

This is the April 25, 2007 Newsletter of the Colorado Bar Association's Technology Law and Policy Section.

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Colorado Secretary of State Suspend Access to UCC Filings to Thwart Identity Theft

The Colorado Secretary of State's business division shut down online access to certain documents on its web site after being notified by The Virginia Watchdog privacy advocate that the site had been posting thousands of documents with Social Security numbers. Secretary of State Mike Coffman took the step to "prevent identity thieves from pulling personal identifying information from Uniform Commercial Code filings" posted on the site, according to this statement from the Secretary of State:

http://www.sos.state.co.us/pubs/pressrel/coffman_takes_steps_thwart_thieves.html

Although very few current UCC filings contain Social Security numbers, many older documents do. Colorado had previously undertaken a redaction effort to black out Social Security numbers from UCC filings received prior to July 1, 2001, and removed Social Security numbers from more than 610,000 filings out of a total of about 1.7 million.

Since 2001 Colorado has used a UCC form that does not require Social Security numbers. However, many financial institutions continued using the older UCC form, which includes a box that asks for a Social Security number. As a result, potentially thousands of UCC records on the Colorado Secretary of State's Web site contain Social Security numbers.

The Colorado Secretary of State is now examining and redacting Social Security numbers from an estimated 320,000 paper filings that have been received and posted since 2001. Coffman has also suspended bulk electronic sales of the UCC database records and is using additional staffers to manually fulfill requests for the documents from businesses that need them.

Junk Fax Claims not Assignable under Colorado Law

The 10th Circuit Court of Appeals recently held in a Colorado case that "junk fax" claims brought under the "Junk Fax Law" - the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227(b)(1)(C), are not assignable under Colorado law. In U.S. Fax Law Center v. iHire, <http://www.ca10.uscourts.gov/opinions/05/05-1325.pdf>, recipients of "junk faxes" from the defendants assigned their claims to the U.S. Fax Law Center, who then initiated law suits in Colorado federal district court. Although the junk fax law is a federal statute, it provides the right to bring an action only in state court. While several previous federal district court decisions have held that there is no diversity jurisdiction to support bringing these claims in federal court, the 10th Circuit Court of Appeals held that one can bring a TCPA junk fax claim in federal court under diversity jurisdiction. The court then held on the basis opinions of the courts of the state of Colorado that "TCPA claims are unassignable because they are in the nature of personal-injury, privacy claims." Thus, the "underlying assignment of TCPA claims was invalid", and the plaintiffs therefore lack standing to sue.

European Commission to make Internet Selling Easier

The EC is proposing to change its contract law to make it easier to conduct business over the Internet. The Commission believes that online businesses would benefit significantly if doubts about the legal implications of cross-border trading were removed. According to the Directorate of Health and Consumer Protection only 6% of EU consumers are currently shopping online cross borders.

The Commission will review all EU consumer contract law, including the Unfair Contract Terms Directive and the Directive on Sale of Consumer Goods and Guarantees; the Distance Selling Directive; the Doorstep Selling Directive; the Package Travel Directive; the Timeshare Directive; the Directive on Injunctions; and the Price Indication Directive.

The Commission has found that the most common problem consumers have is with delivery of items involved in cross-border commerce. Non-delivery, late or partial delivery accounted for 46% of complaints in a 2005 EU study of the online marketplace. The second biggest complaint, at 25% of all complaints, was that the goods had defects or were not what the consumer thought they were buying.

A major issue which the Commission will address will be the issue of returns. National laws currently differ on who should pay for returned items and what the procedure is, meaning that cross-border traders and consumers have to have knowledge of the laws of a number of countries in order to operate in Europe.

Read the Commission's "Green Paper" here:

http://ec.europa.eu/consumers/cons_int/safe_shop/acquis/green-paper_cons_acquis_en.pdf

Personal Data Privacy and Security Act Introduced in U.S. Senate

Senators Patrick Leahy, a Vermont Democrat, and Bernie Sanders, a Vermont independent, introduced the Personal Data Privacy and Security Act. In addition to requiring data breach notification, the bill would also require data brokers to disclose what information they hold on individuals. The bill would allow individuals to correct information held by data brokers, and it would require companies that have databases with personal information on more than 10,000 U.S. residents to implement data privacy and security programs.

The text of the bill is available here: <http://www.epic.org/privacy/pdf/DPSA2007.pdf>

Massachusetts Law Would Hold Retailers Liable for Credit Card ID Thefts

Massachusetts Rep. Michael A. Costello introduced a law to hold retailers accountable when thieves steal credit card information. The bill would force retailers to pay for the cost of reissuing new cards and for other expenses. Credit-card companies now absorb most of those costs. More than 35 states have data-breach and consumer-protection laws, but they merely require companies to warn consumers of possible theft when their computer systems have been breached.

The Massachusetts bill would mandate that companies whose security systems are breached assume full financial responsibility for any fraud-related losses, costs associated with the canceling and reissuing of cards, and -- in cases of identity theft -- the freezing of accounts and credit information. The bill would apply to any company doing business in Massachusetts, wherever it may be based.

Connecticut Lawmakers Target MySpace, FaceBook

Connecticut lawmakers have proposed a law providing stronger penalties on Web sites that fail to verify ages and obtain parental consent for users under 18. Under the proposal violators would face civil penalties of up to \$5,000 per violation.

Connecticut Attorney General Richard Blumenthal reported that up to 44 states were considering similar legislation.

The text of the proposed legislation is available here:

<http://www.cga.ct.gov/2007/TOB/H/2007HB-06981-R02-HB.htm>

Beginning July 1, 2007 SEC Will Allow Paperless Proxy Statements

The "eProxy" rules from the Securities and Exchange Commission will go into effect on July 1, 2007. The rule allows companies to provide proxy statements on the web, and avoid the costly printing and shipping process. According to the SEC, 10.7 million shareholders agreed to receive their proxy materials electronically last year and about 88 percent of shares voted were voted electronically or by phone during the 2006 proxy season. The SEC anticipates that the new rule will increase investor response and participating in shareholder meetings, in addition to cost savings for reporting companies. The final rule is available here:

<http://www.sec.gov/rules/final/2007/34-55146fr.pdf>

Utah Outlaws Use of Trademarks by Search Engines

Under the Utah Trademark Protection Act (Utah SB236), trade mark owners can apply for additional protection in Utah which will mean that their marks cannot be used as a trigger by rivals. The bill establishes a new type of mark, called an electronic registration mark, that may not be used to trigger advertising for a competitor and creates a database for use in administering marks. The law prohibits the use of a registered electronic registration mark to trigger advertising for a business, goods, or services of the same class as those represented by the electronic registration mark.

The law has been called impractical, unconstitutional and misguided, and Google has announced plans to challenge it when it goes into effect this June: <http://blog.tmcnet.com/regulations/in-the-courts/google-to-battle-utahs-trademark-protection-act.asp>

Washington State Targets 'driving while texting'

Washington state Rep. Joyce McDonald introduced legislation that will impose a \$101 fine for texting while driving; however, a citation can only be issued if law-enforcement officers have another reason to pull over a motorist, such as erratic weaving, running a red light or speeding.

Four other jurisdictions (New York, New Jersey, Connecticut and Washington, D.C.) prohibit driving while texting under broader laws prohibiting drivers from using a cellphone in any fashion, other than talking on it via a hands-free speaker device. California is imposing a similar cellphone ban effective July 2008.

A copy of the Washington bill and its legislative status is available here:

<http://apps.leg.wa.gov/billinfo/Summary.aspx?bill=1214&year=2007>