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Technology Law Section
State Bar of Georgia

Fall 2006
Volume 2, No. 1

Technology Law Section's Annual Meeting

By Benjamin L. Young

On June 27, 2006, the Technology Law Section hosted its annual meeting at Maggiano's Restaurant. Following the presentation of the Annual Report, the Section elected new officers for 2006-2007. The new officers are:

Chair: Michael K. Stewart, Friend Hudak & Harris LLP

Vice-Chair: John P. Hutchins, Troutman Sanders LLP

Secretary: Gaines P. Carter, Arris International, Inc.

With the business of the annual meeting concluded, the focus turned to two presentations. The first to present were Scott M. Frank, Carol Beckham, and Michael Bishop from BellSouth, and Jodi L. Hartman from Hope Baldauff Hartman, LLC. The presenters began with an overview on the intellectual property marketing policies at BellSouth, including the role that intellectual property policies have in the corporate culture of BellSouth. The discussion shifted to the value creation, protection, and risks inherent in technological innovation and how such activities can be critically important to large corporations. Moreover, the presenters explained the role of outside counsel as both partners and legal advisers in the growth and protection of a company's technological innovation. The presentation concluded with a look at BellSouth's extraordinary patent growth over the past twenty years.

Scott Frank, Carol Beckham, and Michael Bishop, of BellSouth, and Jodi Hartman, of Hope Baldauff Hartman, LLC provided insights on managing corporate intellectual property portfolios.

The second to present was Glen Johnson, a Senior Attorney who handles IP Licensing issues for Microsoft. Mr. Johnson began with a brief historical perspective of the Intellectual Property Group at Microsoft, with a view towards Microsoft's future commercial technology goals. Mr. Johnson discussed a variety of IP Licensing Activities, including patent cross-licensing and outbound technology licensing activities. Mr. Johnson emphasized the importance of implementing a variety of standardized IP licensing programs within a company that are well-defined and broadly acceptable in the business community. The objectives of Microsoft's IP Licensing

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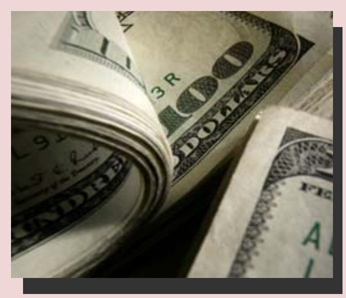
Georgia Journal of Technology Law is published four times per year (quarterly) by the Technology Law Section of the State Bar of Georgia, 104 Marietta Street, N.W., Atlanta, GA 30303. Opinions and conclusions expressed in articles herein are those of their authors and are not necessarily those of the Section.

Activities were supplemented by several examples of strategic relationships and broad business partnerships, such as ventures with small, high-growth IT firms, startups, and companies looking to implement technology in a global market. Mr. Johnson concluded the presentation by discussing Microsoft's patent acquisition activities and product development strategy.

Congratulations to the new Section officers. In addition, a sincere thank you to the representatives of BellSouth and Microsoft for their informative presentations, and to Maggiano's Restaurant for hosting the 2006 Annual Meeting.

The strong panel of knowledgeable speakers at the Annual Meeting drew a large number of attendees.

If you have any suggestions for future topics you would like to see addressed in the Journal relating to financing a company or issues that arise with startups or early stage companies, please email them to Dennis Gerschick at dennis@gerschick.com



In-House Tech Lawyer?
Interested In Participating In A Committee Focused On Your Needs?

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Editor's Notes *By Robert T. Neufeld*

The Fall issue of the Georgia Journal of Technology Law marks a new year for the Technology Law Section. The Section elections took place at the annual meeting in June and our new leaders are people who have all been very involved in working with the Section over the last few years. The new Section Chair is Michael Stewart, the Vice Chair is John Hutchins, and the Secretary is Gaines Carter. We also have new people taking an active role in the Executive Committee including Erinn Robinson, Melissa Yost, and Benjamin Young.

The Section's new leaders are already working diligently to plan another outstanding year of opportunities for our members. Plans for this year's Technology Law Institute are well underway and it promises to be an informative learning experience. The Technology Law Institute, which is the Section's premier legal education event for the year, is scheduled for October 17, 2006 at the State Bar headquarters. This year's event will also include a networking event at a nearby restaurant following the conclusion of the program. Additional information about the Institute can be found on page 5 of this newsletter.

This issue of the *Journal* includes timely and informative pieces from our Section members that can help you in your daily practice. This issue includes the second part of Mari Meyer's article concerning employee blogging. William Still follows up his article from the Summer issue with an informative analysis of a recent decision from the California Supreme Court. Dennis Gerschick, one of our regular contributors, returns with a column containing advice on marketing strategies. Finally, a new contributor to the newsletter, Russ Wofford, provides us with guidance on the antitrust issues often confronted in joint ventures.

I hope you enjoy this issue of the newsletter and consider attending the Technology Law Institute on the 17th.

Bob Neufeld is a registered patent attorney and practices intellectual property law with King & Spalding LLP. His work includes litigating intellectual property and technology disputes and securing patent rights in the U.S. and abroad on behalf of his clients. Mr. Neufeld received his B.A. and B.S. from the State University of New York at Binghamton and earned his J.D. from Fordham University School of Law. He can be reached at bneufeld@kslaw.com.

From the Chair *By Michael K. Stewatrt*

Please allow me to introduce myself as the Chair of the Technology Law Section for fiscal year 2006-2007.

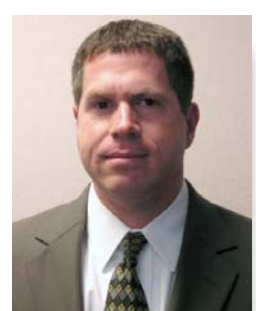
The coming year is shaping up to be a very exciting time for the Section. In early 2006, the Executive Committee, under the leadership of then-current Chair Suellen Bergman, began investigating new ways the Section could better serve the needs of its membership and increase participation in Section events and governance by members at large. This year the Executive Committee will implement some of these innovative initiatives, including, for example, facilitating "telecommuting" to Executive Committee meetings to give Section members outside of the Atlanta area a chance to play a more active role in Section activities. In addition, we will continue to seek out new ways to increase the value and usefulness of the Section to its members.

Of course, the Section will also continue its strong tradition of offering high-quality, timely seminars about the issues that affect us all as technology law practitioners. By the time you read this, the Section will have held its Summer Quarterly Meeting, which focused on buying and selling distressed technology companies. Next up is the Section's annual flagship event, the day-long 21st Annual Technology Law Institute, which will be held at State Bar Headquarters on Tuesday, October 17. This year's Technology Law Institute is shaping up to be a stellar event and a great value for the money to boot - not only will it feature informative presentations from nationally-known speakers such as Ian Ballon and Sean Carter, but it will also provide a bounty of CLE credits (7 credits, including 1 Ethics and 2 Trial Practice credits) while staying well below the $200 (or more) price tag usually charged for comparable programs. Still further ahead on the horizon is the Winter Quarterly Meeting, which is being coordinated by the Section's Litigation Committee.

However, while we have a lot of exciting events and initiatives lined up for the 2006-2007 fiscal year, those of us on the Executive Committee are always on the lookout for new ideas and fresh points of view. As such, if you have any thoughts or ideas as to ways to make the Section more worthwhile for you, please feel free to contact me. In addition, if you want to become more active in planning future events and Section projects, I urge you to contact me about joining the Executive Committee.

I look forward to seeing you at the next Section event.

Best regards, Michael K. Stewart



Michael K. Stewart is a Partner with Friend, Hudak & Harris, LLP, where he advises clients on technology, intellectual property and e-commerce–related issues. Mr. Stewart earned his J.D., magna cum laude, from the University of Georgia in 1998, and he earned a B.A. in History from Emory University in 1990. Mr. Stewart may be reached at (770) 399-9500 or via e-mail at mstewart@fh2.com.

21ST ANNUAL TECHNOLOGY LAW INSTITUTE

TUESDAY, OCTOBER 17, 2006

8:00a.m. – 5:00 p.m.
7 CLE Credit Hours, Including 1 Ethics Credit and 2 Trial Practice Hours

State Bar of Georgia Headquarters
104 Marietta Street, Atlanta, Georgia

Nick Holland
Partner, Beachcroft, LLP
Bristol, United Kingdom

Frequent lecturer to US counsel on EU-specific legal issues. Former in-house counsel for Lucent Technologies, Nick has extensive experience in the IT and telecommunications industry throughout Europe, the Middle East and Africa, including expertise in large network infrastructure deals, outsourcing, licensing, global trade agreements and data protection.

