

Internet & On-Line Law

Fall 2007

INTRODUCTION:

The Internet implicates rights and responsibilities in intellectual property, privacy, defamation, First Amendment expression, contract formation and many other areas of the law. Please do not be concerned if you lack a background in any specific area. I have structured this course and selected cases and readings that attempt to illustrate concepts and principles in these areas in the context of their application to the Internet. In order to apply these principles to service your future clients, it is important that you understand the standards applied by courts in these areas. This course should provide you the background to recognize and analyze such issues. I encourage you to contact me to discuss them or to discuss any other matters. Please do not allow yourself to be confused by any underlying matter or legal principle. My office phone is 202-672-5416 and my e-mail is bmcnamara@foley.com.

As with most law school classes, one of our objectives is to think critically about the issues presented. A prerequisite to critical thinking is familiarity with the underlying facts and issues. That familiarity can only be gained by reading the cases and being prepared to discuss them in class. Therefore, I encourage you to keep up with the reading, to think about the issues and to articulate your thoughts in class. You will find it helpful in understanding the issues and to allow you to speak authoritatively on policy matters, as well.

This course does not have a text book. Since Internet law is still a fast evolving filed of law, you will notice that many of the cases listed for this class are recent, some decided within the last several weeks. Indeed, it would be unusual for us not to include cases decided during the semester. Thus, additional or substitute readings are likely.

I recognize that this course has a great deal of reading and that the cases are not redacted, as they would be in a textbook. Therefore, we will use a TWEN cite and a group presentation system to manage the reading and help you create an outline. This approach has worked well in the past and is described below under ORGANIZATION OF THE COURSE - CLASS PARTICIPATION.

Use of a TWEN site will allow you to download the cases to your computer or to print them out. Please sign up for the TWEN site, since it provides you links to the cases – all you have to do is click on the link. On the TWEN site you will also find several “Chapters” of text I have prepared. If possible, I will add additional such chapters as the semester progresses.

While this arrangement requires you to download and save or print the required cases yourself, at least you do not incur the cost of a textbook. If you print the cases, you

may want to do this at GMU, where you are more likely to have access to high speed printing. In any case, the cost of paper has to be much lower than the cost of a book. Finally, please contact me if the absence of a text book is a hardship and I will look into how to otherwise obtain copies of the cases for you.

Please also keep in mind that the material you are printing is subject to copyright protection and that you are not authorized to re-distribute it.

ORGANIZATION OF THE COURSE – CLASS PARTICIPATION

In order to facilitate class participation and to assist you in preparing an outline, beginning with our second class, a group of three or four students will present several cases, unless indicated otherwise on the attached schedule of assignments. In our first class you will be asked to sign up with a group. The groups will present cases in their numbered sequence and when each group has presented, we will begin again with group 1. The attached schedule identifies the cases that the groups will discuss. The number of students and groups dictates how many times each group will present during the semester.

I have tried to group the cases to cover a common topic or variations on a common topic, so the groups should look for relevant themes. In making their presentations, the groups should thoroughly cover the cases assigned and facilitate a discussion among other class members of the implications and issues raised by the cases. The class will be much more interesting if the group can engage the rest of the class in a spirited discussion.

Each group making a presentation should prepare a summary of the cases and the issues in Word. After the class presentation, the group should appropriately revise the summary (if necessary) and MUST post the summaries on the TWEN site for all students to use as a course outline. Summaries MUST be posted within one week of the corresponding class. Posting of summaries is a course requirement – failure to timely post a summary will result in a grade of incomplete.

Where the schedule indicates “Professor Lecture”, everyone should prepare the assigned materials.

FINAL EXAM

There will be a final exam. It will most likely consist of a combination of objective questions (True/False, fill-in, etc.) and essay questions. You will be allowed to bring any self-prepared materials, such as notes, outlines, copies of the cases we cover and any materials posted on the TWEN site. Other commercially prepared materials, such as treatises and other texts are not permitted. I do not have any sample exams on file.

