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Michigan COMPUTER LAWYER

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State Bar of Michigan Computer Law Section

In the News...

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New law limits Y2K liability. The recently passed "Y2K Act" (HR 775) provides substantial protections to defendants facing legal liability based on the inability of technology systems, devices, and software programs to accurately process dates beyond December 31, 1999. The Act applies to actions brought after January 1, 1999 for Y2K failures occurring as late as December 31, 2002. The Act defines Y2K actions broadly to include all civil actions arising from or related to actual or even potential Y2K failures. Personal injury and wrongful death actions are not limited by the Act.

Amongst the liability limitations, punitive damages may not be awarded unless proven "by clear and convincing evidence" that the relevant standard has been met. Economic entities with a net worth below $500,000 may not be subject to punitive damages in excess of the lesser of $250,000 or three times the amount of the compensatory damage award. For Y2K actions based on tort law theories, a defendant can only be held liable for its proportionate share based on the percentage of responsibility for fault.

Many of the added protections are procedural in nature. Under the terms of the Act, a plaintiff must provide a 30-day notice to a potential defendant before a complaint can even be filed. If the defendant proposes remedial action or offers to engage in alternative dispute resolution, the plaintiff must wait an additional 60 days before commencing litigation. The pleading requirements for Y2K actions have also been statutorily modified. The nature of the damages, a description of the material defect and its manifestations, facts supporting allegations about defendant's state of mind, and the amount of damages sought must all be pled in an action found be to a "Y2K action" under the terms of the Act.

The affirmative defenses of mitigation of damages, impossibility, and commercial impracticability have been expressly preserved. The Act also requires that liability limitations must be strictly enforced. Economic losses are precluded in tort cases unless the damages result from damage to tangible personal or real property.

Senate Committee approves electronic signatures legislation. The Millennium Digital Commerce Act as approved by the Senate Committee on Commerce, Science and Transportation seeks to facilitate e-commerce by temporarily overriding state laws pertaining to digital signatures. The purpose of the bill is to facilitate on-line transactions by precluding non-uniform state policies with respect to digital signatures. State laws currently conflict on the validity of the various types of currently utilized e-signatures. However, the Senate bill does not set forth a particular type of electronic signature standard. Rather, it would make all types of e-signatures equally valid until such a uniform standard could be agreed to amongst the states themselves. Experts say that one of the key benefits to a standardized e-signature policy would be to allow people to engage in e-commerce without the use of credit cards, a feature particularly useful for buyers outside of the United States. It is also hoped that the bill will send a message to consumers that they can safely engage in online commerce.

Australia enacts Internet censorship law. In June of 1999, the Australian Parliament passed the Broadcasting (Online Services) Amendment Act. Under the new law, Internet Service Providers will be subject to the demands of the Australian Broadcasting Authority to remove offensive material from web sites. Failure to follow the dictates of the Australian Broadcasting Authority could result in fines of $27,500 per day. In conjunction with the additional regulatory authority, industry codes will largely be developed by the Internet industry itself. The exact details of how the new law is to function were not specified in the statute. Apparently, the intent behind the bill was to get the Australian Broadcasting Authority and the private entities composing the Internet industry to work together to develop codes to deal with offensive material. Thus, the primary effect of the new law is to provide significant regulatory rule-making authority. In an attempt to focus and limit that authority, a

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balancing between the goals of the bill, technical feasibility, and cost is specifically incorporated into the new law. Moreover, specific provisions were added to ensure that the new law would not unnecessarily burden the development of e-commerce. Australia is not the first nation to enact in Internet censorship law. Countries such as Saudi Arabia and Singapore have already passed laws to censor Internet communications.

Bermuda seeks to attract e-commerce. The island of Bermuda is already an international haven for the insurance industry, and the self-governing British territory now seeks to use a similar formula to attract international e-commerce. A proposal to allow companies to conduct international e-commerce transactions via Bermuda shell companies is currently before the legislature. If the law is enacted, e-commerce orders could be run through Bermuda while the actual shipping of goods and materials would be off the island from currently existing sites. E-commerce under the bill would largely be self-regulating. A government advisory board would be empowered to draft a code of conduct were the proposal to be enacted into law. Gambling and pornography would be banned under the bill. The bill attempts to provide the basic legal structures necessary for e-commerce while complying with the data and privacy protection requirements of the European Union.

PTO issues notice of allowance for a revolutionary web server patent. On July 12, 1999, Information Architect Corporation ("IA") received a notice of allowance for a potentially lucrative e-commerce patent. IA's patent application covered the company's "Any Data—Anywhere" Metaphoria™ Products. The technology enables rapid development of Internet products and the ability to manipulate data from a wide variety of different environments in an almost seamless manner utilizing any Internet accessible device. The technology provides the ability for data stored on mainframes, web servers, Intranets, Extranets, client server systems, to be accessed and manipulated in real-time despite the different environments, at the touch of a button.

Music industry joins with electronics manufacturers to find a technological solution to piracy. After losing the battle against Internet piracy in court, the music industry focuses its efforts on a technological solution. The Diamond Multimedia Rio portable MP3 player allows consumers to download nearly CD-quality music off the Internet without paying for it. However, the Recording Industry Association of America's failed in its attempt to obtain an injunction on the basis the Audio Home Recording Act of 1992 because making copies from computer hard drives does not constitute digital music recordings under the act. The aftermath of that litigation brought about a joint initiative between the recording industry and the consumer electronics industry. The Secure Digital Music Initiative is an attempt by electronics manufacturers and other technology developers to prevent future versions of portable digital music recorders from playing music that has been pirated from the Internet. Encryption and other security techniques are being utilized in an attempt to prevent piracy. In the new spirit of cooperation, record companies are even releasing their own MP3 products, products they previously claimed to undermine copyright protection.

United Kingdom seeks to provide police with new encryption powers. The British government announced its intentions to force the disclosure of encrypted material on the Internet and other forums for e-commerce. An electronic commerce bill is expected to be presented to parliament. The bill would require that all encryption keys be registered with a third party to enable access by the police. The bill is allegedly intended to prevent encryption technology, which is necessary to support e-commerce, from being misused by criminals. Business groups have criticized the key escrow clause, but the government has promised there would be strong safeguards.

Senate bills seeks to protect privacy rights online. On April 21, 1999, Senator Leahy introduced the Electronic Rights for the 21st Century Act (S 854). The bill purports to protect the privacy and constitutional rights of Americans on the Internet, to establish standards and procedures regarding law enforcement access to location information, decryption assistance for encrypted communications and stored electronic information, and other private information, to affirm the rights of Americans to use and sell encryption products as a tool for protecting their online privacy. The Federal Government's ability to use decryption technology is limited under the bill, as is the release of personal information by institutions such as libraries, book stores, and video rental stores. The Online Privacy Protection Act of 1999 (S 809) proposed by Senator Burns similarly provides protection against the online disclosure of personal information, and even provides state governments with the power to bring civil actions in order to enforce the rights of citizens under the bill.

Internet data held "not admissible" in defending a motion for summary judgment. In *Dean Foods Co. v. Consolidated Freightways Motor Freight*, 1998 U.S. Dist. LEXIS 19690 (N.D. Ill. December 15, 1998), the defendant attempted to create an issue of material fact with regards to the monetary value of a machine by producing an affidavit by an administrative assistant which attested that an Internet search revealed that two different sites offered the machine at substantially less cost than was established by the affidavit submitted by the plaintiff. The Court ruled that the defendant's affidavit was "not admissible" because the administrative assistant had no relevant business knowledge relating to the machine and was merely reporting what appeared on a computer screen. Without an issue of material fact, plaintiff's motion for summary judgment was granted.

Y2K fraud case filed based on license extending to Year 2043. On January 28, 1999, Milton Bradley Corporation filed suit against Garpac Corporation (N.Y. Sup. Ct., Case No. 99600463) alleging that it was fraudulently sold non-Y2K ready software. One of the factual grounds for alleging fraud was the fact that the software could only be used for six and one half years, and yet the 1993 contract provided for a fifty-year license. The complaint thus alleged that the defendant Garpac Corporation had no intention at the time of contracting, to fulfill the terms of the contract with Milton Bradley. ■

IT IS TIME FOR ALL SECTION MEMBERS TO STAND UP, BE COUNTED, AND VOTE!

In compliance with Article IX of the bylaws for the Computer Law Section, the following bylaws as amended (all changes are redlined), will be put up for a vote at the 1999 Annual Meeting in Grand Rapids. Council member Anthony Targan has diligently spearheaded the effort to have the bylaws for the Computer Law Section embrace changes in technology and how those technological changes affect the way people interact with one another. Changes have also been made with respect to council member and officer requirements, as well as other more administrative provisions. Please review the proposed changes in their totality so that you will be able to make an informed vote. A summary of the proposed changes follows the redlined version of the bylaws.

AMENDED AND RESTATED BYLAWS OF THE COMPUTER LAW SECTION OF THE STATE BAR OF MICHIGAN

ARTICLE I
Name and Purpose

Section 1 - Name. This Section shall be known as the Computer Law Section of the State Bar of Michigan (the “Section”).

Section 2 - Purposes. The purposes of the Section shall be to review, comment upon, and apprise Michigan lawyers of~~, and to maintain liaison with other interested professional and trade associations concerning,~~ significant legal developments and trends relating to the~~distribution, financing,~~ protection of intellectual and other proprietary rights in, distribution, provision, and use of, computer and data processing equipment, computer software ~~equipment and further relating to the furnishing of software and services for such equipment, including issues of contract and tort liabilities arising therefrom and~~ and services, and computer networks, electronic commerce, and the Internet, including associated contract and tort liabilities, and related civil and criminal legal ~~consequences of the misuse thereof.~~ consequences.