What Litigators Wish Contract Drafters Knew - And Vice Versa

Lenne' Espenschied, Esq. - *Law Office of Lenne' Espenschied, Atlanta*
Timothy Kratz, Esq. - *McGuireWoods LLP, Atlanta*
Peter C. Quittmeyer, Esq. - *Sutherland Asbill & Brennan LLP, Atlanta*
Bradley A. Slutsky, Esq. - *King & Spalding LLP, Atlanta*

The New Communications - a Look at the Social and Legal Issues in Blogs, Podcasting, and Other New Media

Professor Leonard Witt - *Kennesaw State University, Atlanta*
David Vigilante, Esq. - *Turner Broadcasting Systems, Inc., Atlanta*

EU Data Privacy-A Practical Guide to International Data Transfers

Nick Holland, Esq. - *Beachcroft LLP, Bristol, United Kingdom*

Broadband, Wi-Fi & VOIP: Issues Affecting New Telecommunications Technologies

Charles A Hudak, Esq. - *Friend, Hudak & Harris LLP, Atlanta*

Luncheon Presentation: A Funny Thing Happened on the Way to the Disciplinary Hearing

Sean Carter, Esq., *Meza, Arizona*

Novel Issues in Cutting-Edge Technologies

Moderator: L. Brett Lockwood, Esq. - *Smith, Gambrell & Russell LLP, Atlanta*
Panelists: Paul H. Arne, Esq. - *Morris, Manning & Martin LLP, Atlanta*
Richard P. Keck, Esq. - *Duane Morris LLP, Atlanta*
W. Richard Smith, Esq. - *Law Offices of W. Richard Smith, Atlanta*

The Tension Between Litigating Against Harmful Anonymous Activity On The Internet And First Amendment Protections

Ian C. Ballon, Esq. - *Greenberg Traurig LLP, Silicon Valley, Los Angeles, California*

Pre-litigation CPR- Reviving the Drowning Large-Scale IT Project

Lawrence H. Kunin, Esq. - *Morris Manning & Martin LLP, Atlanta*
Warren Reid - *WSR Consulting Group, LLC, Encino, California*

Recent Developments in Federal and Georgia Law

Professor Michael B. Landau, Esq. - *Georgia State University, Atlanta*
Robert T. Neufeld, Esq. - *King & Spalding LLP, Atlanta*

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Ian Ballon
Partner, Greenberg Trauig LLP
Silicon Valley, Los Angeles

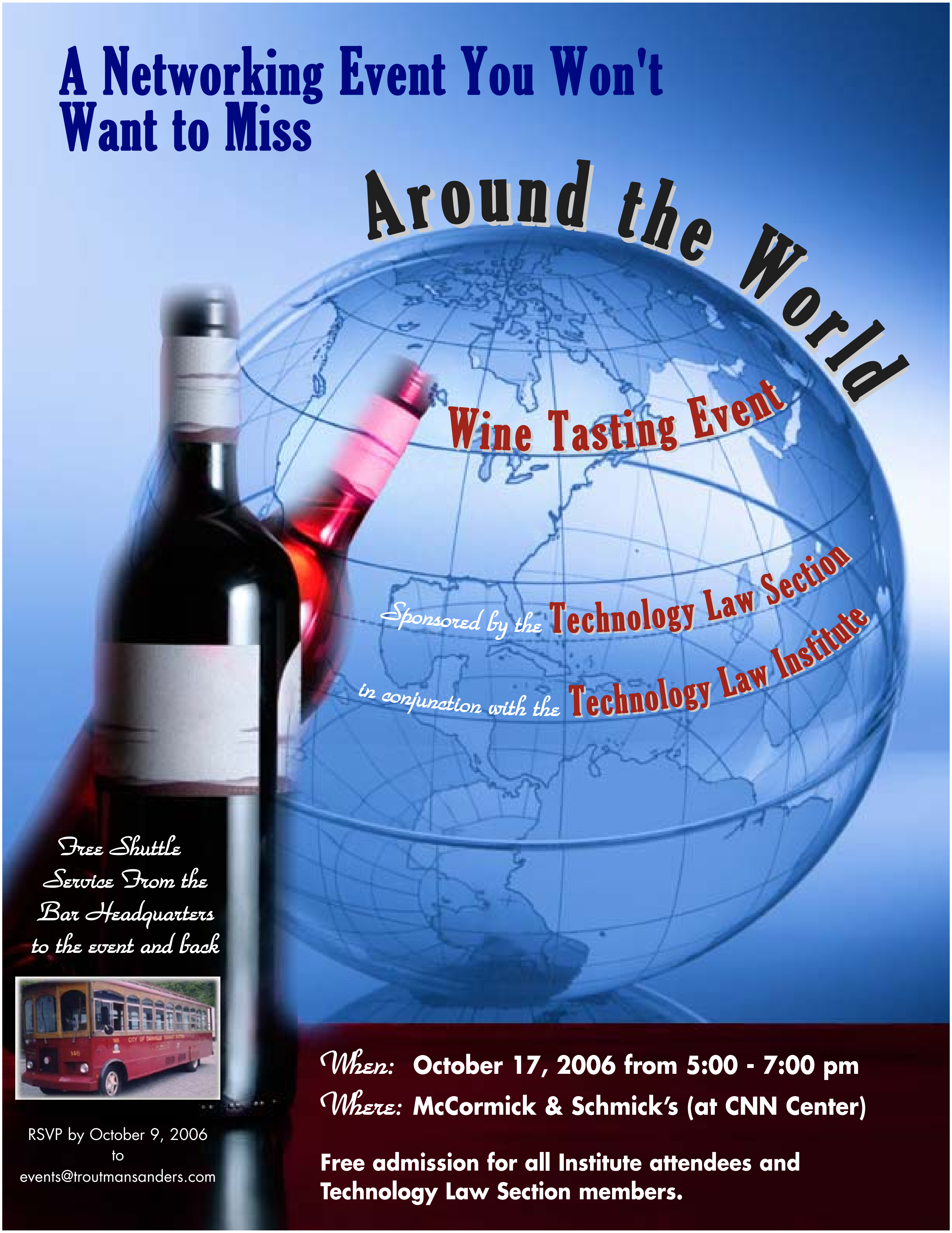
Ian Ballon represents technology, media and entertainment companies in complex litigation and counseling relating to copyright, trademark, trade secret. and computer and Internet law issues. He is the author of the three-volume legal treatise, "E-Commerce and Internet Law: Treatise With Forms" (LegalWorks/West Pub. 2001 & 2005 Supp., www.ballononecommerce.com). He also serves as Executive Director of Stanford University Law School's Center for E-Commerce (http://lawtech.stanford.edu/ecommerce/).

Sean Carter
Attorney
Meza, Arizona

"Smart and very funny! Combines legal commentary with great situational comedy. Think Dennis Miller meets Chris Rock in a pot stewed by Johnny Cochran."

"He actually made the law both funny and enjoyable - for an hour anyway."

"Sean Carter was truly entertaining and contributed greatly to the success of our Partnership Retreat. The partners are still talking about it."


A Networking Event You Won't Want to Miss
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Wine Tasting Event
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Free Shuttle Service From the Bar Headquarters to the event and back
RSVP by October 9, 2006 to events@troutmansanders.com
When: October 17, 2006 from 5:00 - 7:00 pm
Where: McCormick & Schmick's (at CNN Center)
Free admission for all Institute attendees and Technology Law Section members.

Do Your Clients Have Blogging Policies? Maybe They Should.

Part Two - Determining the Best Blogging Policy for Your Client.

By Mari L. Myer

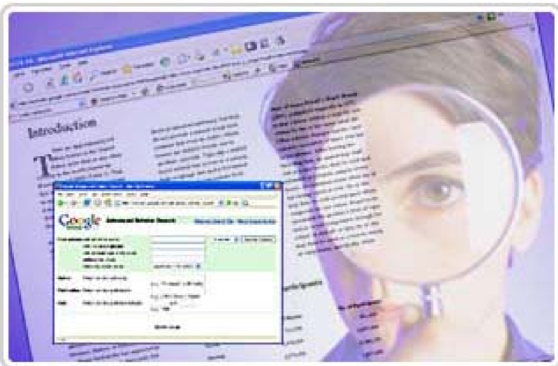


Image from: http://blogging.vc/images/internet.jpg

Part One of this article, which was published in the previous issue of the *Georgia Journal of Technology Law*, identified some statistics regarding the growth of employee blogging and offered reasons companies should implement blogging policies. Part Two discusses some of the blogging policy options that are available to companies.

What kind of policy should the company implement?

Part One of this article answered the question of why a company should implement a blogging policy sooner rather than later. The appropriate policy for any particular company may not be so easy to determine. Companies that have considered blogging policies have struggled with many issues, all of which must be resolved with the company's goals, the corporate culture, the nature of the company's product or service, and applicable laws in mind. Blogging ground rules for a technology company may not be appropriate for an airline, and vice versa.

