

**2003 Edward F. Langs
Writing Award
ESSAY COMPETITION RULES**

1. The award will be given to the student article, which in the opinion of the judges makes the most significant contribution to the knowledge and understanding of Computer or Internet law. Factors that are taken into consideration include originality, timeliness of the subject, depth of research, accuracy, readability and the potential for impact on the law.
2. The top three papers will receive awards of \$500, \$300 and \$200 respectively (in US dollars)
3. All entries must be original and must not have been submitted to any other contest within the last 12 months.
4. All entries must include the submitter's name(s), current address, current telephone number and college or university attended.
5. All articles must be typed, double-spaced and submitted on letter-size (8½ by 11 inch) plain, white, bond paper (no onion skin).
6. Entries must be typed with margins of 10 and 70, respectively, along with top and bottom margins of no less than one inch each.
7. All entries must contain proper citations, including footnotes at the end of the entry.
8. Entry of at least 10 pages is preferred.
9. All rights to the entries shall become the property of the State Bar of Michigan.
10. The Computer Law Section reserves the right to make editorial changes and publish the article(s) in the Section Newsletter.
11. The entry must be post-marked by June 30, 2003.
12. Entries are to be mailed to:
David R. Syrowik, Chairman
Computer Law Section Essay Competition
Brooks & Kushman P.C.
1000 Town Center, 22nd Floor
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Council Member Biographies



Paul James Raine Treasurer, Computer Law Section

Paul Raine leads the Evictions and Landlord Tenant departments at Potestivo & Associates, P.C., a Creditor's Rights law firm in Sterling Heights, Michigan. Paul attends hearings in the District and Circuit Courts of South East Michigan daily; providing effective counsel on behalf of creditors in adversarial proceedings.

In addition to his traditional litigation skills, Paul is an innovator in applying technology to the legal environment. He is the Treasurer of the State Bar of Michigan's Computer Law Section and also serves as the Section's Newsletter Editor. Paul was also a contributing author of the book: *Internet Guide for Michigan Lawyers*, published by the Institute for Continuing Legal Education.

Mr. Raine teaches classes in the evening as an Adjunct Professor at the University of Detroit - Mercy School of Law, Walsh College, and Lawrence Technological University. Paul's teaching assignments include classes in Computer Law, Ethics, Leadership, Contracts, and Intellectual Property.

Prior to practicing law, Mr. Raine was the Commercial Sales Manager for Sprint's Broadband Wireless Group in Troy, Michigan. Before joining Sprint, he was the Regional Director of Internet Services for Charter Communications, Inc. – one of Michigan's largest cable television providers. Before joining Charter, Mr. Raine was the President of Michigan Internet; a Southfield, Michigan provider of Internet services to Michigan businesses. Mr. Raine also spent two years as an Internet Consultant with Merit Network in Ann Arbor and spent several years managing computer networks at General Dynamics and General Motors.

Mr. Raine earned his law degree from the University of Detroit-Mercy School of Law, and holds a Bachelor's degree in the Management of Information Systems from Lawrence Technological University.

Frederick E. Schuchman, III, Esq Chair-elect, Computer Law Section

Chair-elect Fred Schuchman maintains a practice focusing on software contracting, computer law, national and international sales and procurement, as well as a bit of trademark and copyright work, out of Midland, Michigan. He has been an active member of the Computer Law Section of the State Bar of Michigan since at least 1995, working on the Agreements, Membership and By-laws Committees, as well as acting as Section representative on various special Bar Committees.

Fred brings an eclectic background to the Section. After graduating from Boston College, he opted to obtain a Masters in Anglo-Irish Literature (with a minor in Guinness Stout) from the National University of Ireland. He then attended Duquesne University School of Law while teaching HS English and Drama classes at a college prep school in his hometown of Pittsburgh. After clerking at a court in Somerset, Pennsylvania, Fred moved to Washington, DC to teach at the Catholic University of America Law School. He followed that with a stint writing for BNA's Patent, Trademark and Copyright Journal in DC before moving to Michigan to work for the Dow Corning Corporation.

