



Internet Law Update

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INTELLECTUAL PROPERTY, PATENTS AND THE INTERNET

As is becoming more obvious with each passing day, the Internet continues to evolve, along with a host of business, political, technical and legal issues related to it. To deal with these emerging issues, present case law and statutory law are being adapted and modified to produce a body of cyberlaw to address the burgeoning cyberworld.

Among recent legal issues arising in response to the growth of the Internet are:

- The Communications Decency Act of 1996, which criminalizes certain communications transmitted over the Internet;¹
- Digital notary and signature, encryption, cybercash and related services designed to address the technical and legal problems associated with electronic commerce, such as data authentication, data privacy and contract formation;²
- Whether employers may read employees' e-mail;³ and
- The effect of U.S. export controls (for example, limits on exports of encryption-related software) on information communicated on the Internet over national borders, and whether encryption software is "speech" protected by the First Amendment.⁴

Intellectual Property Issues

Clearly, because of the highly technical nature of the Internet, combined with the intangible and informational character of Internet-related services, intellectual property law will continue to figure prominently in cyberlaw's development. Some intellectual property law issues related to the Internet include:

¹For further information, see SHS&L's Home Page (<http://www.shsl.com>) for our Telecommunications Act Litigation Updates and for the full text of SHS&L's *amicus* brief filed in support of the plaintiffs in a lawsuit challenging the constitutionality of certain aspects of the Act.

²See, e.g., California's new Digital Signature Law, Cal. Gov. Code §16.5; and Paul R. Katz & Aron Schwartz, "Electronic Documents and Digital Signaturing: Changing the Way Business Is Conducted and Contracts Are Formed," *ABA IPL Newsletter*, vol. 14, no. 2, Winter 1996, at 3.

³See *Smyth v. Pillsbury Co.*, 914 F. Supp. 97 (E.D. Pa. 1996); SHS&L's January 1996 *Internet Law Update*, "Protecting Your Company from Email Litigation: The Building Blocks of a Sound Policy," available on SHS&L's Home Page.

⁴See *Bernstein v. United States Dept. of State*, 1996 WL 186106, No. C-95-0582 (N.D. Cal., April 15, 1996).

- The interrelationship between trademark law and Internet domain names;⁵
- Georgia's new so-called "Internet Law," which prohibits under certain circumstances the knowing transmission of misleading data, including misleading use of trademarks and copyrighted symbols, through a computer or telephone network;⁶
- The Digital Performance Right in Sound Recordings Act of 1995, which expands copyright protection of music in the context of digital transmissions;⁷ and
- Whether Internet access providers may be held contributorily liable for copyright infringement⁸ or defamation⁹ by service subscribers.

Patent Law

In addition to trademark and copyright issues, patent law will also play an important role in protecting rights to Internet-related intellectual property. Design patents cover ornamental designs for an article of manufacture, and the Patent Office recently issued its "Guidelines for Examination of Design Patent Applications for Computer-Generated Icons."¹⁰

A utility patent is what people ordinarily think of to protect inventions, such as new devices, new chemical compositions, or new processes or innovative ways of doing things. The Internet is a vast network of both hardware and software elements. As the backbone hardware connections of the Internet are improved, patents will continue to be obtained covering these innovations. Thus, as various individuals and companies continue to innovate in developing and improving the Internet and related services and products, we can expect patent law to help inventors protect these inventions.

The Internet also encompasses a host of software applications, like the World Wide Web. With recent case law and regulatory developments expanding the availability of patent protection to software-related inventions,¹¹ the new world of software patents can be expected to cover Internet-related software inventions. As the commercial importance of the Internet and World Wide Web continues to grow, patents in Internet- and computer-related inventions will become an increasingly important part of high-tech companies' assets.

⁵For further information, see SHS&L's December 1995 *Internet Law Update*, "Protect Your Company's Rights on the Internet: The New Internet Domain Name Registration Policy," available on SHS&L's Home Page; *Roadrunner Computer Systems v. Network Solutions*, No. 96-413-A (E.D. Va., March 26, 1996; <http://www.domains.org>).