Section 3 - Implementation of Purpose. This Section shall endeavor to accomplish these purposes by publishing a quarterly newsletter with articles and information of interest to its members; by conducting and sponsoring seminars, institutes and conferences, either independently or in cooperation with the Institute of Continuing Legal Education (ICLE), with other appropriate organizations, and with other Sections and committees of the State Bar of Michigan; by appointing special committees to research and study specific legal problems confronting the Section’s members and their clients, and to formulate ~~thereby~~ recommendations to the Board of Commissioners; ~~by sponsoring institutes and conferences;~~ by the publication of books and other legal writings related to the aforesaid purposes; and by maintaining liaison with other professional and trade associations interested in the same subject matter.

ARTICLE II
Membership

Section 1 - Dues and Enrollment. Except as provided below in this Article, e~~E~~ach member of the Section shall pay annual dues of Twenty Dollars ($20.00). Any member of the State Bar of Michigan, upon request to the Executive Director of the State Bar of Michigan and upon payment of dues for the current fiscal year (October 1 - September 30), shall be enrolled as a member of the Section. The annual Section dues shall be paid in advance for each year of enrollment. Members so enrolled and whose dues are so paid shall constitute the membership of the Section. Any member of the Section whose annual dues shall be more than six (6) months past due shall ~~thereupon automatically~~ receive a final demand for payment, and absent payment in full within thirty (30) days, shall thereafter cease to be a member of the Section. Only members of the Section who are also active members of the State Bar of Michigan shall be entitled to vote.

Section 2 - Associate Members. Full-time members of the faculties of law schools and other institutions of higher learning who are not active members of the State Bar of Michigan may become non-voting associate members of the Section upon payment of dues in the amount required of voting members.

Section 3 - Law ~~Student.~~ **Students.** Law student members of the State Bar of Michigan may become non-voting members of the section upon payment of annual dues of Ten Dollars ($10.00) each.

Section 4 - First Year Attorneys. Members of the State Bar of Michigan may become voting members of the Section in accordance with Section 1 of this Article; provided, however, that the Section may agree to waive payment of annual dues for attorneys during their first year of membership in the State Bar of Michigan.

ARTICLE III
Officers

Section 1 - Officers. The officers of this section shall be the Chairperson, the Chairperson-Elect, the Treasurer, and the ~~Secretary.~~ Secretary (“Officer(s)”). No person shall serve as Chairperson or Chairperson-Elect for two (2) consecutive one-year terms, and no person shall serve as an Officer for more than four (4) consecutive one-year terms.

Section 2 - Section Council. There shall be a Section Council consisting of eighteen (18) members, ~~including the Chairperson, the Chairperson-Elect, the Treasurer and the Secretary~~ all of whom shall be voting members of the Section, including the four (4) Officers, together with fourteen (14) other members, all eighteen (18) of whom shall be elected by the Section as hereinafter provided. Each past Chairperson shall remain an ex officio (non-voting) member of the Council for as long as he or she may choose to serve in that capacity, and none of said ex officio members shall be subject to removal for failure to attend meetings; provided however, that, subject to Section 7 of this Article, any past Chairperson may be elected to voting membership on the Council.

Section 3 - Beginning and End of “Term”. The Chairperson, the Chairperson-Elect and Treasurer and Secretary shall be nominated and elected by the Council, in a manner hereinafter provided, immediately following each annual meeting of the Section, to hold office for a term beginning at the close of the annual meeting at which they shall have been elected and ending at the close of the next succeeding annual meeting of the Section (and until their successors shall have been elected and qualified).

Section 4 - Term; Section Council. At the September 12 , 1985 annual meeting of the Section, six (6) members of the Section shall be nominated and elected to serve on the Council for a term of three (3) years; one (1) member of the Section shall be nominated and elected to serve on the Council for a term of two (2) years; and one (1) member of the Section shall be nominated and elected to serve on the Council for a term of one (1) year. Thereafter, six (6) Section members shall be elected at each annual meeting of the Section to serve on the Council for terms of three (3) years, and vacancies on the Council shall be filled in accordance with Article VI, Section 3 of these ~~By-Laws.~~ bylaws.

Section 5 - Definition of “Year”. A “year,” as herein used, is the interval of time between annual meetings of the Section.

Section 6 - ~~Consecutive Terms.~~ **Duration of Council Membership.** No person shall be eligible for election to serve as a member of the Council if that person is then a voting member of the Council and has been continuously for a period of ~~two (2) terms.~~ six (6) years, except for Officers, who shall be allowed to remain on the Council for so long as they remain an Officer of the Council, subject to Section 1 of this Article.

Section 7 - Election of and Terms of ~~Office of Chairperson, Chairperson-Elect, Treasurer and Secretary.~~ **Officers.** Immediately following each annual meeting of the Section, the Council shall elect, from the voting membership of the Council, ~~one (1) member of the Council to serve as Chairperson~~ for the one-year term ending as provided in Section 3 of this Article~~;~~ , one (1) member of the Council to serve as each of the four (4) Officers of the ~~Chairperson-Elect for the same one (1) term; and one (1) member to serve as Treasurer for one (1) term ending at the next annual meeting; and one (1) member to serve as Secretary for one (1) term ending at the next annual meeting;~~ Council: Chairperson; Chairperson-Elect; Treasurer; and Secretary; except that, at each annual meeting of the Section, ~~the Chairperson-Elect, if any, shall automatically (~~unless he or she shall submit written ~~resignation)~~ resignation or shall have failed to successfully perform the duties of his or her office: the Chairperson-Elect, if any, shall automatically succeed to the office of Chairperson of the Section for the next ~~one (1) year term.~~ one-year term; the Secretary, if any, shall automatically succeed to the office of Chairperson-Elect of the Section for the next one-year term; and the Treasurer, if any, shall automatically succeed to the office of Secretary of the Section for the next one-year term.

ARTICLE IV
Nomination and Election of Officers

Section 1 - Nomination. At or before each annual meeting of the Section, the Chairperson, with the advice of the Chairperson-Elect, shall appoint a Nominating Committee of at least three (3) members of the Council, which Committee shall make and report nominations to the Section for vacancies on the Council. The Nominating Committee shall not nominate any of its own members. Other nominations for the Council may be made from the floor, but ~~may~~ must be made and seconded only by voting members of the section. The Nominating Committee shall ~~consider the need for~~ endeavor to achieve a balanced representation on the Council by considering the following ~~of~~factors when nominating members ~~with~~ to fill vacancies on the Council: experience in hardware, software, intellectual property rights, and in other fields of law relevant to the purposes of the Section; ~~the need for balance between~~ gender, racial, ethnic and geographic diversity of the Council; a cross-section of members whose primary practice involves the representation of vendors and those whose primary practice involves the representation of ~~users and to avoid imbalance which could result from over-representation of any interest groups; the need to endeavor to balance the gender, racial and ethnic composition of the Council as reflected in the Section Membership; and the need for members who practice in various geographic areas of the State of Michigan.~~ users; and a cross-section of members working in private practice, as in-house counsel, and in educational institutions.

Section 2 - Elections. All elections ~~shall~~ may be by written ballot unless otherwise ordered by resolution duly adopted by the Section at the annual meeting at which the election is held. Only voting members of the Section shall be entitled to cast ballots or otherwise to vote.

ARTICLE V
Duties of Officers

Section 1 - Chairperson. The Chairperson shall preside at all meetings of the Section and of the Council. The Chairperson shall formulate and present at each annual meeting of the State Bar of Michigan a report of the work of the Section for the then past year. The Chairperson shall perform such other duties and acts as usually pertain to the office.

Section 2 - Chairperson-Elect. Upon the death, resignation, or during the disability, of the Chairperson, or upon his or her refusal to act, the Chairperson-Elect shall perform the duties of the Chairperson for the remainder of the Chairperson's term except in the case of the Chairperson's disability and then only during so much of the term as the disability continues.

Section 3 - Treasurer. The Treasurer shall keep a true record of all monies received and disbursed and shall report thereon to the Council whenever requested. Annually, he or she shall submit a financial report for presentation to the membership of the Section. Consistent with the ~~By-Laws~~ bylaws of the State Bar of Michigan, he or she shall be responsible for forwarding all monies of the Section which come into his or her hands to the bookkeeping department at the State Bar Headquarters in Lansing for deposit and credit to the account of the Section. Further, unless waived on a meeting-by-meeting basis by vote of the Council, the Treasurer shall present a current financial report at each meeting of the Council.

Section 4 - Secretary. The Secretary shall be the custodian of all books, records, papers, documents, and other property of the Section, other than those entrusted to the Treasurer under Section 3 of this Article. He or she shall keep a true record of the proceedings of all meetings of the Section and of the Council, whether assembled or acting under submission. With the Chairperson, he or she shall prepare the Section's Annual Report. The Secretary, in conjunction with the Chairperson, as authorized by Council, shall attend generally to the business of the Section.

