

**THE INTERNET AND INTELLECTUAL PROPERTY ISSUES
FOR ON-LINE PUBLISHERS AND CONTENT PROVIDERS**

By

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I. INTRODUCTION

A Hypothetical Case

A client publishes a series of scientific journals in print. The client has now decided to publish all the journals on CD-ROM, and to publish many of the articles on its newly-created Web site on the Internet. The client plans to sell access to the journal articles on the Web site by subscription; institutions and individuals will pay various annual fees for unlimited access to the articles. The client also plans to establish discussion groups on scientific topics on the Web site; all subscribers may contribute to the discussion groups.

The client has publishing agreements with authors of all the articles. Some of these agreements assign copyrights to the publisher; some others grant the publisher an exclusive license to publish the articles. However, none of the publishing agreements mentions electronic publication or publication on the Internet. Most of the authors are paid honoraria.

The client has posed a series of questions to you regarding the various enterprises on which he/she wishes to embark. You, in turn, have consulted the Proprietary Rights Committee of the Computer Law Section of the State Bar of Michigan to get answers. Here is what you have learned.

II. Q&A

Q1. What is the best way to secure and enforce "electronic rights" to newly created material? What rights should a publisher secure? What if assignment of copyright is not possible?

A1. Initially, the phrase "electronic rights" has no legal meaning, but it is generally thought to include the right to distribute products on-line. The scope varies widely depending on who uses the phrase. It can range from rights to exploit a work on "magnetic and optical media" (such as floppy disks, cartridges, MMCDs, and CD-ROMs) to more expansive definitions that include the right to exploit works through distribution or display on computer networks, direct broadcast satellites, and other means.

If the publisher is also the author of the material, she has all rights, electronic and otherwise, from the beginning. If the publisher is not the author of the material, she has only those rights that the creator gives up. Under United States Copyright Law, the employer of the person who creates a work is deemed to be the author under the "work for hire" doctrine. The best method of obtaining these rights is by assignment of copyright. If this is not possible, the next best method is by a contract specific to the material in question. If this is not possible, the next best method is by a standard contract applicable to any ma-

material the publisher has, such as anything submitted to the discussion group on the Web site your client has in mind.

The book publisher Random House has an "electronic rights" provision in its standard contract with authors as follows:

Print, publish, distribute and sell the work in book form and (2) publish and distribute the work (in complete, condensed, adapted or abridged versions) by any means of distribution or transmission, whether now or hereafter known or developed, intended to make the text of, and any illustrations or photographs contained in, the work available in visual form for reading (including, but not limited to, electronic or machine-readable media, or on-line electronic or satellite-based data transmission) (referred to as Electronic Books)

To prepare, reproduce, publish and sell, to distribute, transmit, download or otherwise transfer copies of, and, with the Author's consent, which consent shall not unreasonably be withheld or delayed, to license the foregoing rights in electronic versions of the work (referred to as Electronic Versions). As used herein, Electronic Versions shall mean versions that include the text of the work and any illustrations contained in the work in complete, condensed, adapted or abridged versions, and in compilations for performance and display (i) in any manner intended to make such Electronic Versions of the work available in visual form for reading (whether sequentially or non-sequentially and together with accompanying sounds and images, if any) and (ii) by any electronic means, method, device, process or medium (referred to as Electronic Device or Medium). For the purposes of this subparagraph, Electronic Device or Medium shall include, but not be limited to, electronic, magnetic, digital, optical and laser-based information storage and retrieval systems, floppy diskette-based software, CD-ROM, interactive software and compact discs, floptical disks, ROM Card, silicon chip, on-line electronic or satellite-based data transmission and other such systems, and any other device or medium for electronic reproduction, publication, distribution or transmission and other such systems, and any other device or medium for electronic reproduction, publication, distribution or transmission, whether now or hereafter known or developed. Notwithstanding the foregoing, the rights to publish or license Electronic Versions pursuant to this subparagraph shall be revocable by the Author upon giving written notice to the Publisher with respect to any particular Electronic Device or Medium for which the Publisher has not published or licensed publication, transmission or distribution of any Electronic Versions within five (5) years after first publication of the work in book form in the United States or after first development of such Electronic Device or Medium in commercially viable form, whichever is later.

