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INTRODUCTION: Becoming the Internet Lawyer: An Introduction

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BIO:

+ Robert Kasunic is a Senior Attorney with the Office of the General Counsel, United States Copyright Office in the Library of Congress. During his service with the Office, he has focused on Internet, technology, and computer issues before the Office. In particular, he has been a primary attorney in the Anticircumvention rulemaking mandated by the Digital Millennium Copyright Act that the Office recently concluded. He has also been involved with numerous litigation issues before the Office. Robert Kasunic is also an Adjunct Professor of Law at the University of Baltimore School of Law where he has been teaching copyright and trademark law for the past six years. Prior to his work at the Copyright Office, he had his own practice focusing on copyright, trademark, and Internet issues and was involved in major copyright infringement litigation. He is a member of numerous intellectual property law associations and recently served as Chair of the Government Relations to Copyright Committee of the American Bar Association's Intellectual Property Section.

SUMMARY:

... These days, everyone seems to be an "Internet lawyer" since everything seems to have an Internet component and because everything that touches the Internet is believed to be hot. ... When I began my intellectual property practice in 1993, it was unusual for an attorney to concentrate in copyright and trademark law without an emphasis on patents. ... The Internet and intellectual property law have developed into a dynamic inter-relationship that shows no signs of diminishing for many years to come. ... After spending months providing free general information to the public on Internet and intellectual property issues, the project was abandoned. ... I was able to keep up with Internet and intellectual property legal issues almost exclusively through free online resources, often staying well ahead of the subscription journals. ... Professor Easton's Communication Law course incorporated numerous other legal issues affecting the Internet. Similarly, Professor Fryer and I developed a constant dialogue through email over the past five years and have both incorporated the Internet's intellectual property issues into our courses for several years. ... Of course, the subject matter of "Internet Law" is actually the full spectrum of procedural and substantive law, yet the application of these substantive issues to this medium is unique. ...

TEXT:

[*105] As an introductory statement to this Cyberspace law edition of the Intellectual Property Law Journal (IPLJ), I offer some thoughts on the development of Internet law as a practice and the development of teaching Internet law at the University of Baltimore School of Law. These days, everyone seems to be an "Internet lawyer" since everything seems to have an Internet component and because everything that touches the Internet is believed to be hot. But, just a few years ago, very few attorneys were willing to get involved in Internet legal issues. Precedents, statutes, or treatises simply did not exist; there were no external aids upon which to rely or by which to be guided. The standard

lawyer qualification of "it depends," took on a whole new level of significance. No one knew where this technology was going, but one thing was clear: intellectual property issues would abound.

I became involved with the development of the law of the Internet in 1995, when the World Wide Web was just beginning. I attended one of the first Continuing Legal Education (CLE) seminars devoted to the topic and by [*106] the next year, when I returned to the same seminar in New York, everything had changed. To put it mildly, it has been a wild ride.

It has been an interesting turn of events for my practice as well. When I began my intellectual property practice in 1993, it was unusual for an attorney to concentrate in copyright and trademark law without an emphasis on patents. Copyright and trademark work alone did not appear to produce enough work to support a practice. Then came the Internet. Today, the issues of copyright, trademark, domain names, dilution, and right of publicity are the hottest areas of practice in just about every market in the country. The Internet and intellectual property law have developed into a dynamic inter-relationship that shows no signs of diminishing for many years to come.

Since I began teaching five years ago, I have told my copyright students that the Internet could have a more profound effect on society than did the printing press. It was the advent of the printing press that initially inspired the creation of copyright law in England as a means of control, censorship, and maintenance of the status quo. Later, it developed into a means of strengthening the rights of the creators and authors of intellectual property. Similarly, the initial wave of proposed laws to be applied to the Internet threatened to stifle and censor this new, potent form of free speech. People were afraid of the unrestricted information anyone could find on the Internet and business industries were fearful of the dramatic potential for abuse online. There were many efforts to preempt abuse and control this perceived threat. While these fears have not completely subsided, the advantages available to individuals and to businesses are becoming evident. As has been the case with many new technologies (e.g., the VCR), initial fears and attempts to put the genie back into the bottle have given way to the realization of massive new markets.

As a sole practitioner in a largely federal practice, the benefits of the Internet became readily apparent to me. After close to a year of trying to get communications software and modem cables to connect to the Maryland Bar Association's Bulletin Board Service for solos and small firms in 1993, the early online Internet discussion groups were a much welcomed source of communication and camaraderie with other attorneys. The early days of America Online's Legal Information Network and Lexis' Counsel Connect opened up the ability to discuss substantive issues and share ideas with colleagues around the country. They also opened up the initial discussions of how to deal with Internet legal issues.