ARTICLE VI
Duties and Powers of the Council

Section 1 - Primary Duties and Powers. The Council shall have general supervision and control of the affairs of the Section, and shall elect ~~officers~~ Officers of this Section (as provided in Article III, Section 7, and in Section 3 of this Article), all subject to the provisions of the ~~By-Laws~~ bylaws of the Section. It shall specifically authorize all commitments or contracts which shall entail the payment of money, and shall authorize the expenditure of all monies appropriated for the use or benefit of the Section. It shall not, however, without prior approval of the State Bar Board of Commissioners, authorize commitments or contracts which shall entail the payment of more money during any fiscal year than the total of: (a) the amount received in Section dues for such fiscal year; and (b) any unexpended funds remaining in the Section treasury from prior years.

Section 2 - Committees. The Council may authorize the Chairperson to appoint committees consisting of Section members to perform such duties and exercise such powers as the Council may direct, subject to the limitations of these ~~By-Laws~~ bylaws and of the ~~By-Laws~~ bylaws of the State Bar of Michigan. The Chairperson shall appoint the Chairperson and members of such committees and may~~— or ondirection from the Council shall —~~ remove any Chairperson or member from such committees and fill any vacancies on such committees created from time to time.

Section 3 - Vacancies. The Council, during the interim between annual meetings of the Section, may fill vacancies in its own membership or in the offices of Treasurer or Secretary or — in the event of a vacancy in both the office of Chairperson and Chairperson-Elect — in the office of Chairperson. No vacancy in the office of Chairperson-Elect shall be filled otherwise than by a vote of the voting members of the Section at the annual meeting next succeeding such vacancy. Members of the Council and ~~officers~~ Officers so appointed shall serve until the close of the next annual meeting of the Section; at the meeting the vacancies shall be filled for the remainder of their respective terms by a special election conducted concurrently with the regular elections, as provided in Article IV herein.

Section 4 - Regular Meetings; Locations; ~~Invites.~~ Invitees. Regular meetings of the Council shall be held at times and locations to be determined by the Chairperson, and the schedule of regular meetings for each fiscal year shall be published in advance. At least one regular meeting of the Council shall be held in each fiscal year. In determining the location of regular or special meetings of the Council, the Chairperson shall endeavor to vary the location of said meetings to accommodate members of the Council who reside or practice in various geographic areas of the State of Michigan; provided however, that the Chairperson shall also consider the maximization of attendance at meetings, and also the wishes (if any) communicated by members of the Council who may be willing to attend meetings of the Council at locations which otherwise might appear geographically remote and inconvenient for them. Members of the Section shall be entitled to attend all meetings of the Council. The Chairperson shall be entitled to invite persons who are not members of the Section to attend any regular or special meeting of the Council. Upon request of any member of the Council, the Council may meet in executive session, without the presence of invitees, to deliberate and vote upon any business which may come before it.

Section 5 - Special Meetings. Special meetings of the Council may be called by the Chairperson or majority of the voting members of the Council at such times and places as either may determine.

Section 6 - Definition of "Attendance". For all purposes under these bylaws, other than the amendment of the bylaws pursuant to Article IX, "attendance" shall be deemed to include physical (in person) attendance, or, upon permission of the Chairperson, attendance by telephonic, electronic, videoconference, or other means of interactive communication.

Section 7 - Quorum. ~~Ten~~ Attendance by ten (10) voting members of the Council ~~physically constitute~~ constitutes a quorum on both regular and special meetings of the Council.

Section ~~7~~8 - Controlling Vote. Provided there is a quorum present at the inception of the meeting, the Council shall act pursuant to a majority of those ~~present~~ in attendance at regular and special meetings of the Council; and the Chairperson, or Chairperson-Elect presiding in the Chairperson's absence, may vote only to break a tie.

Section ~~8~~9 - Failure to Attend Meetings. If any Council member fails to attend~~two (2) - consecutive Council meetings~~ three (3) consecutive Council meetings without an excused absence, ~~or fails to attend three (3) consecutive Council meetings~~ such failure may constitute grounds for removal from the Council, ~~for any reason, such failure shall constitute an automatic, irrevocable, notice of resignation~~ which shall be voted on at the next Council Meeting. If the Council by a majority vote, ~~accepts~~ elects to remove the ~~resignation,~~ member, the Council may then fill the vacancy in accordance with Section 3 of this Article.

ARTICLE VII
Section Meetings~~.~~

Section 1 - Annual Meeting. The annual meeting of the Section shall be held during and at the same place as the annual meeting of the State Bar of Michigan and shall include such programs and order of business as may be arranged by the Council.

Section 2 - Special Meetings. Special meetings of the Section may be called by the Chairperson or by a majority of the voting members of the Council at such times and places as either may determine.

Section 3 - Quorum. ~~Twenty~~ Attendance by twenty (20) members of the Section ~~physically present at any Section meeting shall constitute~~ constitutes a quorum for the transaction of business at any Section meeting; provided, however, that at any annual meeting that shall have been duly noticed and that shall be held during and at the same place as the regularly~~-~~scheduled annual convention of the State Bar of Michigan such members of the Section who attend the annual meeting ~~in person~~ shall collectively constitute a quorum even if their number be less than twenty (20).

Section 4 - Controlling Vote. Provided there is a quorum present, all actions of the Section, other than the amendment of the ~~By-Laws,~~ bylaws, shall be taken pursuant to a majority vote of the members ~~present~~ in attendance at a meeting of the Section.

ARTICLE VIII
Miscellaneous Provisions

Section 1 - Fiscal Year. The fiscal year of the section shall be the same as that of the State Bar of Michigan.

Section 2 - Debts. All debts incurred by the Section, before being forwarded to the Treasurer or to the Executive Director of the State Bar of Michigan for payment, shall first be approved by the Chairperson or by the Treasurer; or, if the Council shall so direct, by both of them.

Section 3 - Compensation. No salary or compensation of any kind shall be paid to any ~~officer,~~ Officer, Council, or committee member.

Section 4 - Approval. Any action by this Section must be approved by the Board of Commissioners or the Representative Assembly of the State Bar of Michigan before it becomes effective as an official act of the State Bar of Michigan. No public statement of a Section or Council position may be made unless in full compliance with the provision of Article IX of the ~~By-Laws~~ bylaws of the State Bar of Michigan (as amended from time to time). Any resolution adopted or action taken by the Section may, on request of the Section, be reported by the Chairperson of the Section to the Board of Commissioners or Representative Assembly of the State Bar of Michigan for action.

ARTICLE IX
Amendments

Section 1 - Amendments. These ~~By-Laws~~ bylaws may be amended at any annual meeting of the Section by a two-thirds (2/3) vote of the members of the Section physically present and voting, provided there is a quorum; and provided further that any such proposed amendment shall first have been submitted for its recommendation to the Council and provided further that no amendment so adopted shall become effective until approved by the Board of Commissioners of the State Bar of Michigan.

Section 2 - Procedures. Any proposed amendment of these ~~By-Laws~~ bylaws shall first be submitted in writing to the Council in the form of a petition signed by at least ten (10) members of the Section and considered by the Council at a regular or special meeting prior to the annual meeting of the Section at which it is to be addressed. The Council shall consider the proposed amendment at such a meeting and shall prepare recommendations thereon; and those recommendations, together with a complete and accurate text of said proposed amendments, shall be published in the *Michigan Bar Journal* or Section newsletter at least thirty (30) days prior to the annual meeting of the Section at which the amendment is to be considered. ■

Summary of the proposed substantive amendments to the Bylaws of the Computer Law Section

Article I, Section 2, Purposes. Statement of purposes is expanded to include issues related to computer software and services, computer networks, electronic commerce, and the Internet.

Article II, Section 1, Membership. Notice requirement added before members more than six months late in payment of dues can be expelled automatically; as amended, nonpayment continuing 30 days after final demand for payment would result in expulsion.

Article II, Section 4, First Year Attorneys. Provides for waiver of Section dues for first year attorneys.

Article III, Officers. Codifies existing progression of “officer track” (Secretary, Treasurer, Chairperson-Elect, Chairperson) and establishes Officer term limits at four consecutive one-year terms and Council member term limits at six years, except for those in officer track.

Article IV, Nomination and Election of Officers. Clarifies factors that may be considered in filling Council vacancies; gender, racial, ethnic, geographic, and professional diversity is promoted.

Article VI, new Section 6, Attendance. “Attendance” is defined to include “physical (in person) attendance, or, upon permission of the Chairperson, attendance by telephonic, electronic, videoconference, or other means of interactive communication.” Related sections of the bylaws are amended to conform to this definition of attendance.

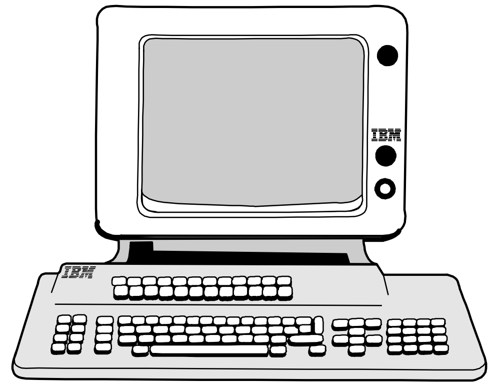
Article VI, Section 9, Failure to Attend Meetings. Prior to amendment, the bylaws required “automatic, irrevocable, notice of resignation” from any Council member who failed to attend “two (2) consecutive Council meetings without an excused absence, or . . . three (3) consecutive Council meetings for any reason”. As amended, the bylaws would provide that failure to attend three (3) consecutive Council meetings without an excused absence may constitute grounds for removal from the Council.

