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Inside

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of the New York State Bar Association

Message from the Chair

I am very proud of our Section's accomplishments over the past ten months. Thanks to the hard work and dedication of our Section's Executive Committee, we have revived *Inside*, our newsletter, and revamped our Web site. We also restructured the Section's administration, removing our various Section Committees which were no longer active, and increased our Executive Committee membership by five positions. The Executive Committee is now the vehicle through which all of the Section's activities and programs will be planned. In addition, we have focused on creating programs which not only carry CLE credits, but which we hope have been, and will continue to be, of practical value and academic benefit.

January 2000

We started the year at the NYSBA Annual Meeting with a joint afternoon program with the Commercial and Federal Litigation Section titled, "Multi-Disciplinary Practices and Ethics" moderated by Thomas O. Rice, Esq. (NYSBA President). The four panelists—Robert E. Brown, Esq. (Brown Boylan Brown Code Fowler Vigdor & Wilson), Steven C. Krane, Esq. (Proskauer Rose), Robert L. Ostertag, Esq. (Ostertag & O'Leary) and Claudia L. Taft, Esq. (KPMG Peat Marwick)—debated on the role of the attorney in multi-disciplinary practice and the ethical considerations raised thereby.

May 2000

Our Spring meeting was held in the picturesque town of Niagara-on-the-Lake in Canada. This weekend-long event, cosponsored with the Commercial and Federal Litigation Section, featured, among other things, a morning session titled, "Litigation without Borders: Corporate Counsel Discuss Implications of the Global Marketplace and the New Economy on Litigation Management." Topics included multi-jurisdictional litigation management of class actions, coordinating defense strategies, ADR, and efficient use of both outside and in-house counsel resources. Many thanks to the panelists—Jill K. Bond, Esq. (Rich Products), Wendy A. Kelley, Esq. (BMO Nesbitt Burns), Steven A. Moll, Esq. (The Thomson Corporation), David B. Perlman, Esq. (Citizen Watch), Edward J. Weiss, Esq. (Time Warner), The Honorable Frederick J. Scullin, Jr. (U.S. District Court, N.D.N.Y.) and The Honorable Mr. Justice James M. Farley (Ontario Superior Court of Justice) for a fascinating discussion.

June 2000

On June 16, 2000, Chairperson-elect Gary F. Roth made a guest appearance on The Ron Thomas Small

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Business Forum on WNYE-FM. The Forum is a half-hour radio magazine providing practical management advice to small business entrepreneurs in the tri-state area. Gary discussed the Section's brochure, "How Companies Can Prevent Legal Problems and Save Legal Expenses."

October 2000

On October 5, 2000, we presented "Ethics for Corporate Counsel" to a sell-out crowd at the Le Parker Meridien Hotel in Manhattan. First, Debra L. Raskin, Esq. and Anne C. Vladeck, Esq. of Vladeck, Waldman, Elias & Englehard, and Jill L. Rosenberg, Esq. of Orrick, Herrington and Sutcliffe, held a question-and-answer session on "The Lawyer as Employee: Ethical Issues when Lawyers Become Litigants." Next, John Villa, Esq. of Williams and Connolly, presented hypothetical cases for the audience's participation, covering issues such as direct and potential conflicts of interest, informed consent, and the "corporate ladder rule." Richard M. Maltz, Esq. of Gentile, Brotman, Maltz & Benjamin, then discussed the New York Code of Professional Responsibility, disciplinary proceedings and ethical issues relating to multi-jurisdictional practice. A complimentary cocktail reception followed the Program. Special thanks go to our Program Chair, Gary F. Roth, Esq., as well as to Janice Handler, Esq., Jay L. Monitz, Esq. and Steven G. Nachimson, Esq. for their work in putting this highly successful event together.

Looking Ahead to 2001

Plan ahead and mark your calendar! On January 24, 2001, our Section's Annual Meeting will be held at 8:30 a.m., to be followed by a joint morning program and luncheon with the International Law and Practice Section, and an afternoon joint program with the Commercial and Federal Litigation Section, on e-Commerce. Topics will include UETA, advertising, privacy and online dispute resolution. Please join us for what is sure to be an interesting and informative event.

Finally, as mentioned above, we recently amended our Section's by-laws to add five more Executive Committee member slots. Should you wish to become involved in our Section's activities, we hope you will take this opportunity to do so by contacting me or any Executive Committee member.

As always, your comments and suggestions for future Section activities are most welcome. I look forward to hearing from you.

Bonni G. Davis

No-Nonsense Management of IP

By George B. Snyder

Thomas Edison once observed that invention is 10 percent inspiration and 90 percent perspiration. This applies equally to management of inventions and other intellectual property (IP) resources.

Today's environment requires that successful businesses have an in-depth mastery of the intellectual property they own, and strategies for using it to their best advantage. Technology must be secured and utilized insightfully in order to maintain a competitive edge. Strong trade identity must be developed and defended against encroachment. Because of globalization an international approach must be taken.

"Once a current compendium is assembled it should be updated regularly so that its value does not erode."

To be effective, a management program should incorporate the following essential components:

1. Inventorying of the company's intellectual property;
2. Determination of the company's strategic objectives in developing and utilizing its intellectual property;
3. Execution of an action plan consciously designed to achieve the company's objectives;
4. Vigilant monitoring of the activities of others in the marketplace;
5. Provision of adequate staffing;
6. Institution of an overview mechanism.

Such a program will lead to an informed strategy for utilizing intellectual property in a cost-effective manner which produces results. A closer examination of the critical program elements shows why.

IP Inventory

Cataloguing the company's portfolio of patents, trademark/copyright registrations, and pending applications should be supplemented by an audit of "R&D," marketing and other creative operations for items not yet "in the system." Review of "R&D" records, and dialogue with knowledgeable personnel, may reveal inventions and other technological information that merit coverage by a patent (or sometimes copyright registration in the case of software), or treatment as a trade secret. Similarly, analysis of the various brand names, tag lines and logos in use, or on the drawing board in "marketing," can highlight heretofore underappreciated trademark, trade dress or trade name rights.

Once a current compendium is assembled it should be updated regularly so that its value does not erode. This can be done by institutionalizing procedures for keeping the company's legal department apprised of new matters. Useful mechanisms are contemporaneous preparation of invention disclosures, and their submission for attorney review, and creation of a liaison function to bring technological and marketing developments to the attention of "legal."

Company Objectives

Setting priorities for the development and use of intellectual property in the context of the company's overall business plan is also important. When a particular technology is highly efficacious, or when a specific brand very strong, the company's best interests are often served by excluding all others from its use through vigorous enforcement activities. Alternatively, if the objective is to develop technology and license it as a revenue-generating activity, then a more conciliatory business-oriented approach would be warranted. Ultimately, the company's priorities will go hand-in-hand with the nature of its intellectual property assets to form the framework for IP policy.