During his eleven years with Dow Corning, Fred supported numerous national and international sales and distribution channels, as well as global procurement efforts, for hundreds of millions of dollars. He currently practices in Midland where he lives with his wife, Pilar, their two children and various pets.



E-Mail Marketing - Lawmakers On Attack

By John J. Genord¹

Many companies utilize e-mail marketing and consider it to be important tool in the business development toolbox. Lawmakers have had to take steps to curb unethical practices of some e-mail marketers. These include practices of utilizing misleading subject-lines, disguising and hiding source domains or addresses and altering routing information, among other things. In several states, laws have been passed which deal with these abuses of e-mail marketing.

Several states prohibit the use of false or missing routing information on unsolicited commercial e-mail. Several states prohibit the use of a third-party's domain name without permission. Many states prohibit the use of misleading subject-lines. A handful of states require companies to include and honor an Opt-Out Procedure. Still fewer states require that advertisers place certain notations including "ADV" or "Advertisement" in the subject-line of the e-mail message to alert recipients that the communication is an advertisement. In some states certain regulatory associations, such as bar associations, have restrictions on the content of e-mail advertisements. Some states have combinations of the above, while other states have nothing.

The Michigan House of Representatives, with House Bill No. 4188 introduced on February 11, 2003, has begun the process of joining this trend among the states to deal with unethical e-mail marketing practices. House Bill 4188 proposes an amendment to the Michigan Consumer Protection Act². In particular, it proposes to add a whole additional section (3)(e) Act providing for some of the restrictions that other states have already enacted as set forth above.

The Michigan proposal makes it unlawful to send unsolicited commercial e-mails which use a third-party's Internet domain name without permission or misrepresents or obscures the origin of the email message. In addition, the proposal would prohibit the use of misleading information in the subject-line of such advertisements. The proposal also would permit Internet service

providers (ISPs) to seek to block such transmissions they believe in good faith violate those rules. The proposal will provide protection for ISPs who in good faith make such attempts.

The Michigan law, however, has not adopted provisions, which require opt-out procedures or that require opt-out requests to be honored. It also does not seek to require "ADV," "Advertisement" to be included in the subject-line, which other states have required in some form or another. Currently, this bill is before the Committee on Energy and Technology headed up by Rep. Ken Bradstreet.

It is the author's opinion that this bill is appropriate in its measures with regard to abuses with respect to e-mail marketing. Businesses marketing via the Internet and, in particular, by way of unsolicited bulk e-mail need to be cognizant of the privacy of the

recipients. Opt-out procedures are commonly used by reputable companies. Businesses should include an opt-out procedure without any legislative activity on the subject to instill consumer confidence.

Endnotes

¹ John J. Genord is an attorney practicing commercial litigation with The American Legal Center, P.C. in Mt. Clemens, Michigan. He can be reached at jgenord@justice.com.

² Specifically House Bill No. 4188 is seeking to amend MCLA §445.903.



Computer Law Section Spring Luncheon

May 21, 2003

To register for this luncheon, complete the form below and send with a check to the State Bar of Michigan, Attn: Seminar Registration, 306 Townsend St., Lansing, MI 48933, or fax (only if paying with credit card) to (517) 316-7221. Payment must be received before your place will be reserved. Deadline for registration is May 10.

If you have any questions, contact Kimberly Paulson at paulson@millercanfield.com.

Name: _____ P#: _____

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Please check one ONLY if you require a special meal: Kosher Vegetarian

I am a:	Section Member	\$20	Check enclosed
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	Student	\$15	MasterCard
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Computer Law Section Annual Spring Networking Luncheon

May 21, 2003

Livonia Marriott at Laurel Park Place

Noon

Registration begins at 11:30 a.m.