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Scheduled Assignments

CLASS 1 - INTRODUCTION TO THE INTERNET, WEB & DEVELOPMENT CONTRACTS & ISP CONTRACTS

Professor Lecture

Chapters 1, 2, 3 from TWEN site

Class Discussion

New York Times v. Tasini, 121 S. Ct. 2381

Kremen v. Cohen, 337 F.3d 1024 (9th Cir. 2004)

Net Neutrality testimony from TWEN site

CLASS 2 – JURISDICTION

Group Presentation:

Bensusan Restaurant Corp. v. Richard B. King, 126 F. 3d 25 (3rd Cir. 1997)

Zippo Mfg. Co, v. Zippo dot com, Inc., 952 F. Supp 1119 (W.D. Pa 1997)

Hasbro, Inc. v. Clue Computing, Inc., 994 F. Supp 34, (D. Mass. 1997)

Cody v. Ward, 954 F. Supp 43, (D. Conn. 1997)

Group Presentation:

Cybersell, Inc. (Az) v. Cybersell, Inc. (Fl), 130 F. 3d 414 (9th Cir. 1997)

Gorman v. Ameritrade, 293 F. 3d 506 (D.C. Cir. 2002)

Robbins v. Yutopian, 202 F. Supp. 2d 426

CLASS 3 – TRADEMARK AND DOMAIN NAME BASICS

Professor Lecture: Trademark Basics

Chapter 4 on TWEN

Professor Lecture: Domain Name Basics

Chapter 5 on TWEN

ICANN Uniform Dispute Resolution Procedure

www.icann.org/dndr/udrp/policy.htm

www.icann.org/udrp/udrp-rules-24oct99.htm

CLASS 4 – DOMAIN NAME ISSUES

Group Presentation:

Intermatic v. Toeppen, 947 F. Supp. 1227 (N.D. Ill. 1997)
Sporty's Farm LLC v. Sportsman's Market, Inc., 202 F. 3d 489 (2nd Cir. 2000)
People For The Ethical Treatment of Animals v. Doughney, 113 F. Supp. 2d 915 (E.D. Va 2000)
Lucas Nursery & Landscaping v. Grosse, 359 F. 3d 806 (6th Cir. 2004)

Group Presentation:

Broadbridge Media LLC v. Hypercd.com, 106 F. Supp. 2d 505 (SDNY)
Lucent Technologies v. Lucentucks.com, 95 F. Supp 2d 528 (E.D. Va. 2000)
Barcelona.com v. Ecelentissimo, 330 F. 3d 617 (4th Cir. 2003)
Dluhos v. Strasberg, 321 F. 3d 365 (3rd Cir. 2003)

CLASS 5 – ADVERTISING ISSUES I

Group Presentation:

Niton Corp. v. Radiation Monitoring Devices, Inc. 27 F. Supp. 2d 102 (D. Mass. 1998)
Brookfield Communications, Inc. v. West Coast Entertainment, 174 F.3d 1036 (9th Cir. 1999).
Playboy Enterprises, Inc. v. Terri Welles, 7 F. Supp. 2d 1098 (S.D. Cal 1998)
Note: Case affirmed by 9th Cir. as to meta tag issues, remanded for determination of use of PMOY, See, 279 F. 3d 796 (9th Cir. 2002)

Group Presentation:

Ticketmaster v. Microsoft Complaint
<http://legal.web.aol.com/decisions/dlip/tickcomp.html>
Washington Post v. Total News Complaint
<http://legal.web.aol.com/decisions/dlip/washcomp.html>
Playboy v. Netscape & Excite, 354 F. 3d 1020 (9th Cir. 2004)

CLASS 6 - ADVERTISING ISSUES II

Group Presentation:

1-800 contacts v. WhenU.com, 414 F.3d 400 (2d Cir. 2005), *reversing 309 F. Supp. 2d 467*
Wells Fargo v. WhenU.com, 293 F. Supp. 2d 734
Public Citizen Amicus in Geico v. Google
www.citizen.org/documents/ACF4F0.pdf
Geico v. Google, 330 F. Supp. 2d 700 (E.D. Va. 2004)
Geico v. Goolge, 2005 WL 1903128 (E.D. Va. Aug 8, 2005)

Group Presentation:

Merck & Co. Inc. v. Medioplan Health Consulting, Inc., 431 F. Supp. 2d 425 (SDNY 2006) *May 24, 2006*