Action Plan

As indicated above, a decision that the company should maintain an exclusive position in the marketplace will dictate an aggressive enforcement posture. This might consist of (1) an expedited out-of-court policing attempt via fast-track correspondence threatening suit (in an initial effort to hold cost down), followed promptly by (2) litigation or an alternative form of contested proceeding, if informal efforts are not fruitful. Settlement would necessarily entail termination of all offending activities. On the other hand, if the goal is licensing (or other cooperative business arrangement)—or if the intellectual property concerned does not realistically warrant the mounting of an all-out effort—a live-and-let-live approach may be better. A more deliberate,

less confrontational exchange could be structured with a view to an eventual business deal. This could take the form of a license, a joint venture arrangement, or agreed coexistence in which the encroacher promises to steer clear of the company's rights. Of course, the plan which is devised and executed must take into account the geographic venue of the dispute or contemplated transaction, whether the company has any pertinent intellectual property assets in that country, and how extensive they are.

Vigilance

Sales and marketing personnel usually keep track of the company's competitors, and probably have a voluminous file on this topic. Similarly, R&D personnel follow the scientific literature and accordingly have knowledge of technological developments outside the company. Setting up a system for liaison with those individuals can provide an invaluable source of information on the activities of others.

"Work assignments both to in-house and outside personnel should take continuity into account."

Another good source of information is the Patent and Trademark Office's Official Gazette. This publication summarizes, on a weekly basis, the contents of all newly-issued U.S. patents and published trademark applications, each by subject matter category for ease of reference. Various other nations' patent/trademark offices have similar publications, and there are contract services which also report published IP developments. These furnish reliable insights into the plans of others.

Staffing

Getting the right team to staff the functions described above is essential. In-house personnel should be selected based on experience (if any) and aptitude, taking into account the detail-oriented nature of intellectual property work. Outside counsel should be well-rounded in their capabilities, and flexible in their approach, so that achievement of the company's business objectives is the controlling factor in devising and executing a plan of action, rather than adopting a plan to fit counsel's particular expertise. Work assignments both to in-house and outside personnel should take continuity into account. If the company's intellectual property is treated like an orphan, results will suffer.

Overview

It is beneficial to perform a periodic analysis of the measures put in place. This should transcend routine review of the progress of pending matters, and instead address higher-order issues such as: whether the system adopted is sufficiently responsive to developments; whether staffing arrangements are adequate; and most important, whether the company's business objectives are being achieved.

Conclusion

The hard work necessary to implement this program will pay dividends when the company's return on its intellectual property investment is recognized as a substantial contributor to the bottom line.

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Articles should be submitted on a 3 1/2" floppy disk, preferably in WordPerfect or Microsoft Word, along with a printed original and biographical information.

Representation Rights of Employees Under *Sturgis* and *Weingarten*

By Diane Windholz and Elise Bloom

Two important decisions from the National Labor Relations Board (NLRB or "Board") have expanded the representation rights of employees and increased the potential for unwanted interference with employers' legitimate interests in managing their workforces. The rules of law contained in these decisions will energize the labor movement by providing new issues for union organizers to appeal to nonunion workers. As we approach a change of administration in Washington, the Board may be eager to exercise its existing authority and make more corrections in federal labor policy that may further strengthen employee rights.

Board Stretches Unions' Reach to Temporary Employees Supplied by Agencies

In a ruling widely regarded as favoring the interests of organized labor, the National Labor Relations Board handed down a decision broadening the rights of temporary and other contingent workers to be represented by a union. Under the ruling, it will be easier for labor unions to organize temporary and other nontraditional workers procured from a supplier agency along with an employer's regular employees.[1]

The August 25 decision in two consolidated cases, *M.B. Sturgis, Inc*. and *Jeffboat Division, American Commercial Marine Service Company*,[2] significantly alters the legal framework under the National Labor Relations Act (NLRA or "Act") for temporary employees in both unionized and union-free work environments. Since 1990 in the case *Lee Hospital*,[3] the NLRB had held that the only way temporary workers could be represented by a union and bargain with the "user" employer was if both the temporary agency and its client company consented to "multi-employer" bargaining. The *Sturgis* decision overrules *Lee Hospital*, clearing the way for temporary workers to be included along with a company's regular workforce in a previously unorganized bargaining unit or merged into an existing bargaining unit.

The *M.B. Sturgis* Case in the Nonunion Setting

M.B. Sturgis, Inc. manufactures flexible gas hoses at its Maryland Heights, Missouri facility and has approximately 35 full-time employees and 10-15 temporary employees procured through a supplier company. The temporary employees do essentially the same work as the full-time employees. In 1995, the Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 108 filed a petition to represent Sturgis' full-time employees. The company argued that the voting unit also should include the temporary employees. However, relying on the *Lee Hospital* decision, the Board's regional director excluded the temporary employees and directed an election among the full-time employees only. The company appealed that decision to the full Board.

"As we approach a change of administration in Washington, the Board may be eager to exercise its existing authority and make more corrections in federal labor policy that may further strengthen employee rights."

The *Jeffboat Division* Case in the Unionized Setting

The *Jeffboat* case involved a unionized employer operating an inland river shipbuilding facility in Jefferson, Indiana. The company has 600 employees in a production and maintenance unit represented by the International Brotherhood of Teamsters, Local 89. On a regular basis, the company also uses 30 welders and steamfitters from a supplier company. Jeffboat managers and supervisors direct the temporary employees and have the authority to discipline them. The temporary employees are not represented by Local 89.

In 1995, Local 89 filed a unit clarification petition with the NLRB, asserting the temporary employees constituted an "accretion" to the existing production and maintenance unit. Under "accretion" a smaller group of nonunion employees is merged into a larger group of unionized employees without holding an election. Relying on *Lee Hospital*, the NLRB Regional Director dismissed the petition because the temporary agency had not consented to multi-employer bargaining.

Understanding and Applying the Legal Analysis of the *Sturgis* Decision

Recognizing the increased reliance by employers on temporary and other contingent workers, the Board found that to require the consent of both the supplier employer and the user employer "effectively denied representation rights guaranteed under the National Labor Relations Act." In overruling the *Lee Hospital* decision, the Board formulated new criteria for including temporary and other contingent workers in a collective bargaining unit that does not depend upon the consent of the supplier and the user companies.

"If two employers have the authority to affect matters of the temporary workers, such as hiring, firing, discipline, supervision, and direction, then they are joint employers."

Under the Board's new analysis, temporary workers may be included in a bargaining or voting unit with a user employer's regular employees if two factors are present: (1) the supplier company and the user company are determined to be joint employers; and (2) the temporary employees share a community of interest with the user company's regular employees.

As a practical matter, satisfying joint employer status in the context of supplier and user companies is very easy, particularly in a manufacturing setting like Sturgis. Under NLRB case law, employers are joint if they "share or co-determine matters governing essential terms and conditions of employment."[4] If two employers have the authority to affect matters of the temporary workers, such as hiring, firing, discipline, supervision, and direction, then they are joint employers. For example, in the *Jeffboat* case, the Board found joint employer status in the fact Jeffboat managers directed the work of the temporary employees and disciplined them. Even where there are supervisors from the supplier company on-site to assist in disciplining the temporary workers, the day-to-day direction almost always lies with the supervisors of the user company.