As the above demonstrates, contract provisions regarding "electronic rights" can get very messy. Assignment of copyright is the cleanest, if the creator will go along with it. Even in an exclusive license to publish, some definition of what is meant by "publish" should be included.

Q2. What is the best way to establish the right to publish current material in an electronic form when the original publishing agreement is silent on the issue?

A2. The answer depends on the specific language of the publishing agreement in question.

If the publishing agreement gives permission to publish once, and that one publication has occurred (for instance, in a print periodical), there is no longer an executory agreement. Any further publication, whether in electronic form or any other, will require a new contract with the creator of the material.

If the publishing agreement gives permission to publish once, and that one publication has not yet occurred, then it depends on whether the publication agreement specifies a publication channel. This can get a little tricky. If the contract says, for instance, that the material "may be published once in XYZ Newspaper," then the permission seems to be specific to a print publication with that name. If the publishing agreement says that the material "may be published once by The XYZ Company," though, then the permission seems broad enough to encompass an electronic publication, for example an XYZ Company Web page.

If the publishing agreement gives permission to publish multiple times, the specific language regarding publication channels in the agreement controls the question of whether or not publication on the Web is included. If the language of the publishing agreement specifies print media, or a specific print outlet, then the only way to obtain electronic publishing rights is by a new agreement, or by renegotiating the current agreement, with the creator of the material. If the publishing agreement does not specify a particular medium or outlet, read on.

The development of new communications technology has created problems in determining the scope of the media that the license covers. Courts must look to the intent of the parties as reflected in the written words of the contract (along with other permissible evidence) when interpreting an ambiguous contract. However, when drafting a license agreement, the parties may be unaware of, or fail to take into account, the existence of novel technological developments that generate unforeseen applications for previously licensed work. If the parties did not specifically contemplate a new medium at the time the license was granted, there will be no single intent regarding the new medium for the court to discern. The court will then generally look to other standard canons of contract interpretation, such as course of performance and course of dealing. With a new medium,

those will probably fail to yield an answer as well. As a last resort, courts will interpret an ambiguous contract against the drafter, in this case probably the publisher. The moral of the story for the publisher: Be inclusive and expansive in your contract language. A few examples will illustrate the point.

Generally, when a grant of rights includes the right to exhibit a work "by any means or methods now or hereinafter known," it includes any and all media even if the licensor did not anticipate a particular development in new media at the time of contract. In *Rooney v. Columbia Pictures Industries, Inc.*, 538 F. Supp. 211 (S.D.N.Y.), *aff'd* without opinion, 714 F.2d 117 (2nd Cir. 1982), the court held that a series of contracts granting motion picture distributors a license to exhibit the plaintiff's films "by any present or future methods or means" and "by any means now known or unknown" encompassed the right to distribute the films by means of later-developed video technology, such as on video cassettes, even though the licensor did not have such rights in mind at the time of the grant.

In contrast, the court in *Cohen v. Paramount Pictures Corp.*, 845 F.2d 851, 853-54 (9th Cir. 1988) held that a more sharply-worded contract did not give video cassette rights. The contract in question granted rights to exhibit a motion picture containing a licensed musical work by means of television; however, the contract also contained a broad restriction reserving to the licensor all rights and uses in and to the musical composition except for those herein granted. The court held that the license did not encompass the right to revenues derived from the sale of the motion picture in video cassette form. Also, in *Ray v. Lafferty*, 990 F.2d 1379 (1st Cir. 1993), the grant of rights to animated film episodes "for television viewing" did not encompass the right to distribute films in video cassette form. The court interpreted an ambiguous copyright license against a sophisticated licensee who drafted the license.