J.G. Wentworth v. Settlement Funding LLC, 2007 WL 30115 (E.D. Pa. 1/04/07)
FragranceNet.com, Inc. v. FragranceX.com. Inc, ---F. Supp2d---, 2007 WL1821153 (EDNY 6/12/2007)

Professor Lecture – Copyright, Fair Use, DMCA, Computer Fraud & Abuse Act

Group Presentation:

Kelly v. Ariba Soft, Inc., 336 F. 3d 811 (9th Cir. 2003)
ALScan v. RemarQ Communities, Inc. 239 F. 3d 619 (4th Cir. 2001)
Perfect 10 v. Google, 416 F. Supp. 2d 828 (C.D. Cal. 2006) *Feb 16, 2006*

Group Presentation:

Field v. Google, Inc. 412 F. Supp. 2d 1106 (D. Nev. 2006)
CoStar Group, Inc. v. LoopNet, 373 F. 3d 544 (4th Cir. 2004)

CLASS 7 – DOWNLOADING & FILE SHARING

Group Presentation:

Religious Technology Center v. Netcomm, 907 F. Supp. 1361 (N.D. Cal. 1995)
Intellectual Reserve, Inc. v. Utah Lighthouse Ministry, 75 F. 2d Supp. 1290 (D. Utah 1999)
RIAA v. Diamond Multimedia Systems, 180 F. 3d 1072 (9th Cir. 1999)
UMG v. MP3.com, 92 F. Supp. 2d 349 (SDNY 2000)

Group Presentation:

A& M Records v. Napster, 2000 WL 573136
Perfect 10 v. CCBill LLC, et al., 488 F.3d 1102 (9th Cir. 2007)
Tur v. YouTube #81 & #82 – cases posted on TWEN site

Group Presentation

A&M Records v. Napster, 239 F.3d 1004 (9th Cir. 2001).
In re Aimster, 334 F. 3d 643 (7th Cir. 2003)
Metro Goldwyn Mayer v. Grokster, 259 F. Supp. 2d 1029 (C.D. Cal. 2003)
Metro Goldwyn Mayer v. Grokster , 125 S. Ct. 2764 (2005)

Group Presentation

Capitol Records v. Debbie Foster 2006 WL 4558154 (D. Okla. 7/13/06)
Capitol Records v. Debbie Foster 2007 WL 1028532 (D. Okla. 2/6/07)
Capitol Records v. Debbie Foster 2007 WL 1223826 (D. Okla. 4/23/07)
Tanya Andersen v. Atlantic Records, et al. complaint, posted on TWEN site

CLASS 8 – ANTI-CIRCUMVENTION OF DIGITAL RIGHTS

Digital Millennium Copyright Act, No Electronic Theft Act

Group Presentation:

Real Networks Inc. v. Streambox , Inc. 2000 WL 127311
Universal Studios v. Corley, 273 F. 3d 429 (2nd Cir. 2001)
U.S. v. Elcomsoft, 203 F. Supp. 2d 1111 (N.D. Cal 2002)

Group Presentation:

Paramount Pictures Inc. v. 321 Studios, 2004 WL 402756 (SDNY 2004)
Lexmark v. Static Control, 253 F. Supp. 2d. 943 (E.D. Ky. 2003)
Lexmark v. Static Control, 387 F. 3d 522 (4th Cir. 2005)
Chamberlain v. Skylink, 292 F. Supp. 2d 1040 (N.D. Ill. 2004), 381 F.3d 1178
(Fed. Cir. 2004) aff'd.

CLASS 9 – INVASIVE BUSINESS METHODS

Group Presentation:

E-Bay v. Bidders Edge, 100 F. Supp 2d 1058 (N.D. Cal. 2000)
EF Cultural Travels v. Explorica, 274 F. 3d 577 (1st Cir. 2001)
Register.com v. Verio, 126 F. supp. 2d 238 (SDNY 2000)

Group Presentation:

Physicians Interactive v. Lathian, 2003 WL 23018270 (E.D. Va. 2003)
TicketMaster v. Tickets.com, 2003 WL 21406289 (C.d. Cal. 2003)

CLASS 10 - INTERNET CONTRACTS

Group Presentation:

ProCD v. Zeidenberg, 86 F. 3d 1447 (7th Cir. 1996)
Hill v. Gateway 2000, 105 F. 3d 1147 (7th cir. 1997)

Group Presentation:

Specht v. Netscape, 306 F. 3d 17 (2d Cir. 2002)
Perfect 10 v. Visa, --- F. 3d ----, 2007 WL 1892885 (9th Cir. 7/3/07), discussion
to include majority opinion and Judge Kozinski's dissent

CLASS 11 – E-MAIL PRIVACY

Group Presentation:

U.S. v. Steiger 318 F. 3d 1039 (11th Cir. 2003)
Fraser v. Nationwide Mutual Insurance, 352 F. 3d 107 (3rd Cir. 2004)
U.S. v. Councilman, 418 F. 3d 67 (1st Cir. 2005)
American Council on Education v. Federal Communications Comm., et. al., 451
F.3d 226 (D.D.C. 2006) *June 9, 2006*
Warshak v. United States, 490 F.3d 455 (6th Cir. 2007)

Group Presentation:

John Doe v. 2themart.com, 140 F. Supp. 2d 1088 (W.D. Wash. 2001)
RIAA v. Verizon, 351 F. 3d 1229 (D.C. Cir. 2003)
Sony Music Entertainment v. Does 1-40, 2004 WL 1656538 SDNY, Jul 26 2004
Guerilla Girls v. Kaz, 224 FRD 571 (SDNY 2004)
Virgin Records America v. Does 1-35 2006 WL 1028956 (D.D.C.) Apr. 18, 2006

CLASS 12 – CONTENT REGULATION

Group Presentation:

Zeran v. America On Line, 129 F. 3d 327 (4th Cir. 1997)
Blumenthal v. Drudge, 992 F. Supp. 44 (D.C. D.C. 1998)
Ben Ezra, Weinstein v. America On Line, 1999 WL 727402 (D.N.M. 1999)
Grace v. EBay, 16 Cal. Rptr. 3d 192 (Cal App. 2 Dist. 2004); 19 Cal. Rptr. 3d 824
(2004) [*Cal. S.Ct. grants review on whether 47 USC 230 confers immunity on interactive
services such as Ebay for publishing/distributing defamatory statements*]; 21 Cal. Rptr.
3d 611 (2004) *dismissed per motion of plaintiff and defendant*; appellant's brief at 2004
WL 2981962

Group Presentation:

Johnny Doe v. Mark Bates and Yahoo! Inc., 2006 WL 3813758 (E.D. Texas,
12/27/2006)
Jane Doe v. MySpace, Inc. and News Corp., 474 F. Supp. 2d 843 (W.D. Texas,
2007)
Universal Communication Systems, Inc. v. Lycos, Inc. et al., 478 F.3d 413 (1st
Cir. 2007)

Group Presentation:

Cyberspace Communications v. Engler, 55 F. Supp 2d 737 (E.D. Mi. 1999), *aff'd*.
238 F.3d 420 (6th Cir. 2000); *See*, 2000 WL 1769583
American Libraries Assn. v. Pataki, 969 F. Supp. 160 (SDNY 1997)
Ashcroft v. ACLU, 124 S. Ct. 2783 (2004)
U.S. v. American Library Assn., 123 S. Ct. 2297 (2003)
American Civil Liberties Union v. Alberto R. Gonzales, 478 F. Supp 2d. 775
(E.D. Pa. 2007)

CLASS 13 – SPAM & OTHER REGULATION

CAN SPAM Act

Group Presentation:

White Buffalo Ventures, LLC v. Uni. Of Texas at Austin, 420 F.3d 366 (5th Cir. 2005), *Aug. 2, 2005*

AOL v. National Healthcare, 174 F. Supp. 2d 890 (N.D. Iowa 2001)

Intel v. Hamadi, 1 Cal. Rptr. 3d 32, 30 Cal 4th 1342 (2003)

U.S. v. Cohen, 260 F. 3d 68

AT&T v. City of Portland, 216 F. 3d 871 (9th Cir. 2000)

National Cable & Telecommunications Ass'n. v. Brand X Internet Services, 125 S.Ct 2688 (2005)

CLASS 14 – REVIEW

Professor Lecture

Question & Answer Session