If joint employer status exists, the Board will then decide whether the temporary workers share a "community of interest" with the user company's regular workers. Community of interest means there is a "mutuality of interests" in wages, hours and working conditions. However, if the temporary employees are performing the same work as the employees of the user company, and if they interact with each other and share facilities such as break rooms, parking lots and restrooms, then more likely than not the Board will find a community of interest and will include the temporary workers in the voting unit.

Preparing for the Impact of the Decision

The *Sturgis* decision has been hailed as "an important step" in organizing temporary workers by AFL-CIO President John Sweeney. Labor unions are eager to tap the pool of temporary workers, who are likely vulnerable to union organizing on issues including regular employee status, job security, and enhanced benefits.

The Implications for Union-Free Employers

Given the way most employers use temporary employees, those employees will be included in a bargaining unit and given the opportunity to vote for representation. It is likely that unions will seize this potential to reach a source of new members and focus their organizing efforts on the temporary workers while involving the regular workforce in a campaign costly to management. Terminating the business relationship with the temporary agency during active organizing would be considered an unfair labor practice, which could subject both companies to liability. Thus, the user employer would be tied to the temporary agency for the duration of the organizing and perhaps beyond it.

This new ruling significantly increases the challenges for nonunion employers that rely upon temporary and other contingent workers to fill their staffing needs. For those employers, remaining union free will now require a more complex employee relations strategy and may include working with legal counsel experienced in handling multiple employer issues. Here are some of the issues to consider:

- How does your company use temporary workers? Is there a good chance the supplier agency and your company will be considered joint employers? If so, is there a community of interest between the groups of employees?
- Do your temporary workers have a reasonable expectation of continued employment or do they have a "date certain" for the employment to end?
- Does your company use temporary employment as a screening process and offer regular employment status to individuals who meet performance standards?
- How are the temporary employees perceived by your regular workforce? Do the regular employees have strong feelings one way or the other about them?

- How close is your relationship with the supplier company? If union organizing occurs among the temporary workers at your company, who would make the important decisions? What happens if the supplier company takes an approach decidedly different than yours?

The Implications for Unionized Employers

The impact of the *Sturgis* decision on unionized employers is of great concern considering the immediate opportunity for a union to petition for inclusion of temporary workers into an existing bargaining unit. The Board would simply apply the two-step analysis: are the supplier company and the user company joint employers, and do the employees share a community of interest. If yes, then the user company would be forced to apply the terms of the collective bargaining agreement, including all wages, benefits and terms and conditions of employment, to all of the temporary workers accreted to the bargaining unit. This could be an extremely costly experience for both the supplier and the user company.

As with the considerations for union-free employers, the issues in this area are complex and actions should not be taken without proper legal counsel. At a minimum, the user company should:

- Analyze how temporary workers are used. Is there a good chance the temporary agency and the user company will be considered joint employers? If so, is there a community of interest between the groups of employees?
- Analyze existing collective bargaining agreements. Do they include express language concerning the use of temporary workers? How are recognition clauses worded? What has been the history of using temporary workers?
- What is the relationship with the supplier company? What is that company's position on unionization?

Asking these questions and analyzing the answers will assist both nonunion and unionized employers in their efforts to preserve management rights and avoid unwanted intrusion into employee relations policies and practices. In this volatile situation, it is imperative that employers relying upon temporary and other contingent workers consult with labor counsel to determine their particular vulnerability to union efforts and to plan a strategy that minimizes the potential for organizing success.

Right to Representation During Interview Is Expanded to Nonunion Employees

In a decision with the potential to impact *the workplace investigation practices of all nonunionized employers*, the National Labor Relations Board has ruled that nonunion employees have the right to have a representative present during an interview that might reasonably lead to disciplinary action. Ruling 5-4, the Board found that the so-called *Weingarten* rights of unionized employees also apply to employees not represented by a union. Given the scope of this decision, all employers should be advised about what it means and how it will affect the way they conduct investigations of non-supervisory employees.[5]

What are *Weingarten* Rights?

In 1975, the United States Supreme Court upheld a decision by the Board that employees have a right, protected by § 7 of the National Labor Relations Act, to insist upon union representation during an investigatory interview by the employer, provided the employee "reasonably believes" the interview "might result in disciplinary action."[6] The Supreme Court explained that this right arises from § 7's "guarantee of the right of employees to act in concert for mutual aid and protection." The *Weingarten* right has been applied to unionized workforces and is limited to situations in which an employee specifically requests representation. An employer is not required to advise the employee of this right in advance, and it applies only to investigatory meetings and not to meetings when, for example, the employer communicates a decision regarding a disciplinary matter.

Whether the employee's belief that discipline might result from the interview is reasonable is based on "objective standards" and upon an evaluation of all the circumstances. If the employee does have a reasonable belief that discipline may result from the interview and requests a representative, the employer must either grant the request, dispense with the interview, or offer the employee the option of continuing the interview unrepresented or not having an interview. If an employer refuses to allow union representation but goes ahead with the interview, or if the employer disciplines the employee for refusing to participate in the interview after denying the employee union representation, the employer has committed an unfair labor practice in violation of the NLRA.

The Decision in the *Epilepsy Foundation* Case

In the earlier 1980s, the Board had applied *Weingarten* rights to nonunion employees for a brief period. However, since 1984 the Board had held nonunion employees are not entitled to *Weingarten* rights. In the *Epilepsy Foundation* decision, the Board concluded that its earlier rulings were inconsistent with the Supreme Court's rationale in the *Weingarten* case and with the purposes of § 7 of the NLRA to guarantee employees the

right to engage in concerted activity for their mutual aid and protection.

The charging party in the *Epilepsy Foundation* case was a nonunion employee who, along with a co-worker, had prepared a memorandum to the foundation's Executive Director outlining criticisms of their supervisor. The Executive Director requested a meeting with the employee and the supervisor to discuss the memo. The employee told the Executive Director he felt intimidated by the request and asked that the co-worker also be present at the meeting. His request for the co-worker was denied, after which he again expressed opposition to the meeting. He subsequently was dismissed for gross insubordination.

The employee filed a complaint with the National Labor Relations Board charging the employer with an unfair labor practice. Following existing precedent, the Administrative Law Judge (ALJ) found the discharge did not violate the NLRA because the *Weingarten* right to representation did not apply to nonunionized employees. The Board, however, reversed the ALJ's opinion and overruled the existing case law. The Board explained that the right to representation is grounded in § 7 of the NLRA which guarantees the right of employees to engage in concerted activity for purposes of mutual aid and protection. Flowing from this is the right to act together to address the imposition of unjust discipline. Since § 7 rights apply to *all* employees, whether unionized or not, the Board found the termination was unlawful and ordered the employer to offer the employee reinstatement and back pay.

The Implications for the Nonunion Workplace

Nonunion employers are likely to be unfamiliar with the *Weingarten* rule of co-worker representation at investigatory or disciplinary interviews. Employers must be alerted to this decision and the impact it will have on current employment practices concerning investigations and the imposition of disciplinary action.