Companies have three general types of policies available to them: (1) allowing any and all employee blogs, with no restrictions; (2) forbidding all employee blogs that make any reference to the company, and disciplining personnel who violate the policy; and (3) the vast grey area in between these two extremes.

What happens when the company imposes no restrictions on employee blogs?

Companies that allow blogs with no restrictions whatsoever may run the risk of having their employees use blogs to (1) identify themselves as employees of the company, naming the company in the blogs, without offering a disclaimer distinguishing personal opinions from company policies; (2) criticize the company, management, and/or co-workers; (3) embarrass the company or the company's clients or customers; or (4) disclose information that the company does not want to have disclosed to third parties.

The lack of any restrictions may make it difficult for the company to respond to any of this conduct, because the employee will be able to point to the lack of policies and also to any inconsistency by the company in its response to various blogs. As a consequence, a failure to have any company policy regarding blogging can be risky for the company. But these are the same risks that companies lacking other personnel policies face, and the risks may not be insurmountable.

Even a company with no official blogging policy will have in its arsenal the entire body of statutes and caselaw that protect against violations of privacy, gender harassment, defamation, tortious interference with employment and business relationships, terroristic threats, extortion, misappropriation of trade secrets and similar conduct. Thus, blog postings falling into any of these categories could - and should - be subject to discipline by the company in the same fashion that such comments would be disciplined if made orally or in a letter or memorandum.

For example, although there is a risk that the blogger may disclose confidential information and/or trade secrets belonging to the company or the company's clients or customers, it is not necessary to have a policy specific to blogging in order to protect against such disclosures, so long as all personnel with access to sensitive information are required to sign employment agreements containing a nondisclosure covenant cast in language broad enough to encompass disclosures made in a blog. In addition, the Georgia Trade Secrets Act, O.C.G.A. §§10-1-760 *et seq.*, should encompass the disclosure of trade secrets in a blog where the disclosure occurs within Georgia. The employer would be wise to periodically remind personnel who have access to confidential information and/or trade secrets that disclosure of such information in a blog is just as bad as disclosure by any other method.

A larger concern is the fact that the absence of a policy forbidding specific categories of postings may leave the employer vulnerable to allegations by third parties who are targets of such postings that the company's lack of a policy was tantamount to condoning the postings. With these considerations in mind, the employer that chooses not to implement a policy specific to blogging should, at a minimum, note in its personnel handbook, and remind its personnel in other communications, that statements in blogs should be made with the same level of care as is expected with respect to all other types of work-related communications, and that such statements are no less subject to discipline when made in blogs than when made in any other format. The company will need to monitor blogging by its employees and consistently take appropriate disciplinary action with respect to any blogs that violate the law or company policy in the same fashion in which the company disciplines comparable violations in other formats.

What happens when the company forbids all employee blogs that make reference to the company?

On the opposite extreme from imposing no restrictions on employee blogging is a policy of forbidding all employee blogs that make any reference to the company. A restriction this severe may create a variety of difficulties for the company. First, the company must enforce this policy uniformly. If the company implements such a policy and makes violation of the policy subject to specific discipline, which could mean termination, the company must be willing to enforce the policy by disciplining **all** violators uniformly, regardless of the content of the blog. Such a policy, while clear, may be difficult to enforce if a high percentage of the rank and file personnel are willing to risk their jobs to test (or protest) the policy. In this instance, such a policy may backfire on the company by forcing the company to discipline, or even terminate, multiple employees or risk eviscerating its policy by failing to enforce it. The company may also unnecessarily create a morale problem if personnel regard such a policy as overly draconian. Depending on the nature of the posting, First Amendment, Title VII, whistleblower or other legal protections for employees may be violated if the company disciplines the employee for the posting. And if the discipline imposed by the company is termination, a terminated employee will have no reason to keep quiet about the company and may be tempted to post even more negative blogs following termination. This can create a public relations problem, and potentially have an impact on the stock value of a public company, if not handled delicately.

Moreover, a company policy banning all blogs that make reference to the company presumes that any blog that refers to the company will contain negative comments about the company. Some blog postings can (1) make constructive suggestions for how the company may improve itself, and (2) drum up positive "press" for the company. An absolute ban on blogs that make reference to the company will prevent even such positive postings and deprive the company of a potential benefit.

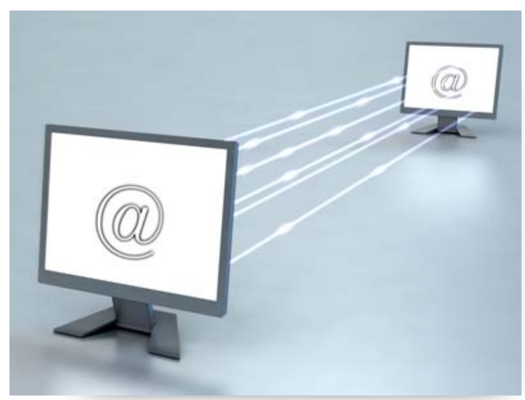
What about the vast middle ground of allowing certain blogging within company-imposed guidelines?

Thoughtful guidelines regarding employee blogging, particularly those established with the input of some employees, can allow employees to post their thoughts without necessarily creating an adversarial atmosphere between management and the rank and file. Some guidelines available to employers - all of which should be implemented with the company's goals and culture in mind - include the following:

- Allow postings but require personnel to submit their blogs to the company for prior approval as to content, thereby placing the company in the role of censor and potentially exposing the company to risk in the event that an inappropriate posting is not filtered out by the company;
- Allow only postings that place the company and its personnel in a positive light;
- Require that all postings be made using the blogger's personal email address, with no information to be posted linking the employee to the company;
- Require that all postings be made using the employee's real name, rather than a pseudonym, to ensure accountability;
- Allow postings to be made on company time using the company's computer equipment and Internet account;
- Require that postings only be made on the employee's personal time; and
- Embrace and encourage blogs as a mechanism to foster creativity, team-spirit, and problem-solving, allowing personnel to make postings in their own names on company time and to link those postings to the company's website.

A company may enjoy a public relations benefit if its customers become convinced that the company is allowing its personnel to comment on the company in blogs without restriction and without using personnel as mouthpieces for the company. The thinking is that an employee who is not subject to any restrictions on his or her blogging is free to make both positive and negative comments about the company, and as a result customers are likely to regard the employee as very credible on matters pertaining to the company.

Microsoft, Novell, Hewlett Packard and SunMicrosystems all allow such uncensored blogs. See, for example, scobleizer.wordpress.com; rollerweblogger.org/page/roller; minimsft.blogspot.com; blogs.msdn.com; and blogs.sun.com (bearing the headline, "This space is accessible to any Sun employee to write about anything.") Some of these blogs feature opportunities for employees to publicly troubleshoot and critique company products while building trust on the part of the company's customers, because the customers can be certain that the postings have not been censored by the company. In this context, the company has to be able to trust that its personnel will refrain from making any postings that may expose the company to claims of defamation, violation of privacy, tortious interference with employment or business relations, gender harassment, and similar claims. The company also has to be able to trust that its personnel will refrain from disclosing confidential information and/or trade secrets.



Companies that officially sanction blogs must choose whether to set up a separate website for the blogs, or to link the blogs to the official company website. If the company sets up a separate website, it may choose to add a disclaimer (if true) that it exercises no control over content and that the opinions expressed are not necessarily those of the company. (Readers may be familiar with similar disclaimers expressed in printed publications to accompany editorials over which the publisher exercises no control.)

If the company chooses to link employee blogs to its official website, the company should consider whether and how to exercise control over content. One option is to require advance approval by the company of all such postings. At a minimum, the company should require employees to include with all postings a disclaimer that the opinions expressed in the blog are those of the blogger and not necessarily those of the company.

While allowing employees to offer constructive comments, the company that links its employees' blogs to its website may be exposed to some risks that necessitate the company's ability to remove offensive or illegal blogs. For this reason, the company should establish a mechanism for the removal of such blogs. Risks to the company include, but are not limited to, defamation of the company, co-workers and/or clients by the blogger; creation of a hostile work environment by making postings that are offensive to women, those over 40 years of age, or particular religious, ethnic or racial groups; posting of obscenities; harassment of co-workers; violations of privacy; copyright infringement; misappropriation of trade secrets; and embarrassment. The blogging policy should establish penalties for any such postings, and the company should enforce the penalties consistently. The manner in which the company anticipates and protects against these types of postings may have a bearing on the company's potential exposure in the event that the subjects of the postings pursue a claim against the company.