Finally, a few words regarding assignment of copyright. The rule governing assignment of copyright under the 1909 Copyright Act was one of "indivisibility" of copyright: A copyright was an indivisible property right that was not capable of being split up into small units and sold or exclusively licensed. This rule was done away with in the 1978 Copyright Act by Section 201(d)(2), which permits the assignment or exclusive license of any part or subpart of the bundle of rights comprising a copyright.

Consequently, if the original publishing agreement is silent on the issue, under 17 U.S.C. § 204(a), the publisher must try to get a transfer of copyright ownership, such as an exclusive license. This must be: (1) in writing, (2) in the form of an instrument of conveyance or a note or memorandum of the transfer, and (3) signed by the owner of the rights conveyed or the owner's duly authorized agent.

Q3. What copyright notices should be included in on-line material? Where should they be included, and what should they say? How often should the date be changed? (Assume the material can both be viewed and downloaded by the customer.)

- A3. A Notice of Copyright is a formal notification of the copyright on publicly distributed copies of a copyrighted work. For public distribution of copies of a copyrighted work prior to March 1, 1989, the affixing of a formal copyright notice to the copies was crucial to keep the copyright alive. For copies distributed after March 1, 1989, the affixation of notice is not necessary, but is still recommended to preclude the defense of innocence as a means of mitigating damages. 17 U.S.C. § 401(d). Other reasons for continuing to use notice of copyright include: (1) the deterrence of infringement, by using the notice as a "no trespassing" sign that provides a recognizable and clear warning that copyright is claimed and is likely to be enforced; and (2) the avoidance of the necessity of complying with ill-known formalities found in the copyright laws of those nations that are members of the Universal Copyright Convention. This is especially important for publishing on the Web, as readers can potentially reside in any country on Earth.

A copyright notice consists of the word "Copyright" or its abbreviation "copy", or the symbol "c" with a circle about it, together with the owner's name and the year of publication, placed on a work where it may be discovered upon reasonable inspection -- usually at the beginning or end of the work. On computer programs, notices are usually placed on the first screen of each standalone module and on related materials. For a Web site, the copyright notice should go on the first page of the site. It would also be a good idea to make each user click on an "OK" button in order to get past the message and on to the next page. In addition to the general copyright notice for the site, a specific copyright should be put on each piece of separately-copyrighted material, and preferably on each page of the material. An easy technique would be via a footer. This is to protect against users who enter the Web site in a spot other than the first page.

In addition to the formal notice, it is probably a good idea to add a little verbiage, something like: "Copyright 1997 Author B. Creator. All rights reserved. These rights include, but are not limited to, the right to make electronic copies and download." The third sentence, while non-standard, seems appropriate to a new medium such as the Web, as the viewer will not be able to claim ignorance of the impropriety of making an electronic copy or downloading the material.

As further discussed in the answer to Question 4, whenever one puts material on the Internet, there is at least some level of implied license to retrieve and view that material. It is recommended to make the license express and clear rather than depend upon some court's later attempt to interpret the scope of the license. With the copyright notice, also make a statement as to what rights are being granted and what rights are not being granted to whomever might access the web page.

Finally, if different versions of the same work of authorship are published in different years, each year of publication should be included in the copyright notice, e.g. "Copyright 1995, 1996, 1997 Author B. Creator."

Q4. How can publishers protect material from copying and dissemination in an on-line environment? If through an agreement with the customer (subscriber), what should such an agreement say?

A4. The publisher can protect material from copying and dissemination in an on-line environment by technological and legal means. Unfortunately, neither is foolproof.

The best solution would be technological: Find a way to lock a Web site such that it can be viewed but not downloaded. If such technology does not exist, it certainly is needed.

Short of that, technological solutions have flaws. For instance, the popular press recently reported on a Web site in which access was restricted to those with a given password, and the site's creator gave out the password only upon payment of a fee. The problem was that, once one person paid for and received the password, he gave (or sold) it to all his friends. A system such as this should be tied to a userid, not a password that anyone can use. Note that encryption/decryption software can be disseminated as easily as a password.