While it is an open question whether the Courts of Appeals will enforce the Board's order in the *Epilepsy Foundation* case, there is no question as to the position the General Counsel of the NLRB and the Board regional offices will take. An employer's failure to adhere to the Board's holding in *Epilepsy Foundation* with respect to investigations of employee misconduct may well result in an unfair labor practice charge and subsequent litigation before the NLRB. Specifically, employers should consider the following in developing a policy for handling *Weingarten* requests for representation:

* The *Weingarten* rule applies to any employee interview which may reasonably be believed will give rise to discipline, including interviews in connection with:
  - sexual harassment complaints or allegations of unlawful discrimination;
  - suspicion of violation of workplace policies;
  - investigation of insubordinate conduct, workplace violence, or other inappropriate behavior;
  - inquiries into theft or misappropriation of goods or funds;
  - investigations of suspected violations of substance abuse policies; etc.
* The right to have a representative present comes into play when an employer brings an employee into a situation that could reasonably be construed as an investigatory interview regarding conduct that could implicate the employee and result in discipline against him or her.
* There is no right to representation if there is no possibility that the employee being interviewed will be disciplined as a result of the interview, or if the meeting does not constitute an investigatory interview (e.g., if the employee is simply being told the results of an investigation and the employer's decision). In other words, if the meeting is to actually execute disciplinary action (provide the warning, discharge the employee, etc.), there is no right to representation.
* The employer need not affirmatively inform the employee of any right to representation before beginning the interview. There is no "*Miranda*" requirement to read the employee his or her rights.
* If the employee requests the presence of a co-worker, the employer should either: 1) forgo the interview, 2) grant the employee's request, or 3) offer the employee the choice of continuing without representation or not being interviewed.
* An employer must allow the employee a reasonable opportunity to speak with a co-worker representative prior to the investigative interview.
* The right to representation by a co-worker does not extend to representation by an outside attorney, government agent, or union official.
* The employer is *not* required to *bargain* with the representative, nor is the employer required to make concessions or compromise with the representative.
* If the co-worker specifically requested by the employee is not available at the time of the inter-

view, the employee may be given the opportunity to have another, available co-worker present. If, at that point, the employee refuses the available co-worker, the employer is not required to delay the interview and may proceed without violating the Act.

* Failure to grant *Weingarten* rights is a violation of the National Labor Relations Act. The National Labor Relations Board has exclusive jurisdiction over enforcement of the Act. The sole remedy is an unfair labor practice proceeding filed with the Board. The Board is empowered to order make-whole remedies, including reinstatement, back pay, and cease-and-desist orders.

The *Weingarten-Epilepsy Foundation* rule may have its most profound implications in an employer's investigation of highly sensitive workplace matters, such as sexual harassment allegations. The dilemma for employers is that they must conduct full, complete, and *confidential* investigations of any such claims. Under this ruling, the employee who is the subject of the investigation may be entitled to bring in another employee with whom the employer may not feel comfortable discussing the sensitive and confidential nature of the incident.

How employers balance these and other competing rights and interests will require an assessment of current workplace investigation policies and practices, as well as other laws and regulations which may govern the investigation, discipline and termination processes. Employers should seek the advice of employment counsel in any such policy review and development, or when confronted with a request for representation in which the employer is unsure of its rights and obligations.

Endnotes

1. *M.B. Sturgis, Inc.*, 331 NLRB No. 173.
2. 331 NLRB No. 173.
3. 300 NLRB 947.
4. *NLRB v. Browning Ferris Industries*, 691 F.2d 1117, 1123 (3d Cir. 1982).
5. *Epilepsy Foundation of Northeast Ohio*, 331 NLRB No. 92.
6. *NLRB v. J. Weingarten Inc.*, 420 U.S. 251 (1975).

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New Federal Law Validates Electronic Signatures and Transactions

Federal Recognition of "e-Signatures" Fosters e-Commerce, But Leaves Some Issues Unresolved

By Christopher Wolf, Howard N. Lefkowitz and Amybeth Garcia-Bokor

An important new federal law went into effect on October 1, 2000, giving presumptive validity to electronic transactions and "e-signatures." Until recently, businesses were faced with a patchwork of state legislation governing the validity of electronic signatures in business transactions. Some 40 states passed various forms of electronic transaction laws, resulting in disparate levels of legal recognition of electronic signatures and contracts from state to state. Some state laws recognized the general legitimacy of electronic signatures, others recognized those signatures only when specified technology was used that provided some assurance of authenticity; yet others provided recognition only in certain types of transactions, and some states had not passed specific legislation. As a practical matter, the lack of uniformity encumbered business development and expansion of electronic commerce.

"In a nutshell, the new law provides that any transaction in or affecting interstate or foreign commerce will not be denied enforceability solely because it was agreed to ("signed") electronically, or maintained electronically, and preempts contrary and inconsistent state laws."

The lack of uniformity and uncertainty now will change with the new federal Electronic Signatures and Global and National Commerce Act ("E-Sign"). The new law solves some fundamental problems with electronic transactions, but highlights how many additional legal issues remain to be resolved when doing business online.

E-Sign became law on June 30, 2000, and most of its provisions took effect on October 1, 2000. The law provides federal legal recognition of electronic business transactions and is intended to foster state adoption of more uniform legislation governing electronic transactions. The passage of E-Sign, and laws developed as a result, will encourage the growth of online business, and particularly reliance on electronic contracting in larger and more complex business-to-business and business-to-government transactions. Such laws also promise to increase the type of online business-to-consumer transactions to encompass, among others, online contracting in insurance, mortgages and other financial matters.

In a nutshell, the new law provides that any transaction in or affecting interstate or foreign commerce will not be denied enforceability solely because it was agreed to ("signed") electronically, or maintained electronically, and preempts contrary and inconsistent state laws. E-Sign requires certain consumer disclosures and consent, and does not apply to certain types of documents and notices.

While E-Sign does not preclude a claim that a contract is invalid solely because it was executed or retained electronically, the law does not prescribe the manner in which online transactions are to take place. Importantly, the law enables, but does not require, the enforcement of an electronic contract. It establishes no presumptive standards regulating the authenticity of electronic signatures, the authenticity of the parties' intent to contract, or the authenticity of electronically-maintained contracting documents. The law also does not address other state law issues that govern e-commerce or the interplay between E-Sign and foreign laws that affect the recognition of electronic transactions, including electronic signatures. Businesses, therefore, need to develop effective procedures and employ technology to ensure the viability of their online transactions.

Understanding the main components of the law and how to best employ them in your business will require knowledge of the limits of the law and development of effective procedures to confidently expand the use of electronic signatures in your business.

Electronic Signatures and Maintenance of Contracting Documents Is Valid

Under E-Sign, signatures, contracts and related transactional records may not be denied legal effect simply because they are in electronic form. The law broadly defines "electronic signature" to recognize any "electronic sound, symbol or process attached to or logically associated with a contract or other record and executed

or adopted by a person with the intent to sign the record." It defines "electronic" to mean "relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities." The law provides recognition not only of electronic signatures by the contracting parties, but also electronic notarization of such documents.