Recommendations of the Council of the Computer Law Section on the proposed amendments

The proposed amendments to the Bylaws and these recommendations are being published in this edition of the Section newsletter to comply with the publication requirements of Article IX of the Bylaws, pertaining to Amendments. The amendments will be voted on at the annual meeting on September ____, 1999, and remain subject to approval by 2/3 majority vote of Section members present at that meeting; no amendment so adopted shall become effective until approved by the Board of Commissioners of the State Bar of Michigan.

The Council recommends adoption of the aforementioned amendments in order to keep pace with changes in the practice of computer law and to encourage broad-based participation in the Section and the Council. The changes to the Purpose statement (Article I) recognize that computer law encompasses such developments as electronic commerce and the Internet. Other amendments seek to promote diversity of membership on the Council (Article IV, Nomination and Election of Officers) and to enable new attorneys to join the Section (Article II, Section 4, First Year Attorneys). In addition, the Council believes that the provisions that required automatic expulsion from the Section or the Council, or mandatory retirement from an Officer position, were too harsh and could inhibit the members’ willingness to participate fully. Accordingly, the amendments to Article II, Section 1, Membership (notice requirement), Article III, Officers (term limits), and Article VI, Section 9, Failure to Attend Meetings, are designed to promote accountability without imposing a draconian result. Finally, the new definition of “Attendance” (Article VI, new Section 6) acknowledges that while physical (in person) attendance is preferred, members can still participate actively in meetings through other means. The Council believes this is a pragmatic approach that maximizes participation, particularly given the attempt to rotate Council meetings among different geographic locations.

Resolving "Y2K" Disputes Through ADR



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The Year 2000 problem, a.k.a. the "millennium bug", arises from the fact that most computers have been programmed to operate with date fields where the last two digits are read as the given year. Systems programmed in this way will fail to recognize the "00" of the year 2000 properly. Instead of reading the digits as "2000", these systems may read them as "1900", perform incorrect calculations, or shut down entirely. Virtually every level of computer, from mainframes to laptops, employ dates. Similarly, dates appear at every conceivable level of computer applications from sales projections, mechanical simulations and inventory control, to loan schedules, drivers licenses, weather forecasts and airplane flight paths. Therefore, the extent and seriousness of the potential range of problems cannot be underestimated. Indeed, estimates of the potential cost to correct the Y2K problem run to the trillions of dollars worldwide.

Approaches to Overcoming the Dilemma

The major hurdle in addressing the Y2K dilemma is getting the attention and willingness of those having decision-making power in the organization. Once this challenge is met, the next steps are to assess Y2K vulnerabilities and needs, and institute a plan that will assure preparedness for the Year 2000 date change. In the final analysis, the typical organization-whether private or public sector-will have to choose to either (a) modify existing hardware/software options, or (b) move to a new hardware/software platform or architecture.

Given the multitude of computer programming languages, products and applications, and the variety of business uses for date fields, computer experts cannot offer a single "silver bullet" solution. Indeed, so pervasive is need for remediation, that scores of vendors have appeared on the scene, marketing over 100 software products purporting to remedy Y2K problems.

Becoming Y2K Compliant

A. Practically speaking, "Year 2000 Compliant" means that computers will recognize "00" as 2000" and accurately send, receive and process data for all dates between the twentieth and twenty-first centuries including the years 1999, 2000 and leap year calculations.

"Y2K Compliant Certification" is an entirely different matter. No formal government, or private national or international certification standard or program exists. Rather, Y2K "Certification" or "Certified" or "Seal of Approval" is either an internally generated user or supplier protocol or standard, or one created by industry associations or private organizations. For example, the Information Technology Association of America has proposed the following definition for use with its industry-based certification program:

"The IT Product(s), when used in accordance with its associated documentation, will be capable upon installation of accurately processing, providing and/or receiving date data from, into, and between the twentieth and twenty-first centuries, including the years 1999 and 2000 and leap year calculations, provided that all other products (*e.g.*, hardware, software and firmware) used in combination with the IT Product(s) properly exchange date data with it."

In an attempt to bring some degree of uniformity to an otherwise national problem, Congress passed the "Year 2000 Information and Readiness Disclosure Act." Apprehension understandably exists about the extent of legal liability due to failure to be Y2K-ready. The objective of the law is to promote the disclosure and exchange of information among parties regarding Y2K-readiness as a means for avoiding-or at least minimizing-Y2K problems from the outset. The law attempts to establish certain uniform principles relating to the disclosure and exchange of information, and creates evidentiary limitations and liability limitations. Generally speaking, these limitations relate to informational disclosures made to third parties in good faith. The limitations are not intended to create broad bars to the introduction of evidence or to liability for Y2K losses.

The Practical Issues

The Y2K dilemma is a systemic problem – it is not limited by any single company's corporate structure, geographical location or industry or to a particular city, state or nation's boundaries or laws. Therefore, the key question for business is, and will be, how to continue doing business once Y2K problems appear. The answer to this question will vary depending upon each business' nature, size, and product or service. Common to all, however, will be the need to resolve any Y2K "glitch" in a way that minimizes business disruption and loss or damage to the particular company's financial position and market share.

When businesses find themselves heading in the direction of conflict because of a Y2K issue the mechanics for producing meaningful, results-oriented solutions should already be in place. This means that conflict should be anticipated and efforts made to formulate non-adversarial procedures for meeting the potential conflicting parties' interests, concerns and needs. Given the immutable nature of the Y2K deadline, the focus of such procedures should be (1) cooperation, (2) minimization of expense, (3) expeditiousness, and (4) minimization of business interruption.

ADR and Y2K – An Ideal Match

ADR concepts and procedures are ideal for addressing Y2K issues. The forms of ADR most applicable to Y2K disputes are: **Negotiation, Mediation/Facilitation** and **Arbitration**:

Negotiation: During contract negotiation or re-negotiation, parties may agree that as soon as a licensing business dispute arises, and before any mediation or arbitration proceeding is initiated, a mandatory face-to-face meeting between specified business executives with authority to resolve the dispute will be held. By holding a face-to-face meeting in which the parties are forced to communicate with each other without the use of intermediaries, the parties may be able to reach a quick and efficient resolution that serves both parties' interests. Even if such a meeting does not resolve the dispute altogether, it may allow the parties to define the issues, narrow the dispute, and/or reach a decision as to how the business relationship can continue even while the dispute remains unresolved.

Mediation: Either in lieu of negotiation, or as the next step in dispute resolution if negotiation is not successful, the parties may agree to mediate their dispute. In mediation, the mediator (a neutral third-party) assists the parties in resolving their dispute by facilitating communication between the parties and emphasizing problem solving. Because mediation is non-binding, a mediator is without authority to force a resolution. Instead, the role of the mediator merely is to facilitate a mutually agreeable resolution.

Mediation is widely favored as a method of dispute resolution because it is private and confidential. Because the focus of mediation is on reaching an agreeable resolution, mediation also generally allows parties to preserve their business relationships. Any advance agreement to mediate, however, should clearly set forth the procedures to be followed and the manner in which the mediator will be selected, thereby allowing the process to start as soon as possible.

Arbitration: The most formal form of ADR, and the method most like litigation, is binding arbitration. In arbitration, the parties submit their dispute to a single arbitrator or panel of arbitrators who are vested with authority to render a final decision on the issue. Like mediation, arbitration often is less time-consuming and less expensive than litigation. The parties can agree to limited discovery and expedited procedures and also to the identity of the decision-makers in advance, thereby speeding up the decision-making process. Because arbitration does, however, involve the submission of the dispute to an outside party, it is most similar to litigation and can become as adversarial and contentious as litigation. For this reason, binding arbitration should be considered as a last step in the dispute resolution process for licensing-related claims.

All of these techniques may be employed in one ADR dispute resolution procedure or a single procedure may be selected or a combination/variation of the three developed. As part of the ADR procedure, the parties can also provide for "information sharing" as a contractual requirement. The importance of this concept cannot be overlooked. As a dispute arises, and as the parties begin to face-off with each other, their willingness to share necessary information to resolve the dispute is often reduced or even stops. An example of an "information sharing" provision follows:

> "Each party covenants and agrees that it will not permit a Year 2000 problem in computer systems, software or equipment owned, leased or licensed by it, its affiliates or subsidiaries to interfere with its performance under this agreement. Each party further agrees to request, from those of its suppliers whose performance may materially affect that party's performance hereunder, that each such supplier undertake the same obligation with respect to such material performance. The parties will use reasonable commercial efforts to cooperate and share information in order to minimize the impact of any Year 2000 problem on performance of this agreement to resolve any dispute as expeditiously as possible. Each party will inform the other party of any circumstance indicating a possible obstacle to such compliance, and the steps being taken to avoid or overcome the obstacle."

Contract provisions for ADR remedies include the following:

<u>Negotiation – Long Form</u>:

"(a) The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this contract. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within [15] days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and the response shall include (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within [30] days after delivery of the disputing party's notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored.

(b) All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence."

Negotiation – Short Form:

"The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives."

Mediation/Facilitation:

Mediation of disputes should be provided under contract among the contesting parties. The following are two examples of agreements to mediate a dispute:

Example #1: Mediation Agreement for Parties And Neutral

Agreement made ___________________________, 19______
between ____
represented by _______________________________________
and____
represented by _______________________________________
and Steven L. Schwartz (the Neutral)

A dispute has arisen between the parties (the "Dispute"). The parties have agreed to participate in a mediation proceeding (the "Proceeding") under the [e.g., *CPR Model Mediation Procedure for Business Disputes*, or *American Arbitration Association Mediation Rules*] [as modified by the mutual agreement] (the "Procedure"). The parties have chosen the Neutral for the Proceeding. The parties and the Neutral agree as follows:

A. Duties and Obligations

1. The Neutral and each of the parties agree to be bound by and to comply faithfully with the Procedure, including without limitation the provisions regarding confidentiality.
2. The Neutral has no previous commitments that may significantly delay the expeditious conduct of the Proceeding and will not make any such commitments.
3. The Neutral shall not be liable for any act or omission in connection with the Proceeding, other than as a result of its/his/her own willful misconduct.