The first list servers on Internet issues, in particular Cyberia-L, featured lengthy and often emotionally contested discussions of the emerging issues of Internet law. One discussion thread that I started a few years ago by posting information on the TotalNews framing suit resulted in about six months of intense debate. These were places where Internet law was developing--on the Internet, by lawyers who used the Internet.

[*107] Not all of these online efforts were productive. A massive effort for CourtTV's Legal Helpline, which even required joining a CourtTV bar association, was created with a small group of dedicated attorneys in various concentrations to utilize the power of the Internet to inform the public. After spending months providing free general information to the public on Internet and intellectual property issues, the project was abandoned. My innumerable hours of work disappeared without a trace. Similarly, after moderating an intellectual property discussion group on AOL's Legal Information Network for several years, I signed on one day only to find that AOL had closed it.

Despite these setbacks and a number of disappointments with other proprietary systems, I found that the Internet revolutionized my practice. I was able to work with co-counsel on major copyright litigation almost entirely through email, attachments, and online research. I was able to keep up with Internet and intellectual property legal issues almost exclusively through free online resources, often staying well ahead of the subscription journals. After having written letters to federal judges, years ago, about the potential for the courts in utilizing the Internet, these government

resources are becoming available in a dramatic fashion. The World Intellectual Property Organization recently unveiled a free site containing all of the intellectual property statutes in many countries. Court sites are abounding, public domain information and opinions are being distributed free of charge and with incredible speed. When the Communications Decency Act was struck down, the opinion was circulated nationally with astounding speed. Even more amazingly, the complete oral arguments before the Supreme Court in *Reno v. ACLU* were circulated practically as the lawyers left the Court. The scope and speed of this medium of communication has since become the expectation. We have come a long way quickly.

While the Cyberspace Law Seminar at the University of Baltimore was not one of the first Internet courses in this country, many of the Internet issues involved in the course were being taught at UB for some time. Professor Easton's Communication Law course incorporated numerous other legal issues affecting the Internet. Similarly, Professor Fryer and I developed a constant dialogue through email over the past five years and have both incorporated the Internet's intellectual property issues into our courses for several years.

It was inevitable that a separate course would develop given the growth of the law involving the Internet. Over the past couple years, there were many discussions about incorporating this area into the curriculum and it was clear that there was no shortage of eager students.

The course that was ultimately initiated last year is a credit to the effort Professor Easton put into it. I had the pleasure of being involved with two of the Cyberspace law classes: one on copyright issues, and one on hyperlinks, framing, and meta-tags. Since numerous articles have already addressed these issues, I prefer to comment on interesting characteristics of the class, rather than on the substantive legal issues. What I find inspiring [*108] about the class, I realize, is the same thing that I find so interesting about the Internet. Since "Internet Law" involves so many unanswered questions, law students feel free to think and to express their thoughts. The Internet fosters communication between people in a number of ways. Not only does this technological medium simplify many forms of contact and communication, but its novelty and breadth inspire interest. The excitement and participation of law students reveals the strong sense of relevancy of this subject matter.

Of course, the subject matter of "Internet Law" is actually the full spectrum of procedural and substantive law, yet the application of these substantive issues to this medium is unique. A substantive area of the law that may hold little interest for students in other contexts may be transformed in the eyes of students when approached from its application to the Internet. From a law professor's perspective, it is a dream in that it allows these substantive areas to be examined in a stimulating, metaphysical context.

When I began handling Internet issues, it was partly because very few others were willing to touch the area--there were too many unknowns. Many bar associations and pro bono organizations could not find anyone to accept referrals in this area. Many of the large firms were not yet interested in the Internet and did not even have email capability beyond their intranets. While there were certainly risks in counseling clients with so many unknowns, Internet law was an area without experts. It was a great equalizer. Anyone who worked hard to keep up with the technology and the movements in the law would know as much as anyone also practicing in the area.

This is the phenomenon that I experienced in the Cyberspace Law Seminar. The students felt free to explore the issues and to incorporate into the class other areas of the law they had studied. While students are often reluctant to speak in many law classes, the student's desire to be heard seemed more the norm in this class. I was delighted to listen to one of my former copyright students offer a novel approach to an issue that I had not considered. Since the greatest reward I receive in teaching is to learn from my students and to get them thinking about legal inter-relationships, I greatly enjoyed the colloquy. While much of the success is clearly attributable to Professor Easton's groundwork, the role of the subject matter is compelling.

I look forward to the opportunity of revisiting the class as it matures. It also seems important for professors to appreciate the inspirational effect of the Internet. Even though we now have a superb course on the subject, every

substantive course could benefit from its inter-relationship with this timely and stimulating medium.

Legal Topics:

For related research and practice materials, see the following legal topics:

Computer & Internet Law
Trademark Protection
Civil Infringement Actions
General Overview
Real Property
Law
Ownership & Transfer
Transfer Not By Deed
Dedication
Termination
Trademark Law
Foreign & International
Protections
International Treaties