The statute's broad definition of what constitutes an electronic signature is intended to be "technologically neutral," providing the opportunity for business and government to develop and adopt technologies appropriately suited to their business and online environment. In permitting neutrality, however, the law does not provide contracting parties certainty with respect to what technological means is legally sufficient to ensure that the signature was authentic—i.e., "executed or adopted by a person with the intent to sign the record," or means for determining the "intent" of the digital signer.

Companies conducting business online, therefore, first must select from among a number of rapidly advancing technologies those that are best suited to ensure the authenticity of signatures. Second, businesses must determine whether the signatory intended to be bound by the contract. While the first issue may be resolved by a diligent review and selection of available technology, and by evolving business standards as the use of electronic signatures becomes more commonplace, the second issue may be more difficult. While certain biometric technology, such as retinal scanning, may make it impossible for anyone other than the authorized user to electronically execute a document, other available technology does not provide a means of detecting whether an electronic signature was made by the individual authorized to use it or by an unauthorized user. Thus, companies should navigate this territory carefully and utilize means consistent with their business needs to confirm that the signature was intentionally executed by a person who meant to do so.

Likewise, the statute provides that a contract and other documents relating to an electronically signed transaction may not be denied legal effect solely because the documents are thereafter maintained in electronic form. The provisions of the law affecting document retention go into effect between March and June 2001. This section of the statute provides that documents that must be retained under federal or state law may be maintained electronically, provided that they "accurately reflect the information set forth in the contract or other record" and that they "remain accessible to all persons who are entitled access" to such documents "in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing or otherwise."

Again, E-Sign prescribes no particular technology or set of circumstances that presumptively satisfies this requirement. In this arena as well, businesses will need to determine what technology or service will best enable compliance with this requirement, such that the accuracy of the contracting documents cannot be questioned by a future litigant, and to avoid claims that documents were not accessible by a co-contracting party. In addition, businesses will need to safeguard the security of the electronically maintained documents to shield them from improper access or use.

Consumers Cannot Be Required to Electronically Contract and Must Have Means to Access and Retain Electronic Documents

Consumers may not be required to agree to use or accept electronic signatures or records. E-Sign provides that when information about a transaction must be provided to consumers, the information may be provided electronically when the consumer "affirmatively" consents to electronic communication.

Obtaining a consumer's "affirmative" consent to receive electronic disclosures is satisfied when the consumer has "affirmatively consented and [has] not withdrawn such consent" to electronic notice. To obtain such affirmative consent, a consumer, prior to consenting, must be provided with a "clear and conspicuous statement" advising

- of any right or option to have the record made available in paper or non-electronic form;
- the right to withdraw consent to the provision of the information in electronic form, a description of the procedures required to do so, and identification of fees and consequences resulting from the withdrawal of that consent;
- whether the consent applies to the transaction giving rise to the initial provision of the electronic record, or to identified categories of records that may be provided over the course of the parties' relationship;
- a description of procedures to update the consumer's electronic contact information; and
- informing the consumer how, after consenting, the consumer may request and obtain a paper copy of the electronic document and associated costs.

E-Sign also requires that, prior to consenting to the transaction, a consumer must

- be provided a statement of the hardware and software requirements for access to and retention of the electronic records; and

- confirm consent electronically, in a manner that reasonably demonstrates the consumer can access information in the electronic form in which it will be provided.

Notably, E-Sign provides that the failure to obtain a consumer's electronic confirmation of consent demonstrating the ability to access information alone is insufficient to deny the legal effectiveness, validity or enforceability of a contract electronically executed by a consumer.

After a consumer has consented to receipt of electronic records, the consumer must be notified of subsequent changes in hardware and software requirements if such changes create a material risk that the consumer will not be able to access or retain a subsequent record that was the subject of their consent. In the event of such changes, the consumer also must be able to withdraw their consent to the electronic transaction without the imposition of fees, or any condition or consequence not disclosed prior to their original consent to the electronic transaction. The consumer again must confirm their consent to receive records under the new requirements in a manner that reasonably demonstrates they can access the information in the form in which it will be provided.

E-Sign otherwise does not alter or affect the content, timing, or placement of other legally required consumer disclosures. Companies therefore must tailor their electronic contracts with consumers to ensure their consumer transactions meet these disclosure requirements, as well as other applicable federal and state regulations applicable to the transaction.

Transactions Excepted from E-Sign

E-Sign specifically does not preempt state or other laws governing the creation and execution of wills, codicils or testamentary trusts, adoption, divorce or other family law matters. It also does not apply to certain commercial transactions under the Uniform Commercial Code in states where those Code provisions have been adopted.

Also exempt from the ambit of the statute are court orders, notices and other documents filed or executed in connection with court proceedings, and notices of cancellation or termination of utility services, health or life insurance benefits, or certain credit-related transactions, eviction and similar matters. Product recalls and certain documents relating to the transport of dangerous or toxic materials also are specifically excluded from E-Sign's provisions.

In accordance with the law, the Securities and Exchange Commission (SEC) also issued regulations exempting certain advertising, sales literature and other information issued by certain registered investment companies from the consumer consent provisions.

Some National and International Considerations

Generally, state law governs the enforceability and interpretation of contracts. Beyond providing for the recognition of electronic signatures as a valid means of contracting, E-Sign does not address a plethora of state law issues related to e-contracting. For example, E-Sign does not determine what state law will govern the formation and performance of an electronic contract, contract-related disclosures that may be required, or where the contracting parties will be amenable to suit.

E-Sign similarly does not address these issues when one of the parties to the electronically signed contract resides in a foreign country. In addition, E-Sign does not address the issue of conflicting foreign laws, which variously recognize electronic signatures and, in some cases, only where specified technology is used to execute the contract, or other requirements foreign states may place on the conduct of online business. The law, however, does direct the Secretary of Commerce to promote e-commerce and the acceptance of electronic signatures in international commerce, although no agreements related to the international acceptance of electronic signatures have been established.

U.S. businesses must fully review domestic and foreign legal issues related to the enforcement of their online contracts as the use and recognition of electronic signatures expands. Specifically, companies should carefully review and select appropriate technology; ensure that they can confirm that the electronic execution of a contract by a party was intended; and establish in the contract what laws will govern the formation and enforcement of the contract, particularly with respect to currently unsettled issues, such as jurisdiction, and that the technology the parties agree to constitutes binding evidence of signature authenticity, document authenticity, executory intent and document accessibility to establish and carry out the resulting business relationship.

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Corporate Counsel Section Sponsors Legal Ethics Seminar

By Steven G. Nachimson

The Corporate Counsel Section held its Fall Meeting on October 5, 2000 at Le Parker Meridien Hotel in New York City. Organized by Gary F. Roth, Program Chair, with the assistance of Janice Handler, Jay L. Monitz, Steven G. Nachimson, and the Continuing Legal Education Department of the NYSBA, the meeting featured a seminar titled "Ethics for Corporate Counsel" and was attended by a sell-out crowd.