Conclusion

Blogging will likely be the subject of much litigation over the next several years. The wise employer will protect itself now by implementing a thoughtful blogging policy that reflects the company's culture and needs, and by consistently enforcing that policy.

Ms. Myer is Senior Counsel with Friend, Hudak & Harris, LLP in Atlanta. Her business and employment litigation practice focuses on technology and intellectual property issues, including the protection of trade secrets and confidential business information, and the drafting, interpretation and enforcement of restrictive covenants in employment agreements. She earned her A.B. from Wellesley College, cum laude, and earned her J.D. from Boston University School of Law. She may be reached at 770-399-9500 or via email at mmyer@fh2.com.

Technology Law Journal Contributors Move On To Bigger Ponds!

Would you like to be published in the *Georgia Bar Journal*? Would you like to give your article a "test drive" first? If so, CONTRIBUTE AN ARTICLE to the Technology Law Journal. The Technology Law Section's Executive Committee nominates one article from each issue of the Sections's quarterly publication for submission to the *Georgia Bar Journal*. Several of our recent nominations have been published.

Most recently, Steve Hardy's article entitled "Personal Jurisdiction in Georgia Over Claims Arising from Business Conducted Over the Internet" first appeared in the Technology Law Journal in the 2005 Summer and Fall issues and was re-published in the June 2006 issue of the *Georgia Bar Journal,* Vol. 11, No. 7.

If you would like to showcase your practice for the Technology Law Section and the entire Georgia Bar, consider submitting an article for publication to:
Robert Neufeld, Editor, at rneufeld@wcsr.com or 404.879.2460.

"Getting It From Here to There"©

By Dennis J. Gerschick, CPA, Attorney, CFA

I generally like adages because they are pithy statements that generally contain some wisdom. However, there are exceptions to every rule. Two sayings, in particular, that were in vogue during the dot com craze have hurt many entrepreneurs. One saying is "Build it and they will come." This is a take off on Kevin Costner's Field of Dreams movie. The implicit statement is that if you build great technology, the world will beat a path to your door. This is absolute nonsense. History has shown that the most successful companies are not necessarily those that produce the best products or "cutting-edge" technology. Instead, successful companies focus on what their customers want, know who their customers are, and deliver it in a timely manner and at a competitive price. What I have found is surprising and disappointing is that entrepreneurs often do not even know who their customers are. Instead, entrepreneurs believe that if they produce something that is "next generation", "cutting-edge" or "cool" that everyone else will agree with them and will come running to buy it. Entrepreneurs frequently ask people about their product by asking "Do you like it?" That is not a very helpful question. A better question would be: "Would you pay X dollars for this product"?

The second misused saying during the dot com craze was: "It's the technology stupid!" This was a take-off on President Clinton's campaign manager's "It's the economy stupid!" Again, this saying suggests that if you simply build great technology, everything else will fall into place. My experience is just the opposite – great technology does not sell itself. How would anyone know its great technology? Should they take the entrepreneur's word for it? Microsoft is a great example. Most people throughout the country agree that Microsoft does not produce the best software. However, Microsoft has been phenomenally successful because it understood how to position its software in the marketplace and has used very effective marketing. Too many entrepreneurs fall in love with their own product and simply do not know marketing. This should not be a surprise because many high-tech entrepreneurs have an engineering or technical background. How many of them also have the background and knowledge to devise an effective marketing plan? Have they ever done it before?

Assuming the entrepreneur knows who his customers will be, or are, another basic question is: how will the company get its product from the company to the customer? While this question may initially appear to be obvious, many entrepreneurs do not think through the logistical process. Who will be involved, how much cash will be expended, how much time is needed, and many other questions should be addressed.

Will the company sell direct to its customers/end-users? If so, how will the customers be contacted? What will the advertising campaign be? If middlemen are to be used, what are the expected gross profit margins for the company and each middleman? This has obvious financial implications. If it costs the company $10.00 to make a widget, and the company wants a 50% gross profit margin, it will sell the widget for $20.00. The middleman must also make a profit and that will add to the ultimate cost to the end-user. Will the end-user pay that price?

Should a company sell direct to the end-user/customer or through middlemen? There are many factors to consider including the following. **First**, does the company know who its customers are? Does it know how to contact them and communicate with them in a cost-effective and timely manner? **Second**, does the company have the needed expertise and logistical support to sell directly to the end-user? **Third**, what impact does direct selling have on the advertising budget and other necessary expenses? **Fourth**, does selling direct cause the company to lose its focus? What is the company's core competency? **Fifth**, how is the company really different from its competitors? **Sixth**, can the company control or influence the middleman? How do mistakes by the middleman affect the company and demand for its product? There are many other factors to consider and the analysis will vary depending upon the product or service involved.

I have found that managers in charge of marketing for many companies have a different mindset and attitude than lawyers and accountants. They tend to be "free spirits" and somewhat undisciplined. Many companies could be improved measurably if they would focus their marketing and take a more systematic, rigorous, and disciplined approach. I am not suggesting that lawyers or accountants should be put in charge of marketing. In many cases, it does take "all types" and a diversity of personalities and backgrounds is often a positive for a company. However, that does not mean that marketing should be allowed to simply throw money at advertising and marketing is much more than just "creating buzz." Again, the exact approach will depend upon the specific product or service involved.

In summary, cute cliches, adages, or slogans don't get the job done. Instead, more thought and action is needed to get the company's product into the hands of a paying customer.

Dennis Gerschick is an attorney, CPA, and chartered financial analyst. Gerschick practiced law for 16 years before starting a VC fund; Gerschick is President of VenCap Advisory Group, Inc., which is the general partner of VenCap Opportunities Fund, L.P., a venture capital fund in Atlanta, Georgia. He can be reached at 770.792.7444 or at DGerschick@aol.com.

Antitrust and Technology: A Quick Look at Some of the Issues *By Russ Wofford*

Congratulations. Your company has developed some great technology that you can't wait to get to market. If all goes well, you'll be able to capture an enormous share of the market, sell the product at a fantastic margin and license the technology for other uses at a handsome royalty.

So far, so good – but temper your joy with caution, because without a quick run-through of the antitrust issues likely to arise, you could end up cursing the day, or at least the way, you went to market. Admittedly sacrificing depth for breadth and brevity, this article offers a quick look at some of those keys areas where antitrust can affect how you handle your valuable technology.

The Background

Why Should I Care About Antitrust Law?

For starters, who wants to go to jail? The Department of Justice prosecutes hard-core antitrust violations criminally, as can any state Attorney General. Second, who enjoys long, drawn-out civil litigation or government investigations? The Justice Department and the Federal Trade Commission can investigate and bring civil claims for antitrust violations. Private plaintiffs – typically, those competitors you hope to destroy or those customers from whom you hope to extract a fantastic margin – can bring their own claims, which are among the longest and most expensive lawsuits on the federal dockets. Finally, who enjoys paying large damage awards? If successful, those private lawsuits automatically entitle the plaintiff to treble damages and the reasonable costs of suit, including attorney's fees.

The Significance of "Market Power"

In most cases, antitrust law evaluates behavior in light of its net effect on overall competition: is it positive or negative? The single most important consideration in answering that question is often the market power of the person involved. "Market power" is usually defined as the ability to impose a significant, non-transitory, price increase or output restriction (they often amount to the same thing) on the market. A business's market share is perhaps the most common measure of market power.

Market share, of course, depends on two variables: the size of the market, and how much of that market each competitor has. These are not easy questions; companies have fought long and hard over whether the relevant market includes, for example, cellophane and other "flexible packaging materials," *U.S. v. E.I. du Pont de Nemours & Co.*, 351 US 377 (1956), IBM-compatible peripheral devices and other manufacturer-compatible devices, *Telex v. IBM Corp.*, 510 F.2d 894 (9th Cir. 1975), or generic and name-brand versions of an anti-coagulant medicine. *Geneva Pharmaceuticals Corp. v. Barr Laboratories Inc.*, 386 F.3d 485 (2d Cir. 2004). Because the answers depend on what consumers would actually do when faced with particular product choices, the evidence can become highly technical, voluminous and expensive to assemble.

Although litigating questions of markets and market share can be complicated, many businesspeople have a pretty sophisticated idea of the market in which they operate and the relative size of the competitors in that market. This back-of-the-envelope sense of market share is often enough to plan how a company can behave in the marketplace at minimum risk of antitrust liability.

The Basic Rules

Antitrust law recognizes both the value of new products, including technology, and the rights of innovators to sell to whomever, and at whatever price, they choose. Consequently, and with the caveat that none of these rules is absolute, you can:

1. Sell or license your technology to whomever you wish.
2. Refuse to sell or license to whomever you wish.
3. Sell or license at whatever price or royalty you can command.

