

This is the February 1, 2007 Newsletter of the Colorado Bar Association's Technology Law and Policy Section.

The next meeting of the Technology Law and Policy Section is February 8, 2007
12:00 PM - 2:00 PM
Location: CBA Executive Conference Room / Denver, CO

Permanent Ban on Internet Taxes Introduced
US Supreme Court Allows Patent-Licensees to Challenge Patents
Net Neutrality Re-Introduced
EU Lawyer Employment Assurance Act?
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NY AG Settles Adware Claims

Permanent Ban on Internet Taxes Introduced

At the start of the new congress Senators Wyden, McCain and Sununu introduced the Permanent Internet Tax Freedom Act (S. 156) to ban Internet connection taxes, and to prohibit double taxes on products and services purchased over the Internet. If enacted, the legislation will make permanent a similar ban first enacted in 1998. The legislation was subsequently introduced in the house by Reps Eschoo and Goodlatte as H. 156.

US Supreme Court Allows Patent-Licensees to Challenge Patents

The Supreme Court decision in MedImmune v. Genentech, available here, <http://www.supremecourtus.gov/opinions/06pdf/05-608.pdf>, will allow licensee's to challenge a licensor's patent if an actual dispute as to the enforceability of the patent exists or is anticipated. Historically, licensors felt that prohibiting the licensee from challenging the validity of the licensed patent was a fair trade for an IP indemnity from the licensor and immunity from a patent infringement suit. However, the Supreme Court held that a licensee no longer has to breach or terminate its license to challenge the validity of the patent and royalties dues under the agreement, but rather, may bring an action under the Declaratory Judgment Act to determine if the underlying patent is valid or unenforceable.

Net Neutrality Re-Introduced

Four days into the new congress, Senators Dorgan and Snow introduced the Internet Freedom Preservation Act to prohibit broadband carriers from discriminatory practices such as pricing in handling traffic from Internet content, application and service providers, and to require carriers to offer consumers individual broadband service that is not bundled with television or telephone service. Both AT&T and Verizon have long term plans to charge content providers extra fees to use their new fiber lines based on bandwidth consumption. The legislation is similar to previous legislation that was previously defeated by the Republican controlled congress.

The bill is available here: http://dorgan.senate.gov/documents/newsroom/net_neutrality.pdf

EU Lawyer Employment Assurance Act?

This month the EU will vote on a revision to Article 5 of the "EC Convention on the Law Applicable to Contractual Obligations (Rome 1980) " which, if passed, would broaden the scope of a law requiring that the law of the country where the consumer resides

applies to all business-to-consumer sales. Internet sales to EU residents would be subject to the laws of the consumer's home, and could not be preempted by a "choice of law" provision in the on-line sales contract. Further, some opponents note that the law of the consumer's jurisdiction would apply not only to interpretation of the contract, but also as to issues related to contracts and business in general, such as capacity and consumer protection, which could mean that any business selling to a consumer in an EU jurisdiction must comply with registration and licensing requirements in some instances.

Original convention: <http://www.jus.uio.no/lm/ec.applicable.law.contracts.1980/doc.html>

Proposed changes: http://www.ccbe.org/doc/En/en_rome_ccbe_position_251106.pdf

The Phisherman's Friend

A California jury convicted Jeffery Goodin, 45, of violating the CAN-SPAM Act by using fraudulent e-mails to trick AOL users out of their personal and credit card information. Goodin is the first person to be convicted under CAN-SPAM for "phishing" giving him a perpetual legacy as a technology convention trivia question. He faces up to 101 years in prison, but the sentence will not be handed down until June 2007.

Intel Inside In Trouble

In January European Commission antitrust officials recommended to the EU Competition Commission that it proceed with antitrust charges against Intel. The complaint is focused on Intel's practice of granting rebates to customers who stay loyal to Intel chips. Intel has 80% of the EU chip market.

MySpace Sues Colorado's "Spam King"

MySpace filed suit in U.S. District Court in Los Angeles against Westminster, CO based Optinrealbig.com/Scott Richter for sending spam to members accounts disguised to look like messages from other members. The suit asks for damages, an injunction preventing Richter and his companies from accessing MySpace, and repayment of all profits gained as a result of the activity.

NY AG Settles Adware Claims

The NY Attorney General's office settled adware claims against Priceline, Travelocity, and Cingular. A press release from the AG's office claims that the settlement is "the first time law enforcement has held advertisers responsible for ads displayed through adware". The settlement requires the parties to disclose the adware, get the consumer's consent prior to installation, and to make the adware removable by the consumer.

Press release: http://www.oag.state.ny.us/press/2007/jan/jan29b_07.html

Settlement: <http://www.oag.state.ny.us/press/2007/jan/adware-scannedAODs.pdf>