Deborah Raskin, Anne Vladek, Jill Rosenberg

Deborah Raskin, Anne C. Vladek, and Jill Rosenberg led a panel discussion which addressed retaliation and wrongful discharge claims filed by lawyers, supervision of internal investigations by in-house counsel, and use of secret tape-recordings and other surreptitiously gathered evidence.

The panelists observed that when an attorney asserts a claim against an employer, a tension exists between the attorney's right to assert claims and the ethical obligations the attorney owes to the employer/client. The obligation of the employee to preserve client confidences, for example, may restrict the employee's ability to disclose evidence of discrimination to support her own claim of discrimination. Much litigation has focused on the implications of an employee's removal or disclosure of company files relating to employment discrimination. One lesson to be learned from these cases is that an attorney contemplating action against an employer should not remove employer files for use in litigation. After litigation has been commenced, the former employee can make use of standard discovery devices to obtain relevant documents.

Gary Roth, Richard Maltz, John Villa

The panel also discussed the risks which arise when in-house counsel conduct internal investigations on behalf of a corporate employer. One peril is that by participating in the investigation and employment-related decisions that follow from the investigation, the attorney may be precluded from representing the corporation as trial counsel. Once the attorney becomes a participant in the business decision, she is subject to being called as a witness, rendering it improper to continue acting as the client's advocate.

Another danger in performing internal investigations is that the attorney's work product may not be protected by the attorney-client or work product privileges. If the corporation relies on the attorney's investigation to defend an employment discrimination claim, the courts normally hold that the investigatory materials are subject to discovery.

John K. Villa led a comprehensive discussion of ethical issues of particular concern to in-house counsel, including conflicts of interest, attorney-client privilege and reporting misconduct within the corporation.

Mr. Villa pointed out that inside attorneys advising individual employees must take care to assure that no conflict of interest exists between the corporation and the employee. If a direct conflict of interest exists, the attorney may not represent both parties. A direct conflict may be defined as one in which the necessary best interests of both parties are inconsistent. If the corporation must take action which is directly adverse to the interests of the employee, a direct conflict exists. In the absence of a direct conflict, counsel should explore whether a potential conflict exists. If a potential conflict exists, the attorney may represent both parties only if they waive the conflict after consultation and explanation of the potential risks. A potential conflict can be defined as a situation where it can reasonably be foreseen that one party will be faced with a choice that is adverse to the interests of the other party. Mr. Villa suggested that counsel utilize hypothetical examples to illustrate ways that a conflict may arise.

Jill Rosenberg, Gary Roth

Mr. Villa also discussed the applicability of the attorney-client privilege to discussions between an employee and in-house counsel. The first point of analysis is whether counsel represents the employee. Resolution of this issue turns on several factors, including whether the employee has retained other counsel, whether he has asked in-house counsel to act on his behalf, whether he has made clear that he is personally seeking legal advice, and whether the employee has previously retained in-house counsel in other corporate matters. Assuming it is determined that counsel represents the employee, the privilege attaches. Counsel may not reveal the confidential communications to others. Further, if counsel discloses the communication to other attorneys within the legal department, the legal department may be disqualified from representing the corporation with respect to the matter at issue.

Richard M. Maltz spoke regarding recent amendments to the New York Code of Professional Responsibility, ethical issues with respect to multi-jurisdictional practice, and avoidance of the disciplinary system.

Program Audience at Le Parker Meridien Hotel

Mr. Maltz noted that although attorney disciplinary proceedings tend to involve private practitioners, corporate counsel remain subject to the Code of Professional Responsibility, and the Disciplinary Committee endeavors to ensure that the Code is applied consistently to attorneys practicing in all settings.

Mr. Maltz also discussed multi-jurisdictional practice, an area which is receiving increased attention. Many attorneys are admitted to practice in one state but practice in-house in another state. A number of jurisdictions have adopted statutes or court rules which explicitly permit non-admitted in-house counsel to render legal services to their corporate employer. In states that have not adopted such rules, there is some risk that counsel may be subject to disciplinary action, or that communications with clients will not be protected by the attorney-client privilege.

New York attorneys who attended the program were eligible to receive four hours of New York MCLE credit in the area of ethics and professionalism.

Steven G. Nachimson is Corporate Counsel for Fine Host Corporation of Greenwich, Connecticut and a member of the Corporate Counsel Section's Executive Committee.

Electronic Mail: Is It Labor's Latest Organizing Tactic?

By Peter D. Conrad

It was only a matter of time before labor organizations, often stymied in their efforts to communicate with employees during an organizing drive, would take advantage of corporate America's increasing reliance on the Internet and e-mail. Don't look now, but some unions are even getting authorization cards signed on-line!

Resort to electronic communication is a trend that promises to grow, especially with recent signals from the Office of the General Counsel of the National Labor Relations Board (NLRB or Board), Division of Advice, indicating that the agency may take the position that it is unlawful for employers to bar their employees from using the company's e-mail system for all purposes unrelated to work, including discussion of unionization.

The first sign that the Board might require employees to open up their e-mail systems came in July 1999, when it was reported that the NLRB's General Counsel had authorized a complaint against Pratt & Whitney challenging the company's right to prohibit use of its e-mail system for all non-business purposes, including discussion of unionization.[1] In that case, a group of professional and technical employees in Palm Beach, Florida decided to form a union. As part of the organizing campaign, these employees—who spent the vast majority of their time working on computers and communicating with each other by e-mail—sent and forwarded electronic messages to their co-workers on subjects such as wages, staff reductions, NLRB procedures and unionization generally. The company had a written policy prohibiting the use of its computer resources for any "non-business, unauthorized or personal purposes." However, the policy had not been strictly enforced with regard to e-mail; employees regularly sent each other personal messages, announcements, jokes, etc. Several months into the organizing campaign, a handful of the union's supporters were disciplined for using e-mail to organize their co-workers.

Unfair labor practice charges were filed with the NLRB and, following an investigation, a complaint was issued against Pratt & Whitney alleging that the company had interfered with employee organizational rights by "prohibiting all non-business use and operation of company-owned computer resources, including its electronic mail system" and by "selectively and disparately appl[ying] and enforc[ing] a rule restricting solicitation and distribution of non-business related electronic mail messages." The case was later settled on the basis of Pratt & Whitney's agreement to make its e-mail system available to employees to engage in on-line solicitation. As a result, the NLRB never decided the merits of the dispute.

The media attention garnered by this case might suggest that it was the first time that the NLRB had ever dealt with solicitation by e-mail. It wasn't. More than six years earlier, in a matter involving E.I. duPont & Co., the Board considered the legality of a rule prohibiting employees from using that company's electronic mail system for distributing union literature and materials, while at the same time allowing employees to use it to communicate on virtually any other matter. The Board found that duPont, having permitted the routine use of e-mail by employees to distribute a variety of material having little if any relevance to its business, could not lawfully deny access for the purpose of distributing union literature.[2] DuPont was ordered to cease and desist from discriminatorily applying its e-mail policy. However, the Board did not go on to establish a generalized right of access to this now-common means of plant communication for the discussion of terms and conditions of employment.