Antitrust issues can lurk, however, in a number of areas: in particular, where proprietary technology is involved, and whenever you deal with competitors.

Are There Any Special Rules for Proprietary Technology?

Basically, no. Over the last several decades the courts and the federal enforcement authorities have come to view antitrust law and the laws governing various proprietary technologies – patents, copyrights and trade secrets – as sharing a common goal: the promotion of innovation, and thereby, competition. Those authorities analyze proprietary technologies under the same principles as any other form of property, and the courts have consistently found no antitrust liability when a company achieves even monopoly status simply by virtue of its ability to field a superior product.

Which is emphatically NOT to say that if you have proprietary technology, you don't have any antitrust concerns. You might very well have such concerns, if (to pick a few examples) you stray beyond the scope of your proprietary rights, if you license your technology unwisely, or if you deal with actual or potential competitors in certain ways.

Staying Within the Scope of Your Proprietary Technology

Two cases, both involving high-speed copiers and decided within three years of each other, illustrate how the courts have tried to identify the degree to which proprietary technology entitles the holder to exclude competition consistent with the antitrust laws. The first case, *Kodak Co. v. Image Technical Services*, 125 F.3d 1195 (9th Cir. 1997), involved an appeal to the Ninth Circuit of a jury verdict against Kodak. The second, *CSU, LLC v. Xerox*, 203 F.3d 1322 (Fed. Cir. 2000), involved the Federal Circuit's review of a summary judgment granted to Xerox in the District of Kansas.

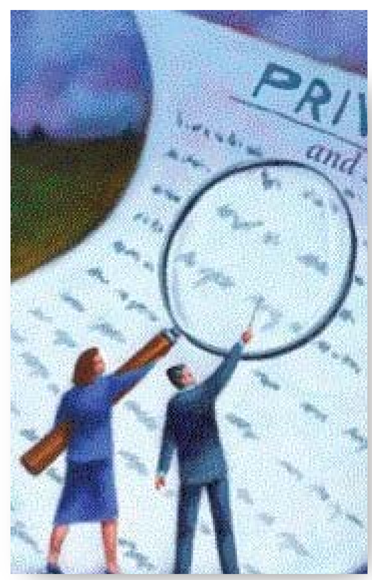
Xerox and Kodak both manufactured high-volume copiers, both held patents on certain replacement parts for those copiers, and both had copyrights covering diagnostic software used with their copiers. Both companies were sued when they began to refuse to sell replacement parts (some patented, some not) and to license the diagnostic software to independent service organizations (ISO). Kodak and Xerox instead urged their customers to use the companies' in-house repair services instead. The ISOs claimed that Xerox's and Kodak's policies exceeded the scope of the proprietary technology (patents and copyrights) at issue, and represented an attempt to monopolize a market in which each already had significant market power: the "aftermarket" for service of their own brand of copiers. Because of an earlier Supreme Court decision resolving the issue, the appropriateness of the defined aftermarket was not at issue in either case. *See Eastman Kodak Co. v. Image Technical Svcs, Inc.*, 504 U.S. 451 (1992).

The courts – the Ninth Circuit in *Kodak*, and the Federal Circuit in *Xerox* – rendered very different decisions. Upholding the summary judgment in favor of Xerox, the Federal Circuit asked whether Xerox had exceeded the scope of its patent rights by refusing to sell the patented replacement parts or by refusing to license the copyrighted manuals. Acknowledging that refusals to sell and license lie well within those rights, the Federal Circuit concluded that no antitrust liability could attach to the simple exercise of those rights.

The Ninth Circuit's analysis went a step further, to consider whether Kodak's reliance on its patents and copyrights was really a "pretext" for anticompetitive behavior. Finding some evidence supporting the jury's verdict that Kodak really was so motivated, the appellate court refused to set that verdict aside even though what Kodak did (motive aside) lay well within its rights to license proprietary technology to whomever it chooses.

So where do these two decisions leave someone trying to discern the limits of its proprietary technology? The *Kodak* and *Xerox* decisions do agree on a few important points. First, the holder of proprietary technology enjoys at least a presumption that she can refuse to sell or license without fear of antitrust liability. At the other end of the spectrum, both cases acknowledge that some acts, such as bundling proprietary technology with non-proprietary products (in antitrust parlance, "tying") can exceed the scope of one's rights and create antitrust liability. In between these poles, much remains in doubt. Will future courts focus exclusively on the behavior, as in *Xerox*, or also consider the subjective motivation behind the behavior, as in *Kodak*?

While the federal courts continue to work out the issues left unresolved by the *Kodak* and *Xerox* decisions, technology companies should consider two points. First, don't assume that the only market at issue is the one into which you intend to sell or lease your product. Aftermarkets consisting of follow-on goods or services sold just to your customers could apply, thereby magnifying both your market share and the competitive effect of your actions. Second, the uncertainty over whether a future court will look to evidence of your company's intent in licensing or not licensing, as the *Kodak* court did, advises extra caution as you plan how to take advantage of your new technology.



Licensing Your Proprietary Technology to Others

How, as opposed to whether, to license your new technology can also raise antitrust issues. Fortunately, the federal government has attempted to provide some guidance.

Released in April 1995 by the Federal Trade Commission (FTC) and Department of Justice, the "Antitrust Guidelines for the Licensing of Intellectual Property" signaled the government's general receptivity to licensing by announcing "three general principles." First, the agencies pledged to regard intellectual property as "essentially comparable" to any other type of property for antitrust purposes. Second, the agencies promised not to presume that intellectual property creates market power. Finally, the agencies recognized that "intellectual property licensing ... is generally procompetitive."

Having set out these generally accommodating principles, the Licensing Guidelines articulated what types of antitrust concerns *might* arise from IP licensing: dividing the markets among firms that would have competed using different technologies; reducing the number of firms engaging in R&D or acquiring exclusive IP rights in a way that threatens to lessen competition. The Licensing Guidelines also applied general analytical principles to specific potential features of an IP license: horizontal restraints, restrictions on resale price, tying arrangements, exclusive dealing, cross-licensing and pooling arrangements; grantbacks and outright transfers of all rights in intellectual property.

While the Licensing Guidelines don't attempt to answer every question, they do provide a useful starting point to identify many of the antitrust issues likely to arise in licensing agreements. Particularly if your company expects to incorporate any of the features listed above in its licenses, the Licensing Guidelines can help identify potential pitfalls.

Dealing With Competitors

As you might expect, any dealings with competitors – actual or potential – raise antitrust issues. Where technology is involved, collaborations and joint ventures, participating in standard-setting organizations and settling disputes often present special challenges.

R&D Collaborations and Joint Ventures

In April 2000 the FTC and the Department of Justice released the "Antitrust Guidelines for Collaborations Among Competitors." The guidelines recognized that "in order to compete in modern markets, competitors sometimes need to collaborate," and condemned as automatically anticompetitive only "agreements not to compete on price or output" – typically, agreements "to fix prices or output, rig bids, or share or divide markets by allocating customers, suppliers, territories or lines of commerce." Anything else, the guidelines stated, the government will analyze "to determine [the] overall competitive effect," and will look to such factors as the business purpose of the agreement, the markets affected, the market shares of the collaborators, and the duration, exclusivity, control over assets, decision making and information sharing afforded by the collaboration. These Guidelines also recognized not only product markets, but technology markets ("the intellectual property that is licensed and its close substitutes") and innovation markets ("the research and development directed to particular new or improved goods or process and the close substitutes for that research and development").

The Guidelines demonstrate the federal government's openness to beneficial competitor collaborations. Because they condemn outright only the most obviously anticompetitive agreements, a company's failure to consider the points raised in them creates truly unnecessary antitrust risks.

Standard-Setting Organizations

As demonstrated by a recent FTC decision, *In the Matter of Rambus, Inc.*, FTC Docket No. 9302 (August 2, 2006), a technology company's involvement in an industry standard-setting organization can also create antitrust issues. By a unanimous vote the FTC found Rambus, Inc. liable under the antitrust laws for failing to disclose that it held patents likely to cover certain standard computer-memory technologies being considered – and eventually adopted by – a computer industry group. When Rambus sought royalties on its patents from companies that had conformed to the new industry standards, the FTC brought an action and eventually prevailed against the company, with the remedy to be determined later.

The FTC's decision hinged in great part on the disclosure that that agency read the standard setting organization's rules to require. In light of this decision, prudent technology companies can avoid antitrust problems by understanding exactly what the standards organizations or committees in which they participate require, and ensuring that they meet those requirements.

