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## The Dynamics of Computer and Information Technology Law in Conjunction with the Global Information Infrastructure: A Foreword, 16 J. Marshall J. Computer & Info. L. 777 (1998)

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## ARTICLES

# THE DYNAMICS OF COMPUTER AND INFORMATION TECHNOLOGY LAW IN CONJUNCTION WITH THE GLOBAL INFORMATION INFRASTRUCTURE: A FOREWORD

by STEVEN A. MCAULEY†

The dynamics of computer and information technology law must endure constant change in order to stay abreast with the growth of the Global Information Infrastructure. The Global Information Infrastructure is not a physical or tangible entity, but is an interconnection of linked computer networks that result in a decentralized, global medium of information exchange.<sup>1</sup> In the course of fifteen years, the Internet has grown from 300 host computers in 1981,<sup>2</sup> to 35,000,000 in 1996.<sup>3</sup> Additionally, on-line commercial activity has grown to \$1,300,000,000 in sales by 1997.<sup>4</sup> Moreover, commercial activity is expected to reach an estimated \$7,000,000,000 in sales by 2000.<sup>5</sup> Due to the growth of the Global Information Infrastructure, inherent problems have arisen and will continue to arise due to the dynamics of cyberspace. The following issues with regard to computer and information technology law are a sampling of many inherent problems with the growth of the Global Information Infrastructure:

1.) Governance, standards, and control in cyberspace;

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1. DANIEL P. DERN, *THE INTERNET GUIDE FOR NEW USERS* 16 (1994).

2. *ACLU v. Reno*, 929 F. Supp. 824, 830 n.3 (E.D. Pa. 1996), *aff'd*, 117 S. Ct. 2329 (1997).

3. Thomas E. Weber, *Who Uses the Internet*, WALL ST. J., DEC. 9, 1996, at R6.

4. Miguel Helft, *Commerce on the Web: Who do You Trust?*, L.A. TIMES, Mar. 10, 1997, at D1.

5. *See id.*

- 2.) Commercial activity and licensing of intellectual property rights of computer technology;
- 3.) Privacy rights of individuals in cyberspace; and,
- 4.) Intellectual property rights and First Amendment issues in cyberspace.

One of the primary purposes of *The John Marshall Journal of Computer Information Law* is to focus on recent developments, on an international basis, in computer and information technology law. The themes that are developed in each issue of Volume Sixteen, present problems in computer and information technology law, and hopefully help answer questions in this dynamic field of law.

The first issue of Volume Sixteen is a perspective issue on cyberspace governance, standards, and control. The lead articles of this issue discusses the challenge to develop international trademark law with regard to the Internet, Internet regulatory zoning of obscene content, Internet service providers' obligations under the Telecommunications Act of 1996, electronic commerce in Taiwan, and a commentary on *NBA v. Motorola and STATS, Inc.*

The second issue of Volume Sixteen is a symposium issue on The Uniform Commercial Code ("U.C.C.") Proposed Article 2B. U.C.C. Proposed Article 2B is a legal framework for the licensing and transfer of rights in the intellectual property of computer technology. This issue is a detailed discussion of the problems facing the computer industry and the Proposed Article 2B drafting committee. The lead articles of this issue discusses generally, the law of the information age and the path of commercial law to cyberspace. Specifically, this issue discusses the treatment of consumers, express warranties and published information content, implied warranty of merchantability, and development contacts under the Proposed Article 2B.

The third issue of Volume Sixteen is a perspective issue on privacy, information technology, and the Internet. The lead articles of this issue discusses issues of encryption and liberty on an international basis, legislation and decisions as to the control of the use of social security numbers as personal identifiers, and the mapping of legal metaphors in cyberspace. Additionally, this issue featured the bench memorandum, petitioner brief, and respondent brief on First Amendment and Freedom of Information Act issues associated with Internet blocking software in a public forum from the 1997 John Marshall National Moot Court Competition in Information Technology and Privacy Law.

This issue, the fourth issue of Volume Sixteen, is a general issue that presents an array of topics. First, G. Peter Albert, Jr., an intellectual property practitioner and author of a treatise on intellectual property and information technology discusses the domain name registration

system. Mr. Albert examines the dispute resolution policies of the leading proposals for the registration of domain names and proposes an alternative solution to "cybersquatting" and other trademark-related domain name issues. Keith Kupferschmid, an instrumental practitioner in Washington D.C. on intellectual property issues and the Internet discusses the first-sale exception in view of copyrighted works on the Internet. Mr. Kupferschmid argues that the first-sale exception is not applicable to network transmissions and recommends that Congress take steps to limit the applicability of the first-sale exception, and that in order to receive the correct balance between the public's fair use of the work and a copyright owner's right to exploit is the grant of a rental right to the copyright owner is in order. Rinaldo Del Gallo, III, an intellectual property practitioner, discusses the dynamics associated with web site designers and the ownership of a web site under the guise of the work for hire doctrine and joint authorship doctrine. Caroline Uyttendaele, an associate research fellow at Katholieke Universiteit Leuven reviews and analyzes from a European point of view, the need for new free speech legislation regarding the Internet. Ms. Uyttendaele addresses the need for additional legislation protecting free speech and the relevance of the present restrictions on free speech.

The student Comments in this issue discuss various important topics with regard to intellectual property and information technology issues. First, Laura McFarland-Taylor proposes adopting an internationally recognized standard of due diligence in reporting lost or stolen artworks utilizing the Internet. Second, Timothy Hofmeyer analyzes and examines the legal issues surrounding the patentability of cloned organisms, yet remains silent regarding the moral issues involved with the "hot topic" of cloning. Last, Steven Hanley on an international topic of Internet regulation, proposes that every country utilizing the Internet has a right when regulating the Internet to uphold its national values, and Internet Service Providers shall work with each country's government to provide an Internet service that is in conjunction with each country's personal values and ideals.

The Global Information Infrastructure is a dynamic medium that requires legal guidance and assistance in all stages of development. As information technology advances, the law must change with these advances. It is the hope of *The John Marshall Journal of Computer & Information Law* that the legal incites provided by our authors in this issue and all past and future issues help to mold the legal doctrine of computer and information technology law affecting the dynamics of the Global Information Infrastructure.