The General Counsel of the NLRB relied on *E.I. duPont & Co.* in authorizing a complaint against Pratt & Whitney. But he went well beyond the Board's holding in that case by charging—irrespective of whether Pratt & Whitney had discriminated against union-related e-mail—that the company had committed an unfair labor practice by prohibiting the use of the e-mail system for all non-business purposes. In doing so, the General Counsel reasoned that employees at the facility in question relied so heavily on electronic mail as a means of communication, with both the encouragement and assistance of management, that it had effectively replaced telephonic and face-to-face discussion. As a result, he concluded that the employees must be allowed, during their non-working time, to use the e-mail system to discuss with co-workers their terms and conditions of employment and to conduct other activities for their "mutual aid and protection." The "minimal burden placed upon an employer's computer network by such electronic traffic," in his opinion, did "not outweigh the employees' . . . interests."

In taking that position, the General Counsel effectively disregarded a line of cases in which the Board had held that solicitation and distribution, where it involves the use of the employer's property or systems (e.g., bulletin boards and employee mailboxes), could be prohib-

ited, provided that the prohibition was uniformly applied. Indeed, in 1995 the NLRB's Division of Advice described it as "well settled that an employer may restrict and regulate employees' use of company property," and concluded that the employer "could have lawfully restricted employee use of its e-mail system to only business purposes."[3]

More recently, in *IRIS-USA*,[4] the Division of Advice distinguished Pratt & Whitney and declined to authorize a complaint against the employer for banning all non-business use of its electronic communications systems. Unlike in Pratt & Whitney, where e-mail was the "sole method of communication through [that] computerized 'work area'," employees at IRIS-USA "[did] not use E-mail or computers as part of their regular work." Thus, a "computer work area" did not exist for them and the General Counsel could not argue that the ban was an "overbroad restriction of work area use."

However, in *TU Electric*,[5] the Division of Advice made plain that it is prepared to challenge total bans on non-business e-mail usage even if it is not the sole method of communication among employees in the workplace. In *TU Electric*, complaint was authorized despite the fact that TU's employees used e-mail in their work to a lesser extent than Pratt & Whitney's. There, e-mail was used by employees on a daily basis to communicate with each other and with management. In addition, the system was used to disseminate corporate policies and other required readings.

The General Counsel also has made it known that his office will seriously consider any unfair labor practice charge alleging that employer policies regarding e-mail use are unlawfully broad, even if they do not prohibit e-mail use altogether.[6]

The NLRB's recent ruling in *Adtranz, ABB Daimler-Benz Transportation, N.A., Inc.*,[7] decided just a few months ago, demonstrates that the Board is still a few steps behind the General Counsel's Office. In that case, the NLRB adopted an administrative law judge's (ALJ) recommended findings and conclusions that the employer's rule prohibiting all non-business use of its e-mail system was not invalid on its face. The ALJ likened e-mail to bulletin boards and telephones, noting that there is no statutory right of an employee or union to use either, provided that the employer has not permitted them to be used for non-business purposes." "Analogously," the ALJ reasoned, "Respondent could ban its computers and E-mail system to any personal use by employees."

In sum, as matters now stand it appears that a total ban on non-business e-mail use would still pass muster at the NLRB, provided that it is not applied in a discriminatory manner against use related to unionization. However, the day may not be very far away when the Board will accept the General Counsel's position that a ban on all non-business e-mail use, in a workplace where e-mail has virtually replaced face-to-face and other forms of communication among employees, will be found to interfere unlawfully with employee rights to solicit their co-workers during non-working time.

Endnotes

1. *Pratt & Whitney, a Division of United Technologies Corporation*, 1998 WL 1112978 (N.L.R.B.G.C. Feb. 23, 1998).
2. *E.I. duPont & Co.*, 311 NLRB 893 (1993).
3. *Electronic Data Systems, Inc.*, 1996 WL 937194 (N.L.R.B.G.C.).
4. 2000 WL 257107 (N.L.R.B.G.C. Feb. 2, 2000).
5. 1999 NLRB GCM LEXIS 19 (Oct. 19, 1999).
6. *TU Electric*, 1999 NLRB GCM LEXIS 20 (Nov. 16, 1999) (rule prohibiting "inappropriate or offensive communications and/or using the computer system to . . . [communicate] material that reflects negatively on the Company" was impermissibly vague and overbroad); *Texas Utilities Company*, 2000 NLRB GCM LEXIS 31 (Jan. 28, 2000) (rule prohibiting "chain e-mail or non-business related bulk e-mail" was unlawfully ambiguous).
7. 331 NLRB No. 40 (2000).

Peter D. Conrad is a partner in the Labor and Employment Law Department of Proskauer Rose LLP in New York City.

The Computer Law Association
An Organization for the Technology Lawyer

By Mark A. Keiser

Today, attorneys face widely diversified needs for good and valuable information readily useable in their practice. This need applies to all of us, whether student, solo practitioner, member of a firm or corporate counsel. One source where the need for good and valuable information is acute is in the law of information technology, commonly referred to as the computer or high technology industry. In the information age, finding, evaluating and effectively utilizing the inherently fluid and evolutionary information about high technology is an art. However, resources exist right now that make rapid identification, selection and exploitation of that information a science.

One of the traditional ways professionals acquire information is common throughout all professions—the professional association. For lawyers, our professional association is a law association. These associations are generally categorized by bar membership, state and/or practice. In a practice within the computer or high technology industry, the best is the *Computer Law Association* (CLA).

Still, all these associations and resources compete for your time, and there is only so much time to go around. Why should you choose the *Computer Law Association*? Is this the best place to spend your limited resources of time? As many lawyers, legal practitioners and students will tell you, the answer is a resounding ***yes!***

The nonprofit *Computer Law Association* is the oldest of the computer and high technology law-centric associations, and counts within its membership more than 2,000 lawyers in about 42 countries. Each of these lawyers is active in many other segments of the law, but all have a common interest or practice in computers or technology. Many members are "household names" in the legal profession. It may be the only association that seamlessly integrates solo practitioners (including those where technology law is not the primary area in their practice) with corporate in-house counsel (whose primary day-to-day focal point is high technology law). With the pervasiveness of technology and computers in everyday life, the *CLA* is an ideal place for the general practitioner to acquire the basic understanding of the issues faced in this area today.

The *Computer Law Association* was created to promote knowledge, information exchange and professional development among information technology and computer or technology industry attorneys. Among the *CLA's* resources are a regularly published journal (*The Bulletin*); regular computer/technology law conferences for its members; round-table luncheons for smaller groups focussed on specific computer/technology topics; computer or high technology-centric books and publications; networking opportunities and special interest group gatherings concentrated on topics both relevant and timely.

Why is each of these resources valuable to you? Let's look at each one:

- ***The Bulletin***

  Available to members, the *CLA* quarterly publication *The Bulletin* covers national and international information technology and computer/technology legal issues. In addition to articles of timely importance or lasting significance to the community, *The Bulletin* includes listings of upcoming programs (including programs offered by other associations), recent events regarding the *CLA* and analysis of the latest developments in computer/technology law. As a concise journal with the keen focus its members demand, *The Bulletin* is an essential tool for attorneys learning, exploring and remaining competent in computer/technology law. It provides in one convenient and easily accessible place the necessities for the practitioner in the computer or technology area.