Settling Disputes with Competitors

Finally, how your company settles disputes over proprietary technology can raise antitrust issues. The most vivid recent examples of these dangers have arisen in the pharmaceutical industry, where a series of high-stakes settlements of patent-infringement actions have prompted government investigations, threats of criminal charges and private (including class-action) litigation. *See, e.g.*, *Schering-Plough Corp. v. FTC*, 402 F.3d 1056 (11th Cir. 2005); *In re Tamoxifen Citrate Antitrust Litigation*, 2006-2 Trade Cas. (CCH) 75,382 (2d Cir. Aug. 10, 2006); *In re Cardizem CD Antitrust Litigation*, 332 F.3d 896 (6th Cir. 2003). Typically, the settlements under attack involve an infringement action brought by a name-brand manufacturer against a generic producer. The two parties agree to settle the case, but with the plaintiff (the name-brand maker) paying the defendant rather than vice-versa: what some have called a "reverse payment." As an additional consequence of the settlement, the two parties agree that the generic manufacturer will not field a competing drug until an agreed-upon date, usually one before the patent at issue is scheduled to expire. Critics of these settlements deride them as clever agreements between competitors not to compete, and therefore a clear violation of the antitrust laws. Others, usually citing the unusual regulatory regime that governs drug development in the U.S., defend the settlements as rational resolutions of very uncertain patent claims. The courts, struggling to deal with the complex issues involved here, have so far not produced a coherent body of law – one commentator has identified five different standards against which various courts and governmental agencies have weighed the evidence.

While the details of these so-called "reverse payment" pharmaceutical cases are probably important only to those involved in the pharmaceutical industry, any technology company can learn a broader lesson from these cases: how you settle disputes over your technology can create enormous antitrust issues, particularly where those settlements restrict your or your rivals' future actions in the marketplace.

Final Words to the Wise

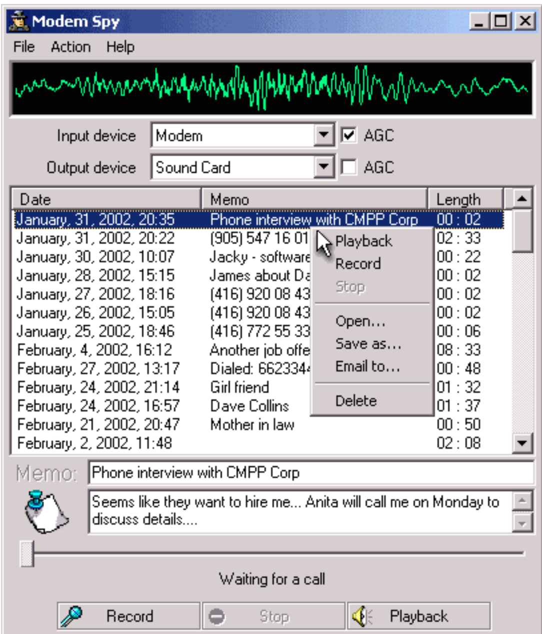
After all these examples of potential antitrust issues, this article's initial point probably bears repeating: antitrust law values, and tries to support, technological innovation. Although issues can arise at multiple points as technology companies bring their new products to market, the courts and the enforcement agencies have typically provided a way to accomplish legitimate business purposes. With some attention to the antitrust details, you can still capture all of the market share, margins on sales and royalties that your great new technology deserves.

Russ Wofford is a partner in Kilpatrick Stockton LLP's Atlanta office, and a member of the firm's Antitrust & Trade Regulation Group.

rwofford@kilpatrickstockton.com

This Article May Be Monitored: Telephone Monitoring in a Post-Kearney World

By William R. Still, Jr.



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"This call may be monitored or recorded for quality assurance." We've all heard this warning whenever we call our bank or Internet Service Provider or other customer service oriented businesses. Employers monitoring or recording telephone calls made by or to employees is certainly nothing new. However, a recent California Supreme Court case has the potential of making this phrase as ubiquitous as "Hello, thank you for calling. May I help you?"

Companies that want to monitor telephone calls by their employees face a complex mix of federal and state statutes, regulations, and common law. Federal law and most states allow call monitoring with the consent of one-party to the call, while a handful of states require consent from all parties to the call. This mix creates a web of uncertainty when calls are made between jurisdictions with different requirements and exceptions. As the relevant statutes can often be criminal statutes, careful planning and attention to compliance is vital.

The federal wiretap statute, found at 18 U.S.C.S. §§ 2510, *et seq.*, prohibits the intentional interception of "any wire, oral, or electronic communication." 18 U.S.C.S. § 2511. However, the federal law provides two avenues for an employer to monitor or record telephone calls made by his or her employees.

First, monitoring is allowed where "one of the parties to the communication has given prior consent to such interception." 18 U.S.C.S. § 2511(2)(d). Second, employers may monitor calls using telephone equipment for valid business purposes. *Briggs v. American Air Filter Co.*, 455 F.Supp. 179, 181 (N.D.Ga. 1978). This "extension phone" exemption or "business use" exemption is grounded in the definition of "device," which excludes "any telephone or telegraph instrument, equipment, or facility, or any component thereof ... furnished to the [employer] ... by a provider of wire or electronic communication service in the ordinary course of its business and [is] being used by the [employer] in the ordinary course of its business." 18 U.S.C.S. §2510(5); *United States v. Harpel*, 493 F.2d 346, 351 (10th Cir. 1974) ("Simply stated, there is no interception if the acquisition of the contents of the communication is accomplished through telephone equipment used in the ordinary course of business.").

However, without federal preemption, the federal law simply provides a floor of protection and states are authorized to impose stricter standards. Many states have done just that.

In Georgia, a person may monitor a telephone call where "one of the parties to the [call] has given prior consent to such [monitoring]." O.C.G.A. § 16-11-66. In addition, employers wishing to monitor calls for the purposes of "business service improvement," i.e., quality assurance, must apply for and obtain a license from the Public Service Commission. O.C.G.A. § 16-11-65. Such employers must demonstrate "a clear, apparent, and logically reasonable need for the use of the [monitoring] equipment in connection with a legitimate business activity of the user ... and ... that [such equipment] will be operated by persons of good moral character." *Id.* Furthermore, under Public Service Commission rules, licensees must "prominently display on every telephone instrument subject to [monitoring] a notification" that the instrument is subject to monitoring "in the form of official gummed labels." Ga. Comp. R. & Regs. r. 515-8-1-.05.

California, on the other hand, prohibits monitoring calls "without the consent of all parties to a confidential communication." Cal. Pen. Code § 632(a). California Public Utilities Commission rules prohibit monitoring or recording telephone calls except when all parties have given their "express prior consent" or when notice, as prescribed by the rules, of monitoring or recording is given to all parties. Rules and Regulations Concerning the Privacy of Telephone Communications General Order 107-B.

In addition to California, approximately ten other states, including such states as Florida, Maryland, and Pennsylvania, require "all-party consent." Where communications cross state lines, the federal minimum and the varying state laws make predicting the applicable law on the required number of parties for consent uncertain at best. A recent California decision emphasizes the uncertainty involved in these scenarios. However, as for calls involving California participants, this complicated choice of law question has been definitively answered.

In *Kearney v. Salomon Smith Barney, Inc.*, 137 P.3d 914 (July 13, 2006), the California Supreme Court held that calls to or from California residents are subject to California's law and, in order to monitor or record a call involving a California resident, companies must get the consent of all parties to the call, even if the call originates in a "one-party consent" state like Georgia. The *Kearney* case arose from the discovery that calls made by Salomon Smith Barney employees in Georgia were recorded without the consent of or notice to the company's California clients. As Georgia is a one-party consent state, while California is an all-party consent state, the Court found itself confronted with a "classic choice-of-law issue." *Id.* at 917.

To resolve this issue, the Court applied its version of the "governmental interest analysis." This required an examination of the governmental interests served by the statutes and the "jurisdictions' respective interests to determine which jurisdiction's interests would be more severely impaired if that jurisdiction's law were not applied in the particular context presented by the case." *Id.* Under the Court's analysis, the privacy interests of California residents were found to be more important than Georgia's interests in controlling recordings by businesses.

The Court said that "[a] person who secretly and intentionally records [a telephone] conversation from outside the state effectively acts within California in the same way a person effectively acts within the state by, for example, intentionally shooting a person in California from across the California-Nevada border." *Id.* at 931. With this stark analogy set, the Court concluded that "[b]ecause there can be no question that the principal purpose of [the California law] is to protect the privacy of confidential communications of California residents *while they are in California*, we believe it is clear that [the California law] was intended, and reasonably must be interpreted, to apply in this setting." *Id.* (emphasis in original).

The Court did not fine Salomon Smith Barney for its past conduct but did grant injunctive relief to the Plaintiffs. However, the Court pointedly warned companies operating in California that the next Defendant would not be so lucky. According to the Court, "out-of-state companies that do business in California now are on notice that, with regard to future conduct, they are subject to California law with regard to the recording of telephone conversations made to or received from California, and that the full range of civil sanctions afforded by California law may be imposed for future violations." *Id.* at 938-939.

