

November 2008

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Letter from the Information Technology Section Council

We are sure those who attended last week's seminar, Information Technology Law: What Every Lawyer Should Know, will agree that it was both enlightening and entertaining. The Section Council would like to thank the speakers, attendees, ICLE, and all those who worked so hard to make it such a success. If you did not have a chance to attend, ICLE partnership members may obtain the seminar materials now at [ICLE's website](#), and both an mp3 podcast and streaming archived webcast will be available there soon.

One of the interesting activities at the seminar was an electronic poll taken of Section members who attended. Only half of the members present recalled receiving the October 2008 edition of the Section publication, *Michigan IT Lawyer*, which was sent to the membership last month via e-mail. We encourage you to read it and to look for the next issue to appear in your inbox next month. The [current issue](#) and [past issues](#) are available at the Section's website.

We welcome your comments on how to improve this e-newsletter to better serve you and the rest of our membership. We also welcome contributions of substantive items, news, and events that you think would be of interest to IT lawyers. If you would like to contribute, please contact Ron Nixon at ron.nixon@kkue.com.

Real Legal Trouble in Virtual Worlds

Last month the Washington Post reported two stories about people criminally prosecuted for their activities related to their participation in what are commonly known as MMORPGs (massively multiplayer online role playing games).

In one story dated October 23, 2008, the paper reported that a 43 year old Japanese woman was being held on suspicion of computer hacking when she allegedly logged into the victim's account for the popular game Maple Story and had his character killed. The virtual characters of the woman and the victim were purportedly married in the game world, and Japanese police suspect that her anger over their sudden online divorce

Web 2.0 Summit 2008 in San Francisco

The fifth annual Web 2.0 Summit was held in San Francisco last week, November 5 through November 7. This year's Summit included topics ranging from the usual discussion of innovative web-based applications to broader issues of world interest, concluding with a speech by former Vice President and global-warming advocate Al Gore, once rumored to have proclaimed himself the inventor of the internet. Cnet has extensive coverage of the Summit [here](#).

The Sixth Circuit Declines to Rule on an e-Mail Privacy Issue

In a case of interest to many IT and criminal lawyers, an *en banc* panel of the Sixth Circuit recently rejected as not ripe for judicial review a facial Fourth Amendment challenge to the Electronic Communications Privacy Act of 1986, 18 USC § 2701 *et seq.*, commonly known as the "Stored Communications Act" (SCA). [Warshak v. United States, 532 F.3d 521 \(6th Cir. 2008\)](#). The plaintiff brought the declaratory action after the government, while investigating the plaintiff for bank fraud, mail fraud, and money laundering, obtained plaintiff's e-mails from two internet service providers by court order without a warrant or prior notice. The SCA permits the government to do so in limited circumstances, including where a court determines that notice to the suspect could jeopardize the criminal investigation.

A district court had concluded that the SCA was unconstitutional and enjoined the government from using the SCA to search the contents of any personal e-mail account maintained by an internet service provider for a resident of the Southern District of Ohio without prior notice and an opportunity to be heard. However, because the plaintiff had been convicted by the time the case came to the Sixth Circuit, a 9-5 majority of the panel ruled that there was little likelihood the government would seek another *ex parte* order to search plaintiff's e-mail. The court decided that it did not have

precipitated the attack. Although she has not been formally charged, she could face up to five years in jail or a fine of up to \$5,000.

In another story dated October 21, 2008, the paper reported that a Dutch court convicted two teens for coercing another teen into transferring a virtual amulet and virtual mask from the game Runescape to their accounts. The court ruled that virtual goods are goods under Dutch law and that the act was theft.

Thanks to Michael Gallo and Bryan Hall, the editors of *Michigan IT Lawyer*, for finding these stories for the e-newsletter.

concrete facts on which to decide a facial challenge to the SCA, especially where the question would “turn in part on the expectations of privacy that computer users have in their e-mails—an inquiry that may well shift over time, that assuredly shifts from internet-service agreement to internet-service agreement and that requires considerable knowledge about ever-evolving technologies.” Consequently, the court vacated the injunction and remanded to the district court to dismiss the case.