An agreement can be made with the customer or subscriber to limit copying and dissemination of the work. In such an agreement, there may be specific language that no consent is given to transferring the work to others. The language may be as simple as, "I agree not to disseminate anything from the XYZ Web site or any of its pages." Also, it would be a good idea to explicitly disclaim any and all implied licenses. The problem with this, as with a copyright notice on the first page of a Web site, is that someone might enter the site at a point other than the beginning, thus bypassing the contractual language.

If the electronic material is a program, the publisher might include a kind of electronic shrink wrap license agreement together with its distribution. The program itself might be distributed in encrypted form, with the key for decryption provided as part of the license in which the publisher authorizes, enables, and appropriately limits use.

Q5. What new liability issues do publishers face when publishing material on-line? How can this liability be most effectively limited? What forms of disclaimers and explanations are recommended?

A5. The Internet generally provides an unhampered communication environment where it is easy to distribute and duplicate works of authorship. Each Internet communication is a potential copyright infringement. Once a message is fixed in a medium for anything more than a transitory period, copyright is established under 17 U.S.C. §§ 101 and 102. No formal act is required to perfect the copyright, though one must register it prior to seeking remedies under 17 U.S.C. §§ 410 and 411. Such registration prior to instituting suit is unique to U.S. law.

When one reads an electronic message, the computer immediately places the message in some sort of memory. See *MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511 (9th Cir. 1993). Courts have treated this placement in memory as the message being "fixed in a tangible medium of expression," thus satisfying the copyright statute. Consequently, by definition, all communications sent over the Internet are copyrighted works of the authors.

Copying protected works constitutes infringement, absent consent or fair use. Under 17 U.S.C. § 504(c)(2), even innocent infringement is actionable under copyright.

Contributory infringement of a copyright is the act of supervising or directly financially benefitting from the direct infringement of another. Consequently, there can be no contributory infringement unless there is proof of a direct infringement. Note: In *Religious Technology Center v. Netcom Online Services, Inc.*, 907 F. Supp. 1361 (N.D. Cal. 1995) and 923 F. Supp. 1231 (N.D. Cal. 1995), the court seemed to indicate that when a publisher receives a notice from a third party that a subscriber is infringing the third party's copyright, if the publisher does not remove the material in question, the publisher has notice of the infringement and thus becomes liable as a contributory infringer.

Given the above, the more control an online publisher has over content, the more contributorily liable the publisher becomes for any copyright infringement that occurs. The level of liability will likely be in proportion to the control or responsibility that the publisher bears for making harmful copying possible.

In the hypothetical situation at hand, the client has a high level of control over content, as she chooses what to put on her Web site and what to put on her CD-ROM. She will probably therefore be highly liable if something she publishes is not the property of the putative "author."

Contrast this with the typical situation of a pass-through Internet access provider, such as AOL or CompuServe. These services typically do not censor what is posted through their networks. Thus, they do not have a high level of control over content, and so, absent specific notice, should not be contributorily liable to any great extent for any infringement that occurs.

One way of limiting liability is for the online publisher to seek and obtain from each content provider a warranty that he has a right to convey the license to the publisher, including a right to place the work on the Internet. Also, the publisher should seek indemnification from the content provider. One type of indemnification clause that may be useful is as follows:

A content provider shall indemnify the publisher against the liabilities and costs, including reasonable attorney fees, of defending any suit arising from publishers placing the work of authorship on the Internet.

A separate question of liability might occur if somebody makes copies or distributes a work from the Web site beyond the intended or desired scope of the license intended for such work. If that happens, the content provider might attempt to hold the publisher liable. To help control the potential for such liability, the publisher might put in technological locks or copyright notices, or have contract provisions with its subscribers, to control such activities. Even if the publisher does use such mechanisms in an attempt to control such behavior, they are likely not to be perfect. Such potential liability might be reduced or avoided by appropriate contract language with the content provider, disclaiming any duties to prevent such actions by third parties.

Q6. How does the doctrine of fair use operate in an on-line environment, and what should publishers be aware of?