Companies that are considering a monitoring program are well-advised to seek additional counsel in considering these complex issues. At a minimum, however, a company that adopts a conservative "all-party consent" approach may be better positioned to navigate a *post-Kearney* world.

William Still is a member of Troutman Sanders LLP's governmental law practice group and privacy and data security practice team. As Director of Privacy and Government Affairs for ChoicePoint for almost eight years, William brings important corporate experience and insight to his practice. William can be reached at (404) 885-3044 or by e-mail at ***william.still@troutmansanders.com****.*

Technology Law Section Volunteer Opportunities

The Committee on Volunteer Activities of the Technology Law Section seeks to provide members a collection of both community service projects and pro bono legal service opportunities.

Technology Opportunities

Protection of Website: Georgia Legal Services Program ("GLSP") and the Atlanta Legal Aid Society ("ALAS") provide free online legal resources and information via the website, **www.LegalAid-GA.org**. Unfortunately, some entities have sought to misappropriate these resources and sell the information for profit. GSLP and the ALAS need assistance protecting these important resources. To assist with this matter, contact ALAS/GSLP Technology Consultant Tracey M. Roberts (***troberts@glsp.org***)

Technology Agreements: GLSP is also developing a plan for the wide-area networking of its twelve (12) field offices across the state, including the negotiation for (and implementation of) Internet-based case management software and its Voice over Internet Protocol ("VoIP") services. GLSP is seeking advice and counsel on future technology plans and contracts. Also, GLSP seeks intellectual property counsel to serve as advisors to GLSP management. For more information on this opportunity, contact Mike Monahan (***mike@gabar.org***)

Technology Best Practices: Volunteer lawyers are needed for a legal seminar for community-based groups scheduled for early December in Atlanta. The seminar, intended for a basic-to-intermediate skills audience, will address legal issues for nonprofit managers related to Internet usage, website development and content, and e-mail and communications policies. Interested? Contact Mike Monahan (***mike@gabar.org***)

Technology Agreements: From time to time, area non-profits need attorneys to review equipment leases, register domain names, and assist with the registration of trademarks and related issues. The Pro Bono Partnership of Atlanta, Inc. ("PBP-Atl") (**www.pbpatl.org**) was formed with a mission to make it as easy and enjoyable as possible for transactional lawyers at corporations and law firms to provide valuable pro bono services for nonprofit agencies servicing the public interest in Metropolitan Atlanta. PBP-Atl services community-based nonprofits whose primary purpose is to operate ongoing programs or activities that benefit low-income communities or that otherwise serve the public interest.

PBP-Atl is seeking assistance with an audit of the nonprofit's website, including its Terms of Service, privacy policy, copyright and trademark use and links to other websites. For more information on these and other opportunities, please contact Executive Director Rachel Spears. (***rachel.spears@pbpatl.org***).

Teaching/Training/Advice: TECH CORPS Georgia, Inc.'s ("TECH CORP") (**www.techcorpsga.org**) mission is to promote "Digital Inclusion" for the residents, teachers, students and entrepreneurs of Georgia's low-income and otherwise under-served communities, and to advocate for the use of technology in promoting self-sufficiency and economic resiliency.

TECH CORPS often needs volunteers to assist with the various classes and programs that are provided, including computer and software Training (e.g., office applications, etc.), Computer Repair and Maintenance, Internet research, and assistance with the TECH CORPS website.

For the last 5 years, the Technology Law Section has supported TECH CORPS financially (with a portion of proceeds from the Technology Law Institute) and through "volunteer days" for interested members. Past volunteer day topics have included helping students develop computer-based job search skills and to manage their finances. If you are interested in volunteering with TECH CORPS, please contact Ron Jackson (*rvjackson@wstelecomlaw.com*).

General Business Law Opportunities

Volunteer Business Lawyers: A Business Commitment ("ABC") (www.ABC-Georgia.org) is a joint project of the State Bar of Georgia, the ABC Committee, and the Georgia Legal Services Project. ABC matches volunteer business lawyers with community-based organizations in Georgia. Currently, ABC and its member organizations need assistance with several issues.

Non-Profit Formation: ABC is also seeking lawyers to assist community-based organizations that seek to incorporate or acquire 501(c)(3) status. For more information, please visit ABC's website.

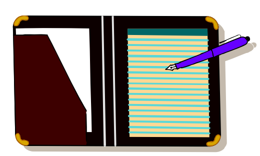
Non-Profit Formation: The Atlanta Volunteer Lawyers Foundation ("AVLF") (www.avlf.org/wills.html) is also seeking lawyers to assist community-based organizations that seek to incorporate or acquire 501(c)(3) status.

Community Service: AVLF has two (2) programs -- "Wills on Wheels" for and "Wills for Emergency Service Personnel" -- in which volunteer attorneys assist individuals by drafting wills and other advance directives.

AVLF designees provide the required training for these programs. Attorneys first work with the client by telephone, draft the will, and then meet with the client to execute the will. To register for this training, please contact Ron Jackson (*rvjackson@wstelecomlaw.com*) or Connie White of AVLF (*cwhite@avlf.org*). If you contact AVLF directly, mention that you are a Technology Law Section Volunteer.

For more information, about these opportunities or for more information on membership on the Committee for Volunteer Activities, please contact: Ron Jackson (*rvjackson@wstelecomlaw.com*).

Calendar of Upcoming Events



Executive Committee Meeting — **October 13, 2006**
Troutman Sanders LLP — 7:30 am
600 Peachtree Street, NE, Suite 5200, Atlanta

Technology Law Institute — **October 17, 2006**
State Bar Headquarters

Highlights from the Executive Committee *By Gaines P. Carter*

The Executive Committee has met three times since publication of the Summer issue of the Georgia Journal of Technology Law - July 14, August 11, and September 8, 2006. Highlights of the June, July and August meetings follow. The minutes of the September 8 meeting will be reviewed and revised (if necessary) at the October 13, 2006 Executive Committee meeting and published in the Winter issue of the Journal.

June 9, 2006

Suellen Bergman chaired the meeting, and the minutes from May 12 meeting were reviewed by the Committee and adopted.

TLI 2006 Mike Stewart provided an updated report, as follows:

Program/Speakers. All modules have been settled. The last remaining piece was the international module, and David Keating settled on a topic for that module relating to EU data privacy. Sean Carter's lunch topic is still to be determined. Speakers/panelists are still needed for the panel on emerging technologies (the moderator, Brett Lockwood, is seeking participants) and for the legal viewpoint in the New Communications module (Mike Vollmer is investigating legal speakers from Turner/Turner New Media.)

The TLI Committee is finalizing the order and timing of the various presentations and notifying speakers regarding writing requirements, and addressing travel booking and lodging reservations for out-of-town visitors. Mike Stewart asked the Executive Committee to approve two nights hotel accommodations for out-of-town visitors, amounting to approximately $1100. The motion carried unanimously.

Annual Meeting Update Suellen Bergman updated the Executive Committee on the final planning details for the Section Annual Meeting, to be held June 27, 2006, at Maggiano's in Buckhead. The meeting is co-planned with the Licensing Executives Society, with scheduled speakers from Microsoft in Redmond, Washington and BellSouth. Suellen reported on the advertisement that had been developed for the meeting, and stated that the event would be advertised to other sections as well as the Technology Law Section. Suellen also opened a discussion, following up on the May meeting, about possible tokens of appreciation for out-of-town speakers. After discussion of several alternatives, such as a "tombstone" or a gift basket, Suellen presented a distinctive, inscribed glass "mug" that she had researched. The discussion turned to whether the Section would like to purchase a "lot" of mugs for future use as gifts for out-of-town speakers. A motion was made that the Section do so, and it carried unanimously. The Executive Committee authorized Suellen to research the cost of purchasing a supply of mugs and to purchase a quantity deemed in her best judgment as sufficient to last several years.

Annual Happy Hour Chuck Ross reported that 23 people attended the spring Section Happy Hour event on May 16, 2006, and there was a discussion about keeping this event in the spring, given the inclusion of a networking event in connection with TLI.

Fall Meeting Update The date for the fall meeting has been changed from August to September 12, 2006. Robert Mercer is planning the event, which will include a presentation regarding buying and selling distressed technology companies.

Marketing Committee Mike Vollmer reported further on his conversations with Doug Isenberg, Chair of the Intellectual Property Law Section, regarding insights on how that Section services its members, including a recent survey to its members. The IP Section recently conducted the self-designed survey, using the free service, Survey Monkey, and received responses from roughly 20% of its members. The data has not been tabulated yet, but the IP Section has stated that it will share the results with Mike as soon as possible. Chris Chan also presented the idea of placing a paid ad in the Georgia Bar Journal soliciting dial-in participation on the Executive Committee beyond metro Atlanta. The Executive Committee decided to take advantage of the free advertising space provided to the various sections first and, if the ad garners no response, to reconsider the idea of a higher profile paid advertisement.