- ***Computer Law Association* Conferences**

  Education of its members is a high priority of the *CLA*. The *CLA*'s purpose is to "inform and educate attorneys and solicitors about the unique legal issues" happening in computer/technology law. But the reach of the *CLA* is much broader, encompassing the evolution, production, marketing, acquisition and use of computer-communications technology in all its many facets. Making sense of the vast array of these technology driven issues remains the key goal of most *CLA* conferences.

  CLA has a well-earned reputation for the highest quality and most thorough computer/technology law programs available. Although nonmembers are welcomed, *CLA* members receive a discount on program fees, and generally attendees receive credit for continuing legal education.

The *CLA* has sponsored numerous world class programs and seminars covering a wide range of international topics in computer/technology law. These include information technology law, technology education, finance and monetary issues, entertainment law and technology, international trade and regulation, taxation, commercial contracting, liability, antitrust and intellectual property rights. *CLA* conferences, full of valuable information, include practical examples of lessons learned that are readily applicable to situations faced by computer or technology law attorneys. Perhaps most importantly, the venue for *CLA* conferences is international, with sponsored conferences held in Europe and Asia as well as North America. As computer technology makes the world a more connected and smaller neighborhood, *CLA* is closing gaps that exists among international computer/technology law professionals.

- **Round Tables**

  Roundtable luncheon discussion groups are sponsored by member firms approximately three times per year on computer/technology law issues of current importance in cities around the country and the world. Past topics include the Contracting Issues in Y2K Warranties, where both in-house counsel and outside practitioners compared interests, ideas and solutions. Generally regarded as a "small *CLA* conference," the Roundtable creates useful contacts around an issue for later networking among the attendees. Even more, these Roundtables offer a unique window into the perspective of the "other side" in a way that allows for thoughtful analysis and unhurried examination of issues sensitive to the opposing side.

- **Networking**

  Many of *CLA's* members are household names in computer/technology law. Many others have been noticeable through work on cutting-edge legal issues, necessary legislation, client counseling, drafting and presenting agreements and the development of answers for questions or problems as yet undefined by the rapid growth of technology. *CLA* conferences and Roundtables provide the opportunity to get to know and work with these experts to solve your issues and help with your quandaries.

  The explosion of technology in the Information Age has also brought with it growth and evolution of technology at a frenetic pace. Having resources to keep up with it all is one of the greatest benefits that *CLA* networking affords. *CLA* membership brings down all obstacles between the leaders of the international computer or high technology bar and those of us in the trenches, providing a common ground for growth in information technology and the development of international commerce.

- **Key Interest Groups**

  Key interest group meetings are held during *CLA* conferences to offer members an opportunity to meet and discuss specific issues relevant to their practice. Prominent among them is the In House Counsel group, formed approximately three years ago during a *CLA* conference in Monterey, California. This key group provides in-house attorneys a conference-like mini-forum tailored to their individual requirements. In this forum, detailed and methodical discussion and evaluation of topics of interest to corporate counsel may be conducted that may not be suitable to solo practitioners, the current conference or of so narrow an application as to have limited utility to a larger body of members. In House Counsel group meetings held to date have included exploration of issues in contracting, education, international issues, litigation, telecommunications, intellectual property and tax.

- **Books, Web Sites, CyberSpaceCamp™ Conferences and More**

  Available through the Web or at *CLA* conferences are a number of books tailored to the practitioner in the Information Age. These extend from introductory explanations of the technology common in the computer/technology industry to detailed dissertations of computer and technology law judicial and administrative decisions. Taken as a whole, they provide a continuum of educational materials for practitioners at all stages of their computer/technology law careers and experience. Topics of recent *CLA* publications for the new lawyer or seasoned professional include:

  - The Internet and Business: A Lawyer's Guide to Emerging Legal Issues
  - Internet-and Web-Related Forms Collection
  - European Computer Law: An Introductory Guide
  - Computer Law in Latin America
  - State Sales/Use Taxation of Software

  The *CLA* Web site (http://cla.org) has been developed to convey much of *CLA's* warehouse of data to members and nonmembers alike. However, membership affords increased access to the Web and provides a real-time source of contact for

other members for networking. All *CLA* publications are available through the Web, and there are links to books, publications, other seminars and other resources within the computer communications field. The *CLA* Web site can also be used to register for any upcoming *CLA* event.

Frequently the lawyer new to the computer or high technology industry can be easily overwhelmed with the vast array of technology and concepts to absorb. To foster easy transition into technology law and meticulous understanding of the underlying concepts and principles, *CLA* has established the CyberSpaceCamp conference to provide grounding in the skills essential to the computer or technology industry. Held annually, the CyberSpaceCamp conference is suitable for all levels of professional experience and provides a convenient forum to put the computer puzzle pieces into a recognizable framework. In doing so, the graduate achieves an understanding of the wide range of information technology that may otherwise take years to acquire.

An annual membership directory for the CLA is published as a benefit to its members and includes national and international technology law attorneys organized by state, country and affiliation. This directory also includes selected profiles for individuals or firms as an additional descriptive resource to identify the support that is right for your needs.

- **Want a Job?**

  Finally, the *CLA* provides member benefits to both individuals seeking a career change as well as employers seeking computer/technology law professionals. *CLA's* employment listing service is published quarterly in *The Bulletin* and listed real-time on the Web site (http://cla.org). *CLA's* resumé clearinghouse file matches resumés of those seeking employment with prospective employers.

  The *CLA* remains committed to providing education, information, resources and professional growth to both the international computer/technology law profession in particular and the larger legal community. *CLA* is further committed to establishing a concrete foundation useable by professionals as they deal with the commercial, practical and legal aspects of computers and the technology they embrace. *CLA*'s scope includes computer services, computer-communications, electronic commerce, telecommunications, multimedia and cyberspace, and provides a forum for exchanging ideas and examining the issues we face in depth as technology extends our reach into the future. The *Computer Law Association* welcomes you to be a leader in the information age.

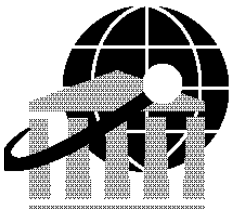
- **Future *CLA* Events**

  Fifth Annual CyberSpaceCamp conference, March 2001

  Computer and Telecommunications Law Update Program, April 2001

For further information on the *Computer Law Association*, including conference registration, membership or other *CLA* benefits, the *CLA* can be reached on the Web at http://cla.org, by telephone at (703) 560-7747, by fax at (703) 207-7028, or directly to Ms. Barbara Fieser, Executive Director, *Computer Law Association*, 3028 Javier Road, Suite 402, Fairfax, Virginia 22031. Ms. Fieser can also be reached directly at clanet@aol.com.

Mark A. Keiser is currently Director of Licensing, worldwide, for Navigation Technologies Corporation (www.navtech.com) in Chicago. He has been a member of the *Computer Law Association* since 1992.



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