- A6. The defense of fair use to a charge of infringement of copyright has long been recognized as an equitable rule excusing certain types of otherwise infringing content. Congress, in broadly defining the doctrine in 17 U.S.C. § 107, intended to restate the judicial doctrine of fair use, not to change, narrow, or enlarge it in any way. In general, fair use allows the making of copies that do not conflict with the normal exploitation of a work and do not unreasonably prejudice the legitimate interests of the author. Fair use will more often exist when the copier uses a copyrighted work as an integral and necessary part of a work of one's own. In other words, one must "transform" the downloaded work to have a reasonable chance to win with a fair use defense.

In *Religious Technology Center v. Netcom Online Services, Inc.*, 907 F. Supp. 1361 (N.D. Cal. 1995) and 923 F. Supp. 1231 (N.D. Cal. 1995), one of the defendants, who had been a member of the Church of Scientology but who had left the church and became an ardent critic of it, posted a large amount of published and unpublished copyrighted church material on the Internet for the stated purpose of advancing criticism of the church. The court held that this was not a fair use, because the percentage of the plaintiff's works copied, combined with the minimal added criticism or commentary, was not enough to find fair use.

While the defense of fair use is a popular privilege, the Supreme Court tells us in *Campbell v. Acuff-Rose Music, Inc.*, 114 S. Ct. 1164 (1994), that there are no bright line rules for determining fair use. Rather, this determination requires case-by-case analysis of the facts.

Specifically regarding the Internet, by the mere act of putting material online, and not locking it with some sort of technological lock, a publisher is giving implied permission to view the material.

The publisher is not, however, giving automatic permission to copy to file for long term retention, which is a form of copying and therefore protected by copyright law, as discussed in #5 above. In order to make the public aware of this distinction, as well as to put the public on notice that the Web site owner does not want such copying to occur, the publisher should expressly state the scope of the intended license and the limitations of that license.

Q7. What is the current status of the relationship between trademark registration and domain name registration? What steps are recommended to protect trademarks?

A7. As the Web has grown and users have realized that it is an ideal advertising medium and marketplace for their products and services, an increasing number of disputes have occurred between domain name registrants and trademark owners. Thus, an Internet user wishing to create a Web page or otherwise publish information on the Internet must pay careful attention to domain name/trademark issues if the user wishes to avoid disputes and even infringing another's trademark rights.

Internet domain names are a scarcer resource than trademarks. Any trademark can potentially be protected in several classes; for instance, this is what allows a Cavalier chess set to coexist with a Cavalier automobile. There are not multiple classes of Internet domain names, though, except for different forms of registrants such as commercial organizations (which use .com suffixes) vs. governmental (.gov) or educational (.edu) units. This leads to a problem: Should the owner of the Cavalier trademark chess set trademark or the owner of the Cavalier automobile trademark own the "cavalier.com" Internet domain name? For another example, consider United Air Lines and United Van Lines, or Beefeater Gin and Sign of the Beefeater restaurants. (This last was an actual trademark dispute in the days before the Web. Beefeater Gin won in court, which is why the former Sign of the Beefeater restaurants are now known as Sign of the Beefcarver.)

Network Solutions, Inc. (NSI) registers domain names, based on a contract with the National Science Foundation, to identify a particular site or Web page on the Internet. The U.S. Patent and Trademark Office (USPTO), a separate entity, registers trademarks. This dichotomy leads to some interesting results, as we shall see.

NSI apparently used to operate exclusively on a first-come, first-served basis when registering domain names. This led to "squatters" who registered hundreds of popular names, such as "panavision.com", and then held them out for sale to companies that should legitimately have them. This has pretty much been eliminated in two ways. First, the courts are now fairly consistently ruling against these "squatters." See, e.g., *Panavision*

International L.P. v. Toepfen, 40 U.S.P.Q.2d 1908 (C.D. Cal. 1996). Second, NSI now requires each potential registrant to show, in effect, that its request is legitimate. *Id.* at 1910. As evidence of the request's legitimacy, NSI requires that each applicant for a domain name represent and warrant the following: (1) it has the right to use the requested domain name; (2) it intends to use the name on a regular basis; (3) it will not use the name for any unlawful purpose; and (4) its use of the name will not violate any party's rights in any jurisdiction.