⁶Georgia HB 1630 ("Computer or telephone network; transmitting misleading data"), signed by the governor April 18, 1996. For further information see <http://www.kuesterlaw.com>.

⁷Pub. L. 104-39, amending various sections of title 17 of the U.S. Code.

⁸See *Religious Technology Center v. NetCom Online Communications Services Inc.*, 907 F. SUPP. 1361 (N.D. Cal. 1995).

⁹See *Cubby, Inc. v. CompuServe, Inc.*, 776 F. SUPP. 135 (S.D.N.Y. 1991); *Stratton Oakmont, Inc. v. Prodigy Services Co.*, 1995 WL 323710, 23 Media L. Rep. 1794, *rearg. den.* 1995 WL 805178, 24 Media L. Rep. 1126 (N.Y. Sup.).

¹⁰61 *Fed. Reg.* 11381 (Mar. 20, 1996).

¹¹See "Computer Software Patents Are On The Way," in SHS&L's Fall 1995 *IP Report*; see also "Examination Guidelines for Computer-Related Inventions," 61 *Fed. Reg.* 7478 (Feb. 28, 1996).

Internet-Related Patents

Several patents in fields related to the Internet or computer networks have recently been issued. For instance, Citibank has obtained a patent for an "Electronic Monetary System."¹² This patent covers a money system in which electronic money, or "cybercash" as it is sometimes called, can be securely transferred between users and financial institutions. Other recent patents in this field include AT&T's patent for "Anonymous Credit Card Transactions"¹³ and Visa International's "Electronic Bill Pay System."¹⁴

A specifically Internet-related patent is Sun Microsystems' "Method and Apparatus for Key-Management Scheme for Use with Internet Protocols at Site Firewalls."¹⁵ This patent concerns methods for securing traffic at an Internet protocol layer as data traverses a public network like the Internet.

Other recently issued network- or computer-related patents include:

- Net Labs' "Apparatus for Remotely Managing Diverse Information Network Resources,"¹⁶ which provides a network management system in which various elements, such as hubs, routers and workstations, that are distributed across a data exchange network, are remotely controlled from a single point of maintenance;
- Taligent's "System for Browsing a Network Resource Book with Tabs Attached to Pages,"¹⁷ in which a user may select a particular network computer resource from a window with "phonebooks" having "tabs" representative of types of computer resources associated with the particular phonebook; and
- General Electric's "Datagram Message Communication Service Employing a Hybrid Network,"¹⁸ in which "datagrams" are transmitted over a hybrid radio/wired network having a number of communicating units such as radio transceivers, wired nodes and bridge transceivers, which both connect to the wired network and communicate with the transceivers.

¹²U.S. Patent No. 5,455,407, issued October 3, 1995.

¹³U.S. Patent No. 5,420,926, issued May 30, 1995.

¹⁴U.S. Patent No. 5,420,926, issued May 30, 1995.

¹⁵U.S. Patent No. 5,416,842, issued May 16, 1995. Other recent Internet-related patents include "General Internet Method for Routing Packets in a Communications Network," U.S. Patent No. 5,353,283, issued October 4, 1994, assigned to Bell Communications Research, Inc.; and "Bridge-Like Internet Protocol Router," U.S. Patent No. 5,309,437, issued May 3, 1994, assigned to Digital Equipment Corporation.

¹⁶U.S. Patent No. 5,491,796, issued February 13, 1996.

¹⁷U.S. Patent No. 5,500,929, issued March 19, 1996.

¹⁸U.S. Patent No. 5,481,535, issued January 2, 1996.

Protect Your Rights

Because of the growing commercial importance of the Internet, individuals and companies that innovate should carefully consider whether their creations are adequately protected under patent or other intellectual property laws. Attorneys in Schnader Harrison's Intellectual Property Department and Internet and Computer Networking Practice Group are available to provide additional information or assistance to help companies protect their intellectual property rights related to the Internet. *For additional information, contact N. Stephan Kinsella — 215/751-2157 • kinsella@shsl.com. Mr. Kinsella, a member of the firm's Intellectual Property Department and the Internet and Computer Networking Practice Group, specializes in computer software and hardware patents.*

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