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Brave New World

The Internet & the Law

It's a vast understatement to say that the Internet has changed everything. The way we gather information, communicate with each other, shop, work and conduct business have all been altered seemingly overnight. The law is no exception. With no historic legal framework to draw from when it comes to "cyber law," judges must do their best to settle disputes having to do with the Internet (copyright infringement, for example) according to legal principles that are still evolving.

The vast numbers of businesses and individuals who have established a presence on the Internet (or website) have also given rise to legal issues that are rooted in the past but new to the digital age.

"There are no Internet laws per se in the United States," said Richard Catalina, an Intellectual Property, Internet and Technology attorney with Szaferman Lakind in Lawrenceville. "What we have is a mish mash of federal and common-based laws that were meant for a pre-Internet world that, with some tweaking, we are now trying to apply to the Internet."

Visiting the "Internet/Web 2.0/Cloud Computing" section of Catalina's biography page on the Szaferman Lakind web site (szaferman.com) is an eye-opener. Most of the list of topics he counsels clients on likely never even occurred to many individuals and business owners who have web sites. They may not even be aware that there are pitfalls—let alone how to avoid them.

Listed among the ways Catalina helps clients avoid potential pitfalls with both new and established web sites, is counseling in all aspects of Internet law and the drafting of Internet legal policies and related documentation, including for social media and e-commerce sites. Documentation such as terms of use agreements, privacy policies, legal disclaimers, DMCA (Digital Millennium Copyright Act) policies, anti-SPAM policies, affiliate/joint venture agreements and email policies are among the services Catalina provides.

Documenting Your Website

According to Catalina, neglecting to contact an attorney to prepare their website's documentation is one of the most common mistakes business owners make. Although standard language is included in documentation like disclaimers and terms and conditions of use, an attorney will tailor the documents to the specific site and how the site is being used.



Richard Catalina



In addition to making sure their site has the proper legal documentation, business owners and individuals need to beware of others who are poised to take advantage of them when they seek help with setting up the site. "There are a lot of scammers out there," Catalina said. "And many people fall for it."

As a seasoned expert who had his own firm for many years prior to joining Szaferman Lakind, Catalina "knows a lot of the bad players out there," and can help clients steer clear of them.

Catalina also maintains a web site, catalinalaw.com, that is a "News and Legal Resource Center for Intellectual Property, Internet and Technology Law." Visitors to the site will find a wealth of information on Internet law as well as Intellectual Property issues, litigation news and more, much of which is available for download. Catalina also shares his insight in the blog section of the site.

Included on the site, under the Internet Law/Social Media/Web 2.0 section, is an entry called "Follow These Basic Rules to Protect Your Website and Intellectual Property." In the entry, Catalina shares guidelines for anyone setting up a new web site to help them "to insulate themselves from legal liability or protect their intellectual property from theft." Calling the Internet "a legal minefield," Catalina shares "the basic measures that should be implemented to protect a web site and the site's owners."

Technology and the Internet effect businesses and business owners in ways that were unimaginable just years ago. Keeping up is nearly impossible, especially without the advice of experts. "When we look at the Internet today and think about how it was 10 years ago, we can't even conceive of where it will be 10 years from now," said Catalina.

Cyberbullying Legislation

Legislators on every level are also trying to keep up with changes created by the Internet as constituents demand protection from such things as "cyberbullying" (the use of the Internet and other technologies to hurt, harass or embarrass another person) and identity theft. Launched by the public outcry over the suicide of Rutgers University freshman Tyler Clemente (who was distraught when a video of what he thought was a private moment was posted on the Internet), the Anti-Bullying Bill of Rights adopted in New Jersey recently is among several new laws sparked by the digital age.

New Jersey has other pending legislation aimed at cyberbullying. Sponsored by Assemblywoman Mary Pat Angelini (Monmouth), two bills having to do with harassment and the Internet are currently in the hands of the Assembly's Judiciary Committee.

Introduced in 2010, and co-sponsored by Assemblywoman Valerie Vainieri Huttie (Bergen) Assemblyman Reed Gusciora (Hunterdon and Mercer) and Assemblyman Joseph Cryan (Union), Bill No. A450 "upgrades harassment under certain circumstances" and "restricts cyberbullying offenders' access to the Internet."

According to the Statement portion of the bill: This bill would restrict Internet access for offenders who are convicted of harassment of a minor or of stalking, when the offense is committed using an Internet-capable device. These offenses are commonly referred to as "cyberbullying." ...In sentencing an offender found to have committed harassment...or stalking...the court may impose certain restrictions on Internet access. ...Failure to comply with these restrictions would be a crime of the fourth

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degree. ...A crime in the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

Also introduced by Assemblywoman Angelini is Bill No. 452. Cosponsored include Vainieri Huttel and Albert Coutinho (Essex). This bill also addresses cyberbullying by upgrading the crime of harassment under certain circumstances from a petty disorderly person's offense to a crime of

the fourth degree. The bill includes harassment by electronic means.

Digital Impersonation Prevention Act

Pending in the Assembly's Judiciary Committee, is Bill No. 723, sponsored by Assemblyman Ruben J. Ramos Jr. (Hudson). Called the "Digital Impersonation Prevention Act," the bill makes it a crime of the third degree for a person knowingly, with intent to defraud, and without consent, to

credibly impersonate another actual person through or on an Internet website or by any electronic means for the purpose of harming another person, transmitting unsolicited bulk messages or commercial solicitations or copying or accessing a contact list."

The bill also allows that a person who is harmed as a result of another's digital impersonation may bring a civil action for damages against the violator.

Transparency in Government Act

The "Transparency in Government Act," (Bill No. A-841) is a bill sponsored by Assemblywoman Alison Littel Mchese (Morris, Sussex, Warren); Assemblyman Uendra J. Chivukula (Middlesex and Somerset); Assemblyman Gary R. Chiusano (Morris, Sussex and Warren); and Assemblyman Jay Webber (Essex, Morris and Passaic). The bill has many co-sponsors as well.

The bill provides for the creation of a "single, searchable Internet website that retains and displays data and information on the state's annual revenues, expenditures and total bonded indebtedness." It has been referred to the state's Budget Committee. ■

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