

October 2009

▶ **Section Links**

- [IT Section Website](#)
- [Council Information](#)
- [Meetings & Events](#)
- [Papers & Articles](#)
- [Newsletters](#)
- [Section Listserv](#)

▶ **Bar Links**

- [SBM Website](#)
- [Calendar of Events](#)
- [Public Policy](#)

▶ **Letter from the Council**

The 2nd Annual IT Law Seminar on October 29 is the big news for the month. If you attended last year's seminar, you know that this will be an event worth attending. It is not too late to [register!](#)

Section members may attend for only \$50, nearly half of the ICLE seminar's regular price of \$95. If you know someone who would like to attend but is not yet a section member, you can save them \$20 by encouraging them to join the Section first (only a \$25 fee) and then registering for the ICLE seminar at the \$50 member rate. The Section Membership Application for [existing Bar members](#) and for [new Bar members](#) is available on the [State Bar of Michigan Sections website](#).

If you missed it in your electronic mailbox, the [September 2009 edition](#) of the *Michigan IT Lawyer* is available on the IT Law Section's [website](#), as are all the past issues.

We welcome your comments on how to improve this e-Newsletter to better serve you and the rest of our membership. We also welcome any contributions 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](mailto:ron.nixon@kkue.com) or Samuel Frederick at [sfrederick@fosterswift.com](mailto:sfrederick@fosterswift.com). We would like to extend a special thanks to Christopher Falkowski for leading us to some articles of interest for this edition.

▶ **Upcoming Events**

**Second Annual IT Law Seminar—October 29—St. John's Conference Center (Plymouth)**

It's not too late, so [register today!](#) The IT Section and the Institute of Continuing Legal Education (ICLE) will host the 2nd Annual IT Law Seminar on Wednesday, October 29, 2009, at the [The Inn of St. John's](#). The seminar will cover important issues to enable you to better serve your clients, including such topics as The Legal Landscape of Web 2.0, Risk Allocation in Tech Services and License Agreements, and the Benefits and Risks of Open Source Software. If you have any questions, please contact Charlie Bieneman at [cab@raderfishman.com](mailto:cab@raderfishman.com).

▶ **IT Law In the News**

**I Agreed to What?!!!: "Terms and Conditions" Link Insufficient to Bind Consumer**

A federal judge in the Eastern District of New York held last month that a consumer who incurred a \$30 restocking fee after she returned a vacuum cleaner purchased on Overstock.com could proceed with a putative class action suit alleging breach of contract, fraud, and other state causes of action, despite arbitration and forum selection clauses in the "Terms and Conditions" accessible by a link on the company's website (a "browsewrap" agreement). *Hines v Overstock.com, Inc.*, No. 09-cv-991, 2009 WL 2876667, 2009 U.S. Dist. LEXIS 81204 (ED NY filed September 8, 2009). The court held that the defendant did not refute the consumer's evidence that she had no actual notice of the "Terms and Conditions." Further, the consumer lacked constructive notice because the inconspicuous link was only visible if she scrolled down to the bottom of the page—an act that was not required to consummate her purchase—and the phrase "Entering this Site will constitute your acceptance of the Terms and Conditions" was contained only within the "Terms and Conditions."

**Buying a False Sense of Security**

An [article](#) from [Reuters](#) states that a new Symantec report on cybercrime shows that tens of millions of computer users are installing and often paying for legitimate sounding but fake anti-virus and anti-malware programs that are actually increasing the vulnerability of their systems.

### **Digital Dogfight for Cloud Supremacy**

This month's [The Economist](#) offers two perspectives on the battle for cloud computing dominance, with the leading combatants for top gun being Microsoft, Google, and Apple. The first [article](#) describes the lay of the battlefield and the [second](#) explains why the author thinks it is a good thing for competition and innovation.

### **Microsoft at a Possible Loss for Word(s) (Revisited)**

Following up from the last edition of the e-newsletter, Reuters reports [here](#) that the US Court of Appeals for the Federal Circuit granted Microsoft a stay pending its appeal of an [injunction](#) barring it from selling copies of Microsoft Word that have custom XML capability. The district court in the appealed [decision](#) had also found that Microsoft willfully infringed the patent of Toronto-based i4i Limited Partnership. In a later [article](#), Reuters also reports that the Appeals Court heard arguments on the case on September 23, 2009, and questioned the lower court's calculation of \$290 million in damages against Microsoft during the hearing, although no decision has been made.