Beyond squatters, there remains the issue of disputes among legitimate owners of the same trademark from different classes, such as the chess set and the automobile discussed above, as to which one gets the coveted domain name. NSI still operates on a first-come, first-served basis if the potential registrant holds a trademark, but it will put a domain name registration request on hold if it is aware of a dispute between trademark holders until a court settles the matter. *Network Solutions, Inc. v. Clue Computing Inc.*, 41 U.S.P.Q.2d 1062 (D. Colo. 1996). In such disputes, NSI itself is subject to litigation, as demonstrated in *Clue Computing*.

In *The Comp Examiner Agency v. Juris, Inc.*, CV 96-0213 (C.D. Cal.), the court ruled on April 26, 1996 that the use of the Internet domain name "juris.com" is likely to infringe the federally registered trademark "Juris" and banished "juris.com" from the Internet. The preliminary injunction issued by the court is believed to be the first judicial determination that the use of an Internet domain name can infringe a trademark.

The USPTO has issued a policy statement on the registration of domain names as trademarks. The USPTO's statement notes that, with the recent publication of NSI's domain dispute resolution policy statement, the number of applications for domain names in the USPTO has greatly increased. The USPTO is developing a policy for handling this new breed of mark. Its discussion of this type of mark distinguishes between content, service, and link providers. The policy states that the prefix HTTP://WWW and the suffix ".com" or ".org" of a universal resource locator (URL) are not to be given weight in the analysis.

To fully protect a trademark, it is recommended that trademarks be registered with the USPTO, as federal registration of a mark accords several benefits to the owner. These rights include constructive notice of rights, evidentiary presumptions, anti-counterfeiting remedies, and availability of an incontestable status after 5 years. State registration is also available and advisable in some instances. However, as discussed above, these do not necessarily protect the mark on the Internet, so registering the mark in a domain name with NSI is also recommended.

In order to secure a viable, protectable domain name registration, a potential applicant should take all the following steps if possible:

- (1) Prior to applying for domain name registration, have a complete domain registration name search performed as well as a complete trademark search covering U.S. and state

trademarks as well as trademarks in other countries. Remember, the Web is worldwide in scope, and disputes can arise with someone anywhere on the globe. A worldwide trademark search would be ideal, but can be cost-prohibitive.

(2) Adopt a trademark that is totally fanciful or arbitrary so as to maximize trademark protection.

(3) Use the trademark properly as a trademark on the Web page. This means use it as an adjective ahead of the generic name of the corresponding goods and/or services, such as "Kleenex brand tissue" or "Jello brand pudding."

(4) Assuming proper domain name registration and trademark clearance in the search, immediately take steps to offer goods/services on an interstate commerce basis and file for U.S. trademark registration. Commerce on the Web can qualify as "interstate commerce" for federal trademark registration purposes, so if the good/service is not otherwise being used in interstate commerce, offer it for sale on the Web site. Establishing interstate commerce and applying for federal trademark registration should be done immediately because even straightforward trademark registrations can take up to a year to issue. On the Web, a year is a lifetime.

(5) Immediately apply for a domain name, even if the trademark has not yet issued. NSI still uses the first-come, first-served procedure among legitimate applicants.

(6) Monitor domain name registrations and federal and state trademarks on a frequent basis to detect unauthorized use of the domain name and/or mark. Immediate action *must* be taken to protect the user's domain name rights and to prevent any dilution or loss of trademark rights.

Q8. Are there standards for author payments for material published on-line? What are the most common arrangements, and what are they based on (royalty or flat fee; based on percentage of material contributed or amount of customer access, etc.)?