B. Disclosure of Prior Relationships

1. The Neutral has made a reasonable effort to learn and has disclosed to the parties in writing (a) all business or professional relationships the Neutral and/or the Neutral's firm have had with the parties or their law firms within the past five years, including all instances in which the Neutral or the Neutral's firm served as an attorney for any party or adverse to any party; (b) any financial interest the Neutral has in any party; (c) any significant social, business or professional relationship the Neutral has had with an officer or employee of a party or with an individual representing a party in the Proceeding; and (d) any other circumstances that may create doubt regarding the Neutral's impartiality in the Proceeding.
2. Each party and its law firm has made a reasonable effort to learn and has disclosed to every other party and the Neutral in writing any relationships of a nature described in paragraph B.1. not previously identified and disclosed by the Neutral.
3. The parties and the Neutral are satisfied that any relationships disclosed pursuant to paragraphs B.1. and B.2. will not affect the Neutral's independence or impartiality. Notwithstanding such relationships or others the Neutral and the parties did not discover despite good faith efforts, the parties wish the Neutral to serve in the Proceeding, waiving any claim based on said relationships, and the Neutral agrees to so serve.
4. The disclosure obligations in paragraphs B.1. and B.2. are continuing until the Proceeding is concluded. The ability of the Neutral to continue serving in this capacity shall be explored with each such disclosure.

C. Future Relationships

1. Neither the Neutral nor the Neutral's firm shall undertake any work for or against a party regarding the Dispute.

2. Neither the Neutral nor any person assisting the Neutral with this Proceeding shall personally work on any matter for or against a party, regardless of specific subject matter, prior to six months following cessation of the Neutral's services in the Proceeding.
3. The Neutral's firm may work on matters for or against a party during the pendency of the Proceeding if such matters are unrelated to the Dispute. The Neutral shall establish appropriate safeguards to insure that other members and employees of the Neutral's firm working on the Dispute do not have access to any confidential information obtained by the Neutral during the course of the Proceeding.

D. *Compensation*

1. The Neutral shall be compensated for time expended in connection with the Proceeding at the rate of $_________, plus reasonable travel and other out-of-pocket expenses. The Neutral's fee shall be shared equally by the parties.
2. The Neutral may utilize members and employees of the Neutral's firm to assist in connection with the Proceeding and may bill the parties for the time expended by any such persons, to the extent and at a rate agreed upon in advance by the parties.

____

Party

By

____

Party's Attorney

____

Party

By

____

Party's Attorney

____

Neutral Steven L. Schwartz

Example #2: Contract Provision for Mediation

"If a dispute arises out of or relates to this contract or the breach thereof and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation ['according to' or "administered"] by'] the [e.g. *American Arbitration Association* under its *Commercial Mediation Rules* or *Center for Public Resources Model Mediation Procedure for Business Disputes*] before resorting to arbitration, litigation, or some other dispute resolution procedure."

Arbitration

The following is a representative example of an agreement to arbitrate a dispute:

Any dispute arising out of or relating to this contract or the breach, termination or validity thereof [which has not been resolved by a nonbinding procedure as provided herein within [90] days of the initiation of such procedure,] shall be settled by arbitration in accordance with the then current (*CPR Non-Administered Arbitration Rules* or *American Arbitration Association Rules for Commercial Disputes*) in effect on the date of this agreement,] by [a sole arbitrator] [three independent and impartial arbitrators, none of whom shall be appointed by either party]; [provided, however, that if either party will not participate in a nonbinding procedure, the other may initiate arbitration before expiration of the above period.] The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1-16, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be _______________________. The arbitrator(s) [are] [are not] empowered to award damages in excess of compensatory damages [and each party hereby irrevocably waives any right to recover such damages with respect to any dispute resolved by arbitration].

The statute of limitations of the State of _____________________ applicable to the commencement of a lawsuit shall apply to the commencement of an arbitration hereunder, except that no defenses shall be available based upon the passage of time during any negotiation or mediation called for under this Agreement.

ADR-The Preferred Process for Resolving Y2K Disputes

Once touted as the "waive of the future," ADR is fast becoming standard operating procedure both in and out of the traditional dispute resolution system. Perhaps no other mechanism holds the greatest potential for easing the demands upon the courts, lawyers, business, governments and the public for addressing the Y2K dilemma soon to be upon us. ■

Recent Developments In Computer Law

By David R. Syrowick
Brooks & Kushman P.C.

U.S. SUPREME COURT

Patents

As reported at 48 U.S.P.Q.2d 1641, the U.S. Supreme Court held on November 10, 1998 that the "on-sale" bar to patentability applies when an inventor's product is the subject of a commercial offer for sale and the invention is made "ready for patenting" either by its reduction to practice or by a description that fully discloses the invention. The court's unanimous decision questioned the Federal Circuit's "substantially complete" standard but affirmed the Federal Circuit's prior ruling that a reduction to practice is not required to apply the "on-sale" bar under 35 U.S.C. § 102(b). The court acknowledged that reduction to practice ordinarily provides the best evidence that an invention is complete but explained that it does not follow that proof of reduction to practice is necessary in every case. *Pfaff v. Wells Electronics, Inc.*

As reported at 57 BNA's PTCJ 210, the Supreme Court on January 11, 1999 denied review of the Federal Circuit's ruling that a machine that performs mathematical calculations to transform data is statutory subject matter under 35 U.S.C. § 101. The Federal Circuit had held that a data processing system that uses a mathematical algorithm to calculate data for administering mutual funds constitutes a practical application of the algorithm that is patentable under 35 U.S.C. § 101 because it produces a useful, concrete, and tangible result. *State Street Bank & Trust v. Signature Financial Group, Inc.*

Patent and Lanham Acts — State Immunity

As reported at 57 BNA's PTCJ 202, the Supreme Court on January 8, 1999 agreed to review whether Congress improperly withdrew state 11th Amendment immunity from being sued in federal court for violating the Patent Act and the Lanham Act. Petitions for certiorari from the Federal Circuit and the Third Circuit ask whether Congress had the power under Section 5 of the 14 Amendment to enact statutes that abrogate state immunity from suit for patent infringement and violations of Section 43(a) of the Lanham Act. *Florida Prepaid Post Secondary Education Expense Board v. CSB* and *CSB v. Florida Prepaid Post Secondary Education Expense Board*, respectively.

U.S. COURT OF APPEALS

Patent — Insurance Coverage

As reported at 49 U.S.P.Q.2d 1223, the U.S. Court of Appeals for the Sixth Circuit held on December 21, 1998 that patent infringement is not covered by an "advertising injury" clause of an insurance policy since it would have been explicitly mentioned, as was copyright infringement, if the parties had intended coverage. *Herman Miller, Inc. v. Travelers Indemnity Co.*

Copyright

As reported at 57 BNA's PTCJ 26, the U.S. Court of Appeals for the Second Circuit released two opinions on November 24, 1998 holding that West Publishing Co. enjoys no copyright protection in the internal page number sequencing and certain other non-creative enhancements of court opinions published in its case reporters. Whether the reporters are considered compilations or derivative works, the elements at issue lack sufficient originality or creativity to be copyrighted, the court says, creating a circuit split. The decision allows two competitors to copy West's reports on their CD-ROM products after excising West's syllabi, headnotes, and key numbers. The remaining editorial enhancements, including page numbers, attorney lists, subsequent procedural history, and editing of parallel citations, involve "obvious" choices from among limited options, the court says. *Matthew Bender & Co. v. Hyperlaw, Inc.*

As reported at 49 U.S.P.Q.2d 1635, the U.S. Court of Appeals for the Seventh Circuit held on January 25, 1999 that the District court properly denied defendants' request for an injunction prohibiting plaintiff from terminating a copyright licensing agreement pending resolution of an action for collection of unpaid royalties since there was no concrete evidence that defendants would suffer substantial and irreparable injury if they desisted from using licensed software while the case proceeded. *Micro Data Base Systems, Inc. v. Nellcor Puritan Bennett, Inc.*

As reported at 48 U.S.P.Q.2d 1668, the U.S. Court of Appeals for the Fifth Circuit held on October 30, 1998 that alleged infringement of computer software by defendant independent contractors is "sheltered" under rights of licensee, since license agreement permits licensee to "provide or otherwise make available" software to consultants such as defendants. *Hogan Systems, Inc. v. Cybresource International, Inc.*

As reported at 57 BNAs PTCJ 302, the U.S. Court of Appeals for the Fifth Circuit held on January 29, 1999 that a copyright license limiting the use of operating system software to the copyright owner's hardware constituted copyright misuse. Vacating an injunction for copyright infringement, the court pointed out that the license provided the copyright owner patent-like protection against the development of competing hardware. Although the court sustained a verdict of trade secret violations, it rejected an antitrust claim for not identifying the relevant product market, rejected a misappropriation claim as preempted by copyright law, and rejected a claim of tortious interference with prospective contracts as unsupported by the evidence. *Alcatel USA, Inc. v. DGI Technologies, Inc.*

Copyright & Trademark

As reported at 48 U.S.P.Q.2d 1481, the U.S. Court of Appeals for the Fifth Circuit on October 1, 1998 agreed to *en banc* review of a panel decision in *Chavez v. Arte Publico Press* that states may not be sued in federal court for copyright or trademark infringement. At the same time, the panel in this case handed down a revised version of its opinion which includes a dissenting opinion by Senior Judge John Minor Wisdom. Judge Wisdom wrote that the doctrine of implied waiver of immunity survived in limited form, and that the 14th Amendment provided Congress with the authority to abrogate immunity in copyright and trademark cases.

