, although a disk or CD ROM is acceptable. Avoid the style of law reviews, CLE materials or legal briefs. A journalistic style is preferred. The structure of the article should include a “catchy” lead, followed by a “thesis paragraph” that tersely states the gist of the article. The exposition of the topic should then follow with a summary at the conclusion.

Footnotes – Keep footnotes to a maximum of 25, as this is not a law review style publication. If footnotes are used they should all fall at the end of the article, not at the end of each page. All footnotes should be in the form prescribed by the *Uniform System of Citations*. Footnotes should be limited to citing specific authorities; ‘string’ citations and discursive notes are discouraged. The author is responsible for ensuring the completeness and accuracy of all references and citations.

Footer – Footers should contain only page numbers, not other information such as a date stamp, or internal document number.

Copyright Notice – A Copyright notice is unnecessary. If the author wishes to include one, it should be placed at the end of the article, not on each page.

Title and By-Line – The article should include both a title and a by-line. The by-line should include both the author’s name and firm affiliation. Do not include any additional biographical information about the author. For example, do not include in the endnotes the author’s practice areas or experience, etc.

Photographs – Photographs of Section events are encouraged. They may be in black and white or in color. Digital photographs are preferred, although prints are acceptable. If digital photographs are submitted, please e-mail them at the highest resolution available on your system. Submitting photographs on disk or CD ROM is acceptable.

Graphs and Charts – The use of graphs and charts should be kept to a minimum. They are very difficult, if possible at all, to input to the newsletter’s Pagemaker software, and often must be recreated manually, substantially delaying the formatting set-up time.

Submission Deadline – The Computer Law Section Newsletter is published 3 times a year in September, January and May. Submission deadlines are about 4 weeks prior to publication and are published in the Calendar of Events for the previous issue.

Distribution – The newsletter is distributed to members via e-mail. Those members without an e-mail address (about 10%) are sent a hard copy through the US mail.

Questions – Please feel free to contact the Editor, Dianne Plunkett Latham, at:
952-941-3542 or PlunkettDi@mn.rr.com. ■

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2001-2002 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 tjalivay@statebar.gen.mn.us.

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- If you are interested in joining one of the following committees for 2001-2002, or are willing to be considered for an officer or committee chair, please check below and send to Sandra Sedo, Computer Law Section Chair, Dorsey & Whitney, 220 S. Sixth Street, Minneapolis, MN 55402-1498.

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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: _____

The Minnesota State Bar Association, with significant help from the law firm of Dorsey & Whitney and local legal services providers, has launched a Minnesota Civil Law practice area in collaboration with www.probono.net in New York. The practice area provides online support for the pro bono and advocacy community and should improve both the quantity and quality of legal services available to low-income and disadvantaged Minnesotans. Please join this online community.

Where is it? How do I join?

You can access the site by visiting <http://www.probono.net/mn> and choosing Civil Law on the “Select a practice area” menu. Once there, you will see a brief description of the site and its sponsors. Click on the Join button and fill out the registration form. Once your membership is approved, you will be sent an email with your user name and the password you selected. You can then access the site immediately. We encourage you to bookmark the practice area.

Who is it for?

The www.probono.net/mn web site has been developed to provide internet-based support, accessible 24 hours a day, seven days a week, for staff and volunteers handling cases through Minnesota legal services, volunteer attorney and judicare programs. Minnesota is probono.net’s first statewide initiative. Minnesota lawyers and law students have access to four practice areas: Civil Law (hosted by the MSBA), Minnesota Justice Foundation (hosted by MJF for law students), Asylum (co-hosted by Minnesota Advocates for Human Rights), and Death Penalty (hosted by the ABA Death Penalty Representation Project).

Launched in late 1998, probono.net initially focused on legal communities in New York City. Sites have now been launched serving San Francisco and Rochester, New York. The long-term goals of the Civil Law area and the entire project are to expand pro bono work, make pro bono work easier and inculcate a community spirit in the pro bono community. Please join yourself and encourage others to join too!

What will I find on the site?

The Minnesota Civil Law practice area contains the following resources:

1. The Calendar section provides a listing of upcoming CLE programs and other important events. The site includes the time, location and description for each event. You can easily add events to the calendar.
2. In the News area, you will find helpful articles from journals and newspapers in Minnesota and across the country and updates from local programs.
3. The Library is a detailed online resource for attorneys working with low-income and disadvantaged Minnesotans. Divided by subject area (e.g., Housing, Family, Consumer, Government Benefits, Health), the library features much of the MSBA’s Minnesota Volunteer Attorney Desk Manual and other practice manuals, links to relevant statutes and regulations at the federal, state and local levels, community legal education materials and much more. Training manuals, brochures and pamphlets covering a wide range of matters can also be found online. Check out Minneapolis Legal Aid attorney Larry McDonough’s entire Eviction Defense Manual online, including forms and all of the unreported housing cases. It’s all in the Housing Folder in the Library. Need Family Law Forms? Go to the Family Law Folder in the Library for a complete set of forms.
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We want this site to be a valuable resource, so please contact the MSBA with any suggestions for improving the site.

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