A8. There are no standards for paying authors for material published on-line. However, in general, a copyright owner is entitled to the fair market value of the work. In calculating this figure, the courts determine what a willing buyer would have been reasonably required to pay a willing seller for the work. For example, an author might license the use of his copyright either for a lump sum based on the reasonable value of the work, or for a royalty derived from the licensee's profits, or for a combination of both.

Q9. If published material also includes on-line discussion groups or conferences, what can the publisher do to minimize its liability for incorrect or slanderous statements that occur in the discussion groups?

- A9. While this is not an intellectual property issue, it is believed that to the extent that the Internet oftentimes functions to broadcast information, the same rules will apply to on-line publishers as to other broadcasters.

Also, to the extent that the on-line publishers exercises little control over content, one can offer good arguments against their being held liable for such torts. However, again, it appears to be unlikely that a rule will develop that completely insulates on-line publishers from liability. The level of liability will most likely be in proportion to the control or responsibility that the on-line publisher bears for making such publication possible.

As with the publication of any compilation, a notice such as, "All opinions expressed herein are those of the individual authors. The publisher does not necessarily agree with any opinion expressed herein." should provide a measure of protection.

A related issue is whether the publisher should attempt to censor/edit the material sent to the discussion group or conference. If the publisher does not censor/edit, the above statement should protect it, just as someone who does not shovel his walkway is not responsible under common law for injuries due to the natural condition of the walkway. (Note: Many jurisdictions assess liability in this situation by ordinance. The above explanation applies only to common law. Do not try this at home.)

If the publisher does not censor/edit the material, though, he may be letting itself in for bad publicity and lessened reputation. What, then, of censoring/editing the material? This could be seen as implying agreement by the publisher, and thus let the publisher in for liability if the material is slanderous. This is a judgment only the publisher can make.

Q10. What mechanisms are in place to make it easy to know who claims copyright in items on the Web and how to obtain permission or pay a licensing fee to use same?

- A10. The owner might be identified by using the Dialog database (i.e. database 120) of registered copyrights, which might be searched to learn who registered the particular work.

Q11. Can an on-line publisher fall victim to a charge of patent infringement?

- A11. One of the committee members conducted a dialog database search for any patent that used the word "Internet" in its abstract or its claims. The search uncovered thirty-four patents using these words that were issued between the dates of May 7, 1991 and December of 1996. So the answer is yes, an on-line publisher can fall victim to a charge of patent infringement.

Of particular interest is the U.S. patent issued to Sun Microsystems, Inc. entitled "Method and Apparatus for Key Management Scheme for Use With Internet Protocols at Site Firewalls", U.S. Patent No. 5,416,842. The invention relates to methods for securing traffic at the Internet protocol layer rather than performing the security functions at application or transport layers.

Some of the other areas that should receive a great deal of attention in patent circles in the Internet and online service industries in the months and years to come are: (1) technology for metering information usage on the "information superhighway"; (2) new encryption techniques for files and messages, such as e-mail; (3) new ways to send and receive television, radio, data, fax, and voice information, and mixes of these; (4) new computer architectures; (5) new information-linking and retrieval techniques; (6) new methods of data compression of video- or text-related data; (7) new network configurations; and (8) new network software.

Q12. Can a person get in trouble for jumping directly into the middle of a Web site without starting at the intended first page?

A12. Yes. A famous example of this occurred recently with Scott Adams' home page on the Web. Adams is the creator of the Dilbert comic strip. The first several pages of Adams' Web site contain advertising, sales, and other like pieces of information; a person who gets through this material is rewarded with a Dilbert cartoon on an inner page. Adams became aware of a person who hacked into his Web site directly at the page that contained the cartoon, thus bypassing the sales material on the first several screens. Adams threatened legal action. The parties settled out of court; to the committee's knowledge, there has not been a published court ruling to date on this topic. Still, it is a good idea to avoid potential liability in this area by going through Web sites along the creator's intended path from the beginning.

III. CONCLUSION

On-line publishers and content providers face a wide variety of intellectual property issues due to their activities on the Internet. Some obvious issues include copyright and trademark issues. However, definitive answers to many questions raised await resolution by the courts.

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