Podcasting Chuck Ross announced that the Section will go ahead with a Podcast as soon as Chuck can set it up. Troutman Sanders has volunteered to provide the content for the first podcast.

Journal Update Bob Neufeld reported that the summer issue of the *Journal* would be published the week of June 16, 2006. He also reported that Steve Hardy's two-part article from the summer and fall 2005 issues of the *Journal* had been accepted by the *Georgia Bar Journal* for publication and appeared as the cover story in the June 2006 issue. The Executive Committee also considered the issue of increasing the compensation paid to the Section Graphic Designer and, upon motion, an increase was unanimously approved.

Section Historian It was announced the Ben Young, of Troutman Sanders, has joined the Executive Committee and will fill the Section Historian role vacated by Dawn Stephens.

2006-2007 Executive Committee Meetings Mike Stewart announced that the meetings of the Executive Committee for 2006-2007 will continue to be hosted by Troutman Sanders LLP on the second Friday of every month. The dates of the meetings are July 14, August 11, September 8, October 13, November 10, December 8, January 12, February 9, March 9, April 13, May 11 and June 8.

Members in Attendance The Executive Committee members in attendance were Suellen Bergman, Mike Stewart, John Hutchins, Melissa Yost, Chris Chan, Kean DeCarlo, Erin Robinson, Mike Vollmer, Chuck Ross, Ben Young, Mari Myer, Gaines Carter, Robert Mercer and Bob Neufeld. Absent members were Larry Kunin, Steve Combs, Ron Jackson, Aaron Danzig and Robert Mercer. You were missed!

Thanks for Hosting! The Executive Committee thanks the law firm of Troutman Sanders LLP for hosting the June 9, 2006 meeting.

TROUTMAN SANDERS LLP
ATTORNEYS AT LAW

July 14, 2006

Michael Stewart chaired the meeting. Meeting was called to order at 7:42 AM. Minutes reviewed. No comments or changes were proposed. Motion to approve by M. Stewart, seconded G. Carter.

TLI Update Mike Stewart reported that the event will be at the Georgia State Bar Facility, attendees will receive 9 hours of CLE. The speakers have all been booked,

Networking Event John Hutchins reported that a wine tasting event will be held at McCormick & Schmick's. Trolly may be used to ferry attendees. Still looking for sponsors – potential candidates are: wine distributors, law firm support services providers (i.e. copy services). Voted to approve expenditure of $5,000. Motion by Mike Stewart, seconded by Gaines Carter.

Treasury Report Mike Stewart reported that approximately $15,000 is currently available.

Annual Meeting Update June 2006 held at Maggianno's – M. Stewart gave the summary of the event. Presenters Good reviews on the mugs and content. Final cost to section was $87 after all costs & fees totaled.

Website Update Steve Combs – BellSouth presenters at the Annual Meeting have agreed to allow us to post their presentations on the Tech Section web site. Need to change ComputerBar to TechnologyBar in various publications to drive people to the site. Podcasting – use non-proprietary (not iPod). Stewart recommended tabling discussion of pricing awaiting notification of new funds from GA Bar. Discussed adding new types of content to the web site. Discussed record meetings/events for placing on web site – Steve noted that a release signed by speakers was required. Annual/Quarterly Events will be recorded. Need to notify speakers in advance. Technical issues of audio and video recording of events was discussed i.e. equipment required and band-width for web site. The need to promotion of the recordings in the newsletter was discussed.

Other New Business

Mugs for speakers were discussed. Two flawed mugs. Total spent on all mugs was $571.00. Section will receive a credit for the two flawed mugs.

Discussion of reaching members beyond Atlanta. Proposal was made to place an ad in the next Georgia Bar Journal. Placement in Journal was critical. Timing was not good, no decision was reached.

Ben Young will take pictures at events and write a summary of the event and pictures which will be placed on the section web site.

Next Executive meeting will be held on Aug. 11, 2006 at Troutman Sanders.

All business was concluded. Mike Stewart called meeting to close, seconded by G. Carter.

Members in Attendance The Executive Committee members in attendance were Mike Stewart, John Hutchins, Mari Myer, Melissa Yost, Steve Combs, Erinn Robinson, Gaines Carter, Benjamin Young, Kean DeCarlo and David Keating.

Thanks for Hosting! The Executive Committee thanks the law firm of Troutman Sanders LLP for hosting the July 14, 2006 meeting.

August 11, 2006

Welcome by Mike Stewart. Meeting called to order at 7:35 AM. Review of July Meeting Minutes: Motion to approve subject to corrections by Chris Chan. John Hutchins second. All approved.

New Business

TLI 2006 Update By Mike Stweart: Ian Ballon, Sean Carter, Larry Kunin. Papers due in 5 weeks, 7 HOURS total CLE (down because no professionalism from Carter).

Summer Quarterly Meeting Report By Mike Stweart: September 12 or 13. Marketing material will be done by Hutchins – draft by next week. Advertise in various section newsletters. Robert Mercer will cover purchase technology out of Bankruptcy.

TLI Networking Event Update Waiting on proposal. Price range remains on target.

Report on Midyear Meeting By Mike Stewart: Meeting in Savannah. Discussion on Tech Section participation. John proposed no participation because we have a meeting in December – leads to minimal attendance. Meyer proposed no participation. Hutchins seconds – all voted in favor.

Marketing Committee Report By Chris Chan: Contact various firms to distribute our materials and request feed back. Wants to market section to new law school students.

Podcasting By Chuck Ross. No update available.

Journal Update By Bob Neufeld. Summer issue is out. Fall issue in works. Mari Meyer is writing a second piece. Sept 8 is deadline for submission for Fall issue.

Website – Mike Stewart presented pricing. Tabled discussion until Steve Combs is present.

Dial in from Beyond Atlanta By Chris Chan. Price for Georgia Bar ad will be several hundred $300 - $3000. Little response so far. Propose to present orally at the TLI and blast to members by Bar (Johanna). Request American Corporate Counsel for list of In-House counsel.

GEORGIA JOURNAL OF TECHNOLOGY LAW

Technology Law Section
State Bar of Georgia

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Technology Law Section Networking Event
By Benjamin L. Young

On May 16th, the Technology Law Section of the Georgia Bar hosted its bi-annual happy hour at the Gordon Biersch Brewery. Section members and attorneys from over ten law firms and various government agencies were in attendance to meet, have a cocktail, and discuss current activities and business development opportunities in the technology field. If you are interested in becoming more involved in the Technology Law Section, please see the calendar of upcoming events in this issue of the Journal.

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Section Events & Announcements

Articles

Participate in the Technology Law Section!

Get involved with the Technology Law Section!

Do you work outside of the metro Atlanta area such as Macon, Savannah, Augusta, or other parts of the State of Georgia? Do you want to be more involved with the Technology Law Section and participate on the Technology Law Section's Executive Committee or one of our various sub-committees?

We are encouraging interested non-Atlanta section members to get involved by participating in our monthly Executive Committee meeting and joining one or more of our sub-committees.

Our next meeting is scheduled for 7:30 a.m. on July 14, 2006. July will be the beginning of the annual term for our newly elected officers and committee chairs.

If you are interested in participating or need dial-in information for our Executive Committee meeting, please contact Chris Chan at 404.815.6048 or at cchan@kilpatrickstockton.com.

Learn About Managing Corporate IP Portfolios From The Experts - See Pg. 10 for details

Old Business

Litigation Committee By Larry Kunin: Meeting to be scheduled for September. Committee has expanded.

State Bar Sponsorship By Mike Stewart: Discussed sponsorship at Bronze or Copper Levels at June 2007 meeting in Florida. (Section Financials currently at ~$17,000). Need to have Executive Committee or other section members present to have any Section benefits. Hutchins move not sponsor. Chris Chan seconded. All voted in favor of motion.

Thanks for Hosting! The Executive Committee thanks the law firm of Troutman Sanders LLP for hosting the August 11, 2006 meeting. Next meeting is at Troutman Sanders on September 8, 2006.

Announcements No additional topics or discussion.

Meeting Adjourned 8:15 AM.

Gaines Carter is Intellectual Property Counsel for ARRIS International, Inc. in Suwanee, Georgia. He is a member of the bars of the State of Georgia and State of Michigan and is a registered patent attorney. Gaines currently serves as the Section Secretary for the Technology Law Section. He may be reached via e-mail at Gaines.Carter@arrisi.com.