Trademark — Insurance Coverage

As reported at 57 BNA's PTCJ 329, the U.S. Court of Appeals for the Sixth Circuit held on February 8, 1999 that a general liability policy's "advertising injury" provision did not obligate an insurer to defend against a service mark infringement suit. *ShoLodge, Inc. v. Travelers Indemnity Co.*

Unfair Competition

As reported at 49 U.S.P.Q.2d 1188, the U.S. Court of Appeals for the Eighth Circuit held on December 11, 1998 that a plaintiff asserting claim for tampering with computer data and equipment in violation of Missouri law failed to show that defendants disclosed confidential information while accessing plaintiff's computer network in course of their employment with plaintiff. *Pony Computer, Inc. v. Equus Computer Systems of Missouri, Inc.*

Antitrust

As reported at 67 BNA's U.S. Law Week 1451, the U.S. Court of Appeals for the D.C. Circuit, citing a 1913 statute, held that depositions in the government's antitrust suit against Microsoft Corp. must be open to the public unless the trial judge determines that closure is required to protect trade secrets. *United States v. Microsoft Corp.*

Taxation

As reported at 67 BNA's U.S. Law Week 1397, the U.S. Court of Appeals for the Seventh Circuit recently held that a company that modified purchased software to improve its own business systems did not "discover" technological information or engage in a "process of experimentation" so as to be eligible for a qualified research tax credit. In any event, its says, the taxpayer's computer modification projects fall within the tax credit's exclusion for software developed primarily for internal use. The "discovery" of technological information contemplated by the tax credit must expand or refine principles of computer science, the court says; merely modifying a commercially available software package is not enough. Also, the process of experimentation must involve something more than the debugging of computer programs. *United Stationers v. United States*.

Civil Procedure

As reported at 67 BNA's U.S. Law Week 1371, the U.S. Court of Appeals for the First Circuit recently determined that balancing the interests of academics against the need for civil discovery, Microsoft Corp. cannot subpoena academic research materials for use in its defense against the federal government's antitrust suit. *Cusumano, In re (United States v. Microsoft Corp.)*

U.S. DISTRICT COURT

Patent

As reported at 57 BNA's PTCJ 140, the U.S. District Court for the Southern District of New York held on November 19, 1998 that factual issues concerning the commercial nature of a software license and allegations of experimental use preclude a summary judgment of patent invalidity for violations of the "on-sale" bar. *Isogon Corp. v. Amdahl Corp.*

Patent — Personal Jurisdiction

As reported at 49 U.S.P.Q.2d 1474, the U.S. District Court for the Eastern District of Missouri held on November 13, 1998 that evidence that foreign infringement defendant included accused product on its Internet web site, which is accessible to Missouri residents, does not demonstrate minimum contacts with forum sufficient to support exercise of personal jurisdiction, since foreign defendant does not sell product through Internet or otherwise. *Mallinckrodt Medical, Inc. v. Nycomed Imaging AS*.

Copyright

As reported at 57 BNA's PTCJ 76, the U.S. District Court for the Northern District of California held on November 17, 1998 that Microsoft Windows98 and other programs infringe the copyright for the Java programming environment because the Microsoft programs fail to satisfy a compatibility requirement in the Java license. The court gave Microsoft 90 days to rework both its Windows98 and its Internet Explorer browser to make them compatible with Sun's Java specifications. The judge also ordered Microsoft to rewrite the Java development kit it provides to software programmers. However, as reported in the February 19, 1999 issue of the WALL STREET JOURNAL, the U.S. District Court Judge Ronald Whyte in San Jose, California, ruled that a preliminary injunction he issued against Microsoft in November doesn't prohibit the software giant from developing its own independent version of Sun's Java programming language. *Sun Microsystems, Inc. v. Microsoft Corp.*

As reported at 48 U.S.P.Q.2d 1266, the U.S. District Court for the Northern District of Illinois held on July 29, 1998 that defendant's copying and distribution of a "shareware" version of plaintiff's computer games, for review by subscribers to defendant's service, was not fair use, but did no constitute willful infringement. *Storm Impact, Inc. v. Software of the Month Club*.

As reported at 57 BNA's PTCJ 7, the U.S. District Court for the Central District of California held on October 26, 1998 that a portable music player that enables a user to download and play back music files retrieved from the Internet is covered by the Audio Home Recording Act. However, the court refused to issue a preliminary injunction barring sale of the "Rio" player, citing a failure to demonstrate irreparable injury. The court reasoned that the alleged injury of increased traffic in illegal music files is precisely the type of injury that the statute's royalty provisions were adopted to redress. *Recording Industry Association of America, Inc. v. Diamond Multimedia Systems, Inc.*

As reported at 56 BNA's PTCJ 790, the U.S. District Court for the Northern District of California held on October 13, 1998 that the right to reproduce an author's contribution "as part" of a collective work under 17 U.S.C. § 201(c) does not extend to the copying of the individual contribution. The court ruled summarily that permission of the contributing authors, rather than the publisher of the collective work, should have been obtained by an Internet delivery service that copied and distributed individual works originally appearing in various scholarly journals. The court distinguished the recent *Tasini* case by noting that the photocopying of the plaintiffs' articles in this case was not a revision of the original collective works from which they came. *Ryan v. Carl Corp.*

As reported at 56 BNA's PTCJ 796, the U.S. District Court for the District of Utah held on September 24, 1998 that a government contract to produce and deliver computer programs to Utah, among other places, did not create personal jurisdiction in Utah over a copyright infringement defendant because the details of distribution were dictated by the government, not by the defendant. *Patriot Systems, Inc. v. C-Cubed Corp.*

As reported at 48 U.S.P.Q.2d 1794, the U.S. District Court for the Southern District of New York held on October 13, 1998 that the infringement plaintiff is the prevailing party for purpose of recovering attorneys' fees and costs, even though he was awarded only modest statutory damages, since the court found that plaintiff successfully proved infringement as to two photographs posted on the Internet by defendants. *Scanlon v. Kessler*.

As reported at 48 U.S.P.Q.2d 1335, the U.S. District Court for the Northern District of California held on September 7, 1998 that infringement defendants failed to show that plaintiff, in acquiring copyright at issue, was party to fraudulent transfer within the meaning of California's Uniform Fraudulent Transfers Act. *CyberMedia, Inc. v. Symantec Corp.*

As reported at 49 U.S.P.Q.2d 1065, the U.S. District Court for the Southern District of New York held on November 13, 1998 that plaintiff's photographic transparencies of well-known artworks, which are substantially exact reproductions of public domain works, are not copyrightable under law of United Kingdom, and are not infringed, under U.S. law, by compact disk that contains digital images of same works. *Bridgeman Art Library, Ltd. v. Corel Corp.*

As reported at 48 U.S.P.Q.2d 1576, the U.S. District Court for the District of New Jersey held on February 13, 1998 that authorization, within United States, of infringing acts to be performed abroad constitutes direct infringement actionable under U.S. copyright law, and a reasonable jury could conclude that defendant authorized its overseas affiliates' infringement of plaintiff's copyrighted computer software. *Expediters International of Washington, Inc. v. Direct Line Cargo Management Services, Inc.*

Copyright — Personal Jurisdiction

As reported at 49 U.S.P.Q.2d 1469, the U.S. District Court for the Northern District of California on October 27, 1998 held that it may assert personal jurisdiction over infringement defendants that have posted interactive website on Internet, accessible to California residents, which permits users to download allegedly infringing copies of demonstration computer program. *3DO Co. v. Poptop Software, Inc.*

Trademarks

As reported at 57 BNA's PTCJ 36, the U.S. District Court for the Southern District of New York held on October 28, 1998 that a small firearms dealer's use of "gunsareus.com" as its Internet address does not infringe or dilute the mark of the famed toy retailer Toys 'R' Us. *Toys 'R' Us, Inc. v. Feinberg*.

As reported at 48 U.S.P.Q.2d 1467, the U.S. District Court for the Southern District of New York held on September 10, 1998 that defendants have diluted plaintiff's famous "Barbie" mark by using the term "Barbie's Playhouse", in font and coloring most commonly associated with plaintiff's mark, and doll-like figure resembling "Barbie" doll, on World Wide Web site offering adult entertainment services. *Mattel, Inc. v. Jcom, Inc.*

As reported at 57 BNA's PTCJ 59, the U.S. District Court for the Eastern District of Virginia held on October 29, 1998 that flooding an Internet service provider's customers with unsolicited e-mail advertising, after being warned to stop the practice, violates both state and common law and the federal trademark statutes. The "Spam" e-mail ads contained the letters "aol.com" in their headers. *America Online, Inc. v. IMS.*

As reported at 57 BNA's PTCJ 207, the U.S. District Court for the Northern District of California ruled on December 30, 1998 that Network Solutions Inc.'s suspension of an Internet domain name under its domain name dispute policy based on a challenge made by a trademark owner does not amount to a civil conspiracy in violation of federal antitrust laws after receiving evidence of trademark infringement by the plaintiff. *Beverly v. Network Solutions, Inc.*

As reported at 67 BNA's U.S. Law Week 2413, Microsoft, as well as Omega Protein Corp., have filed lawsuits seeking to protect their trademarks from cybersquatters. In the two lawsuits filed in federal district court in Texas, Microsoft and Omega argue that cybersquatters infringe or dilute trademarks, or confuse Internet users about the source of the Internet sites located by the domain names, in violation of federal and state trademark and unfair competition laws.

