

Foreword

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*"[C]omputer technology is a dynamic field which
can quickly outpace judicial decisionmaking"*¹

Computers play an increasingly important role in the modern economic, political and legal landscapes of our society. Nearly every day, we are bombarded with news of the 'net and the Web.² Computer use and sales continue to grow annually at staggering rates, with ever-increasing numbers of people hooking up and logging on. Against this backdrop, legislators and administrative agencies struggle to shape new laws and rules around this still-evolving medium and marketplace while courts try to fit the often-square peg of Internet issues in the round hole of the existing body of law.

The articles in this symposium address many of the issues raised by these changes in the legal landscape. The subjects of these articles can be broken down in two categories: (1) issues related to the Internet's role

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1. Computer Assoc. Int'l, Inc. v. Altai, Inc., 982 F.2d 693, 706 (2d Cir. 1992).

2. The Internet, or "the 'net' as it is commonly known, is a worldwide network of computers linked through fiber optic and phone lines. The World Wide Web ("the Web") is one part of the Internet that is based on a common set of communication protocols that allow for the integration of text, graphics, animation, and sound to create "Web pages." For background information on the Internet, see generally, ED KROL, THE WHOLE INTERNET (2d ed. 1994).

as a commercial marketplace, and (2) personal rights and constitutional issues related to the Internet.

THE INTERNET AS A COMMERCIAL MARKETPLACE

Commerce on the Internet has steadily expanded over the past several years. By some estimates, commerce on the 'net will reach fifty billion dollars by the year 2000.³ The creation of virtual storefronts and expansion of business-related Web pages on the Internet has raised a number of old questions in a new context. Some of these questions consider how to detect and prevent consumer and vendor fraud, and how to form and enforce contracts where the parties are transacting over telephone lines and have likely never even met. Several states have enacted legislation designed to resolve these issues.⁴ These legislative efforts, however, have raised new issues about allocations of liability in the inevitable event of a lawsuit. Bradford Biddle's article in this symposium follows up on his earlier comment, "Misplaced Priorities: The Utah Digital Signature Act and Liability Allocation in a Public Key Infrastructure."⁵ Thomas Melling, a practitioner in Washington, has written a response to Mr. Biddle's "Misplaced Priorities" comment. His response appears alongside Mr. Biddle's follow-up piece.

The Internet has also thrown the adequacy of trademark law into doubt. A comment in this issue by Adrian Wolff discusses trademark and tradename issues in the context of the ubiquitous "-.com" monikers that have recently become de rigueur for many industries and companies. In particular, Mr. Wolff considers whether existing trademark law adequately resolves conflicts between holders of Internet domain names and holders of trademarks registered in the corporeal world.

In what is the most comprehensive article of this issue, Professor Walter Effross of Washington College of Law at American University tackles issues related to commerce and the use of virtual storefronts on the Web. Professor Effross applies Article 2 and drafts of Article 2B of the U.C.C. to the architecture of Internet-based businesses to suggest how the law of contracts ought to be interpreted in cyberspace. Following the U.C.C. analysis, Professor Effross discusses personal

3. Steve Lohr, *U.S. and European Union Agree Not to Have Internet Tariffs*, N.Y. TIMES, Dec. 15, 1997, at D14.

4. The legislatures of Arizona, California, Florida, Georgia, Hawaii, Michigan, Rhode Island, Virginia, and Washington have seriously considered or passed legislation aimed at addressing these problems. See C. Bradford Biddle, *Misplaced Priorities: The Utah Digital Signature Act and Liability Allocation in a Public Key Infrastructure*, 33 SAN DIEGO L. REV. 1143, 1166 n.115 (1996).

5. *Id.*

jurisdiction across the Internet and whether opening a virtual storefront on the Web will subject the proprietor of a business to the reach of other jurisdictions.

PERSONAL RIGHTS & CONSTITUTIONAL CONCERNS

The growth of the Internet has also raised issues related to the First Amendment. Legislators, administrative agencies, and prosecutors have tried to shape the content of the Internet to a certain extent by regulating selected speech.⁶ Two articles in this issue discuss constitutional concerns raised by governmental regulation of the Internet. The first, "Lost Opportunities in Cyberspace," discusses Congress' failed attempt at regulating "indecent" speech and pornography on the Internet. In this article, practitioner Jeff Magenau looks at the fatal flaws in Congress' 1996 Communications Decency Act and offers drafting suggestions for future attempts to regulate speech on the 'net. The second is a student comment by Ryan Murr entitled, "Privacy and Encryption in Cyberspace." This comment analyzes the federal regulations that restrict the export of privacy-enabling software and the court challenges to these regulations based on First Amendment principles.

Finally, an article by practitioner Susan Gindin entitled, "Informational Privacy in the Age of the Internet," tackles many concerns that users of e-mail and the Internet have regarding privacy on-line. Journalists and authors have spilled much ink over privacy issues recently, generating debate but little insight and even fewer suggestions. In her article, Ms. Gindin catalogues the potential sources of privacy invasions, discusses the current statutes, common-law causes of action, and constitutional guarantees that impact privacy rights on the 'net, and concludes with her recommendations.

INTERNET CITATIONS

As a testament to the increasing importance of the Internet, most of the articles and both of the student comments in this issue contain citations to materials found on Web pages. These sources are identified

6. See, e.g., Communications Decency Act of 1996, Pub. L. No.104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 223(d) (1996)) (banning "indecent" speech on-line).

by their universal resource locator ("URL"), or Internet address, set off in the footnotes with brackets "< >." One Achilles' heel of the Internet as a research tool has been the transitory nature of much of the information found on the Web. Articles and data that appear on a Web page can be moved, modified, or deleted with a few keystrokes. Because of the sometimes-fleeting nature of information on the Web, the 16th edition of the Harvard Bluebook requires that Internet citations be dated.

The citations to the Internet in this issue bear either the date that the content of the Web page was last modified or the date on which the author last visited the page. All of the locations have been checked as a part of the editing process. Nevertheless, it is possible that some of the locations in this issue will not refer the reader to the cited source. In the event that the location is no longer current, the reader can search for the information through one of the many Internet search engines.⁷ Often the same information is available at another location, or can be reached by a different path. When looking for materials through these search engines, try using the author's name or the title of the work in the search field. Copies of Internet sources can also be obtained directly from the authors.

The San Diego Law Review hopes that the articles in this symposium stimulate dialogue on these issues and help shape the use and regulation of this new medium of commerce and communication.

7. The following are popular search engines that can be used to find articles and related sources: "Yahoo" <<http://www.yahoo.com>>, "Alta Vista" <<http://www.altavista.com>>, "Excite" <<http://www.excite.com>>, and "Lycos" <<http://www.lycos.com>>.