As reported at 57 BNA's PTCJ 260, the U.S. District Court for the District of Massachusetts recently held that the mark "Labrador" is unprotectable for Intranet engines. *Labrador Software, Inc. v. Lycos, Inc.*

As reported at 57 BNA's PTCJ 309, the U.S. District Court for the Central District of California held on December 21, 1998 that the Internet website "Bally Sucks" neither infringes nor dilutes the registration "Bally" mark for health clubs. *Bally Total Fitness Holding Corp. v. Faber.*

As reported at 57 BNA's PTCJ 324, the U.S. District Court for the Eastern District of Virginia held on February 2, 1999 that the facts of Internet life make is somewhat more likely that consumers seeking a particular company will mistakenly arrive at the website of a competitor that uses an "intuitive" domain name that is similar to the name of the company. The court held that the defendant's "washingtonspeakers.com" domain name constitutes a colorable imitation of the plaintiff's "Washington Speakers Bureau" trademark that is likely to confuse consumers as to the source or sponsorship of the defendant's competing speaker agency. *Washington Speakers Bureau, Inc. v. Leading Authorities, Inc.*

As reported at 48 U.S.P.Q.2d 1779, the U.S. District Court for the Eastern District of Pennsylvania held on June 1, 1998 that trademark counterfeiting claims do not lie against defendants' alleged uses of plaintiff's "Bunny" and "Rabbit Head design" marks in connection with World Wide Web site that are not covered by plaintiff's registration. *Playboy Enterprises, Inc. v. Universal Tel-A-Talk, Inc.*

Trademarks — Jurisdiction

As reported at 57 BNA's PTCJ 136, the U.S. District Court for the Southern District of New York held on November 24, 1998 that allegations that a nonresident defendant was a "cyber pirate" who aimed his extortionate conduct at a plaintiff in New York failed to establish personal jurisdiction under New York's long arm statute. The court distinguished the Ninth Circuit's ruling in *Panavision Int'l L.P. v. Toeppen* both factually and legally, finding that the defendant here is not the type of "cyber pirate" sued in *Panavision* and that the New York long-arm statute is more stringent than the California statute. *K.C.P.L. v. Nash*.

First Amendment

As reported at 67 BNA's U.S. Law Week 1333, the U.S. District Court for the Eastern District of Virginia recently held that a county library violated the First Amendment by using software to block Internet access to child pornography and material deemed harmful to minors. It found that the library is a limited public forum and that the blocking policy is therefore subject to strict scrutiny. Although the court assumed the county's asserted interests in minimizing access to illegal pornography and avoiding a sexually harassing environment were compelling, it concluded that the policy is not needed or narrowly tailored to attain those goals. For one thing, privacy screens on computers are a less restrictive means of achieving the same ends. Also, the policy restricted adults to viewing material deemed fit for minors. *Mainstream Loudoun v. Board of Trustees of the Loudoun County Library*.

As reported at 67 BNA's U.S. Law Week 1462, the U.S. District Court for the Eastern District of Pennsylvania on February 1, 1999 ruled that the latest federal statute intended to deter minors' access to indecent communications over the Internet likely violates the First Amendment, preliminarily enjoining enforcement of the Child Online Protection Act (COPA). The COPA, signed by President Clinton in October, seeks to force commercial website operators to collect some sort of identification code as proof of age, such as a credit-card number, from visitors before allowing viewers to gain access to material that is deemed "harmful to minors." Earlier, on November 30, 1998, the district court issued a temporary restraining order enjoining enforcement of the COPA. *American Civil Liberties Union et al., v. Janet Reno.*

Licensing

As reported at 1998 U.S. Dist. Lexis 12487, No. 97-1429-JTM, the U.S. District Court for the District of Kansas on August 7, 1998 upheld a forum selection cause in a software license agreement because it was not clearly unreasonable or unjust, nor was it obtained by fraud or overreaching. *Double A Home Care, Inc. v. Epsilon Systems, Inc.*

Computer Tampering

As reported at 5 F.Supp.2d. 1023, the U.S. District Court for the Eastern District of Missouri on May 26, 1998 held that a computer tampering suit may proceed against attorneys who took with them a "form file" of various pleadings and memoranda they had prepared in the course of their work for a number of firm clients. Some of the documents in their files were accessed from the firm's LAN and copied onto floppy disks. Chrysler sued the attorneys for, among other things, tampering with computer data and equipment in violation of a Missouri statute providing a civil remedy for an owner of a computer system, network, program, service, or data against any person violating the Missouri criminal statute prohibiting tampering with computer data. The tampering statute's intent element makes it apply only to a person who tampers "knowingly and without authorization or without reasonable grounds to believe he has such authorization." *Chrysler Corp. v. Carey.*

Attorney/Client Privilege

As reported at 48 U.S.P.Q.2d 1861, the U.S. District Court for the Southern District of California held on July 27, 1998 that the attorney/client privilege applies to e-mail, even though it is questionable whether there can be anticipation of confidentiality in e-mail messages, since public has only recently become aware of problems with confidentiality of e-mail. *Amylin Pharmaceuticals Inc. v. University of Minnesota.*

Lanham Act

As reported at 57 BNA's PTCJ 159, the U.S. District Court for the District of Massachusetts held on November 18, 1998 that use of Internet "META" descriptions that misdirect searches to a competitor's website warrants preliminary relief for Lanham Act violations. *Niton Corp. v. Radiation Monitoring Devices, Inc.*

Attorneys — Unauthorized Practice of Law

As reported at 67 BNA's U.S. Law Week 1467, the U.S. District Court for the Northern District of Texas recently held that the sale of software products that assist non-lawyers in drafting their own legal documents violates a Texas statute prohibiting the unauthorized practice of law. By offering various legal forms – wills, leases, and such – and tailoring them to the purchaser's state of residence, the software manufacturer enters the forbidden realm of unlicensed law practice, the court said. The court rejected the manufacturer's argument that applying the statute to the marketing of computer software infringes First Amendment free speech rights. Texas has a significant interest in protecting its citizens from being misled by unlicensed practitioners of the law, it says. *Unauthorized Practice of Law Committee v. Parsons Technology, Inc.*

COURT OF INTERNATIONAL TRADE

As reported in the December 23, 1998 issue of the WALL STREET JOURNAL, the New York-based Federal Court of International Trade recently rejected at least temporarily the International Trade Commission's finding that underpriced Japanese supercomputers threatened to injure the Cray Research division of Silicon Graphics, Inc. The decision of the New York-based Court of International Trade last week gives the commission 90 days to reconsider its 1997 finding against NEC Corp. and Fujitsu Ltd. of Japan. If the commission finds imports don't threaten Cray, the U.S. may have to lift the high antidumping duties it slapped on Japanese supercomputers.

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

As reported at 57 BNA's PTCJ 182, on December 23, 1998, the World Intellectual Property Organization recommended new procedures and policies for registering Internet domain names designed to protect trademark rights online, including requirements that domain name registrants provide detailed contact information and agree to alternative dispute resolution procedures.

STATE COURT

Contracts of Adhesion

As reported at 676 N.Y.S.2d 529, a New York appeals court on August 13, 1998 held that Gateway 2000's "Accept or Return" policy does not constitute a contract of adhesion. *Brower, et al. v. Gateway 2000, Inc. et al.*

First Amendment — Trespass

As reported in the December 7, 1998 issue of the WALL STREET JOURNAL, a Sacramento County Superior Court Judge on November 24, 1998 granted Intel Corp. a court order prohibiting a former employee from sending electronic mail to its employees. The judge said that mass e-mails by Kourosh Kenneth Hamidi to as many as 29,000 Intel employees constituted an illegal "trespass" into Intel's computer system.

U.S. PATENT AND TRADEMARK OFFICE

General

As reported at 56 BNA's PTCJ 791, 800, the Patent and Trademark Office on October 26, 1998 issued for public comment a proposed policy for use of the Internet to conduct PTO business. The policy covers the PTO's communications with patent and trademark applicants via e-mail and its use of the Internet to do patent and trademark searches.

Patents

As reported at 56 BNA's PTCJ 756, 769, the Patent and Trademark Office on October 21, 1998 released additional training materials for application of its 1996 examination guidelines for computer-related inventions. The added materials cover patent applications in the areas of business, artificial intelligence, and mathematical processing.

As reported at 57 BNA's PTCJ 114, the U.S. Court of Appeals for the Federal Circuit's recent affirmation of the patentability of a data processing system for administering mutual funds has triggered a "boom" in patent applications for business method-related software. This is the report given by Deputy Commissioner of Patents and Trademarks Q. Todd Dickinson Dec. 9, 1998 in a luncheon address at the annual "PTO Day" conference in Washington, D.C.

As reported in the January 15, 1999 issue of the WALL STREET JOURNAL, the number of patents issued by the U.S. Patent and Trademark Office is skyrocketing. A record 151,024 patents for inventions were issued last year, a 33% jump from 113,720 in 1997. International Business Machines Corp. of Armonk, N.Y. led the pack for the sixth year in a row, with a record 2,657 patents received, up 54% from 1997.

Trademarks

As reported at 48 U.S.P.Q.2d 1280, the Trademark Trial and Appeal Board on July 13, 1998 stated that opposer's existing registration for "penguin" design mark for books precludes registration of very similar mark for computer programs for maintenance management, even though applicant's petition to restrict scope of goods in opposer's registration is pending. *Penguin Books, Ltd. v. Eberhard*.

As reported at 44 U.S.P.Q.2d 1478, the Trademark Trial and Appeal Board on December 14, 1998 ruled that "Web Communications" is a generic term for providing consulting services to businesses seeking to establish sites on global computer network, and thus is not registrable as a trademark. *In re Web Communications*.

COPYRIGHT OFFICE

As reported at 59 BNA's PTCJ 6, 17, on November 3, 1998 the Copyright Office issued an interim regulation implementing a statutory process for Internet service providers to limit their liability for online copyright infringement. By designating an agent to receive notices of infringement claims from copyright owners, ISPs will be able to limit their infringement liability for information placed on their systems by users.

SECURITIES AND EXCHANGE COMMISSION Y2K

As reported in the October 21, 1998 issue of the WALL STREET JOURNAL, on October 20th, the Securities and Exchange Commission said in an administrative complaint that it charged 37 brokerage firms with failing to file status reports of their plans to update computer systems to handle the year 2000 coding problem. As part of a coordinated effort, the National Association of Securities Dealers charged 59 firms with filing reports late. Nearly all the targeted firms are relatively small. Nineteen of the 37 firms charged by the SEC have agreed to settlement offers, consisting of a cease and desist order, a censure and civil penalty ranging from $5,000 to $25,000, the SEC said. As part of the settlements, firms have agreed to pay fines and to file year 2000 status reports. The SEC says it will go to court to try to force firms that are fighting the charges to comply with the reporting requirement and pay fines.

Internet Fraud

As reported at 67 BNA's U.S. Law Week 2250, the SEC recently filed 23 separate actions charging promoters with using fraudulent e-mails, online newsletters, message boards, and Web sites to promote microcap stocks.

DEPARTMENT OF COMMERCE

As reported at 67 BNA's U.S. Law Week 2205, recently the Department of Commerce and Network Solutions, Inc. entered into an agreement that will begin a transition of domain name system management responsibilities from the U.S. government to a new nonprofit corporation.

As reported at 57 BNA's PTCJ 307 on February 8, 1999, the Internet Corporation for Assigned Names and Numbers released for public comment proposed guidelines for opening the generic top-level domain name registration business to competition for the first time. The proposed guidelines spell out the requirements that prospective new registrars must meet before being accredited to dole out domain names in the ".com", ".net", and ".org" top-level domains under the administrations's plan to divest itself of management of the domain name system.

AMERICAN LAW INSTITUTE — LICENSING

As reported at 57 BNA's PTCJ 32, there is a proposal to limit the scope cle 2B, Licenses, says that the draft is not yet ready for formal consideration by the ALI membership. The scope of the proposed new uniform law on software licensing needs further clarification; and there is work still to be done on the public policy and judicial review provisions, according to the council. Meanwhile, members of the Article 2B drafting committee are busy defending their proposal against criticism. The Federal Trade Commission and others complain that the proposed law does not adequately recognize existing consumer protection laws. But the drafters, citing a laundry list of provisions supporting their position, say the draft law provides safeguards that are equal to or surpass current legal protections.

FEDERAL LEGISLATION

Y2K Information Disclosure Act

As reported in 15 THE COMPUTER LAWYER 29, on October 19, 1998, President Clinton signed the Year 2000 Information Disclosure Act (S. 2392), designed to encourage the disclosure and exchange of information among companies, their vendors and their customers about computer processing problems (and solutions) relating to the Year 2000. The new law provides that there can be no civil liability based on an allegedly false or inaccurate statement made with respect to a Year 2000 problem, unless the statement was (a) material; and (b) made with knowledge that it was false, inaccurate or misleading or made with an intent to mislead or with a grossly negligent failure to determine its accuracy. The law also provides that republication of a third party settlement regarding Year 2000 readiness cannot lead to liability for defamation or trade disparagement absent knowledge that the statement was false, inaccurate or misleading, provided that the speaker discloses that the information was supplied by a third party and has not been verified.

Copyright

On October 28, 1998, the President signed into law H.R. 2281, the "Digital Millennium Copyright Act". H.R. 2281 provides implementing legislation for The World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, which were ratified by the Senate on October 21. The enactment also limits copyright liability of Internet online services providers, provides copyright-like protection for boat hull designs, and makes numerous other amendments to copyright law regarding works in digital format. Provisions in the House-passed bill relating to protection for databases and a reversal of the Supreme Court's *Quality King* decision were dropped from the final bill.

Trademark

As reported at 57 BNA's PTCJ 12, Internet bill (H.R. 3332) was signed into law with domain name study added.

STATE LEGISLATION

Effective October 1, 1998, the State of Michigan on December 30, 1998 enacted the "Uniform Trade Secrets Act", Public Act No. 448, "to protect trade secrets; to prohibit disclosure of trade secrets; to provide for remedies and to repesal acts and parts of acts." The Act reads as follows:

M.C.L.A. § 445.1901

Sec. 1. This act shall be known and may be cited as the "uniform trade secrets act".

M.C.L.A. § 445.1902

Sec. 2. As used in this act:

(a) "Improper means" includes theft, bribery, misrepresentation, breach, or inducement of a breach of a duty to maintain secrecy or espionage through electronic or any other means.

(b) "Misappropriation" means either of the following:

(i) Acquisition of a trade secret of another by a person who knows or had reason to know that the trade secret was acquired by improper means.

(ii) Disclosure or use of a trade secret of another without express or implied consent by a person who did one or more of the following:

(A) Used improper means to acquire knowledge of the trade secret.

(B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it, acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or derived from or through a person who owed a duty to the person to maintain its secrecy or limit its use.

(C) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(c) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that is both of the following:

(i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

M.C.L.A. § 445.1903

Sec. 3(1) actual or threatened misappropriation may be enjoined. Upon application to the court of competent jurisdiction, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) If a court determines that it would be unreasonable to prohibit future use of a trade secret, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

M.C.L.A. § 445.1904

Sec. 4 Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

M.C.L.A. § 445.1905

Sec. 5 If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.

M.C.L.A. § 445.1906

Sec. 6 In an action under this act, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

M.C.L.A. § 445.1907

Sec. 7 An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

M.C.L.A. § 445.1908

Sec. 8(1) Except as provided in subsection (2), this act displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(2) This act does not affect any of the following:

(a) Contractual remedies, whether or not based upon misappropriation of a trade secret.

(b) Other civil remedies that are not based upon misappropriation of a trade secret.

(c) Criminal remedies, whether or not based upon misappropriation of a trade secret.

M.C.L.A. § 445.1909

Sec. 9 This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

M.C.L.A. § 445.1910

Sec. 10 This act takes effect October 1, 1998 and does not apply to misappropriation occurring before the effective date. With respect to a continuing misappropriation that began before the effective date, this act does not apply to the continuing misappropriation that occurs after the effective date.

M.C.L.A. §§ 752.771, 752.772, 752.773

Enacting Section 1. 1968 PA 329, MCL 752.771 to 752.773, is repealed.

SETTLEMENTS

Patents

As reported in the December 18, 1998 issue of the WALL STREET JOURNAL, Intel Corp. and graphics chip maker S3, Inc. have agree to end a feud over microprocessor patents and grant each other patent cross-licenses for 10 years. S3 had bought dozens of patents from defunct Exponential Technology, Inc. Industry observers said one Exponential patent appeared to cover a technique that Intel planned to use in Merced, a microprocessor chip due in 2000.

Y2K

As also reported in the December 18, 1998 issue of the WALL STREET JOURNAL, a medical software company in Florida agreed to a settlement of a Y2K lawsuit. Medical Manager Corp. of Tampa, Fla., agreed to provide upgraded software packages to about 12,000 doctor's offices nationwide. The offices had sued the company in eight separate class actions claiming that the software, used to track patient billing and appointments, wouldn't work in 2000. In the out-of-court settlement, Medical Manager also agreed to pay a total of $1.5 million, including legal fees and cash settlements, according to the settlement, which is subject to approval by the U.S. District Court in Camden, N.J.

Antitrust

As reported in the March 9, 1999 issue of the WALL STREET JOURNAL, Intel has agreed to settle ITC charges that it had used monopoly power to intimidate customers with which it had patent disputes. ■

ANNUAL 64th MEETING

Mark Your Calendar!

September 15-17, 1999

Amway Grand Plaza
Grand Rapids

Computer Law Section WILL MEET ON September 15, 1999

business MEETING & ELECTIONS WILL START AT 2:00 PM
PROGRAM WILL BEGIN AT 2:30 pM

Grand Plaza Hotel
Emerald Room (B), Conference Level

Program:
"ELECTRONIC COMMERCE IN THE NEW MILLENNIUM"

guest speakers:

KENT D. STUCKEY

ARMEN KABODIAN—GREAT LAKES REGIONAL AREA MANAGER, VERISIGN, INC

HOLLI HART TARGAN—PARTNER, JAFFE, RAITT, HEUER & WEISS, PC

please take this opportunity to join us for our annual meeting, elections and program.

If you have an article you would like
considered for publication,
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