This year's topic:

Resolving E-Commerce Disputes with Alternative Dispute Resolution

The speakers are:



Tim Cole

Tim Cole

Tim Cole is the Director of Internet Dispute Solutions and Assistant Director of Arbitration at the National Arbitration Forum, one of the largest providers of arbitration and mediation services in the United States. In this role Mr. Cole has assisted the ADR community in adapting to the new types of disputes arising from the emergence of e-commerce. He also works with the business

and legal communities to anticipate and resolve disputes that derive from intellectual property and e-commerce relationships generally, including those that may arise out of B to C transactions and website use policies. The NAF is the largest provider of ICANN's domain name dispute resolution services in North America, handling over 3,000 domain name disputes in the past three years. Mr. Cole also chairs the Intellectual Property and Online Dispute Resolution Committee of the American Bar Association's Section of Dispute Resolution.

Debi Miller-Moore

Debi Miller-Moore is a National Vice President of the American Arbitration Association, where she is responsible for managing the strategy and future direction of AAA's eCommerce Services and online sales efforts. Previously she was an integral part of the group that worked to develop the Association's eCommerce dispute resolution capabilities, including the technology portal for online filing of disputes. She is currently the co-chair of the OASIS ODR XML Committee, a diverse group of business and legal professionals working to develop standard language for use in ODR technology. AAA, a leader in conflict management since 1926, recently announced an exciting new B to B e-commerce dispute management protocol and has been selected as a provider of domain name dispute resolution services for the .US domain names.



Debi Miller-Moore

Cultivate the habit of attention and try to gain opportunities to hear wise men and women talk. Indifference and inattention are the two most dangerous monsters that you'll ever meet. Interest and attention will insure to you an education.

-- Robert Millikan (1868 - 1953) US physicist



“Laws Are Like Sausages” . . .

Continued from page 1

administration of justice.” The State Bar relies on the subject matter expertise of its members for substantive analysis of proposed legislation, which is viewed as “a primary responsibility of committees and sections.” Selected bills are referred to committee and section chairpersons for comment so that the Board considers the “positions of all committees and sections that have expertise in the area of concern before they determine a bar position.” (www.michbar.org, Legislative Update).

The State Bar of Michigan is constrained by the *Keller* decision from an expanded advocacy role. As a mandatory bar, annual Bar dues cannot be used to lobby for legislation that fall outside the “administration of justice” scope. However, the sections are funded by voluntary dues payments, which enable Sections to take positions on a broader variety of legislation than the Bar itself. A Section is free to advocate its own position in the Legislature so long as the position it advocates is not inconsistent with a declared policy of the State Bar and provided that the section indicates that it is speaking only for itself, and not as the State Bar of Michigan.

State Bar Bylaw Article IX establishes standards and procedures for public statements. The basic positions which the Bar may take are: active support or active opposition, support or opposition in principle, or no position if a bill is not sufficiently important to the Bar to warrant the taking of a public position.

The Bar is currently considering possible revisions to its bylaws that would facilitate Sections’ abilities to take positions on legislation. These revisions, drafted through the joint efforts of the Sections and the Bar, should serve to clarify the appropriate steps to be taken when a Section wishes to support or oppose a public position.

These revisions will place additional responsibilities upon the Sections when taking such stances, including annotating each such position paper with certain information, including section size, method of determining a position and vote count. The Computer Law Section is itself in the process of amending our bylaws to help establish, among other changes, a process for establishing Section Advocacy, to ensure that positions we advocate are in fact representative of our Section membership. This is to avoid situations that have occurred in other sections, where differing opinions on the same subject were issued as representative of that Section.

So, when you receive some proposed amendments for our Section bylaws, please carefully consider the changes, as they will establish the process for our section taking public positions on items of critical importance. Better still, why not join the Section group that is looking into establishing these procedures!

We as a Section should help the legislative process through advocating for or against legislation that directly affects our livelihood! So let’s get involved and make some sausage!

Article IX-Public Statements (excerpt)

A Section, Section Council, Committee or other State Bar entity may take and publicly disclose a policy position, provided it is not inconsistent with State Bar policy, if the following requirements are met:

- (a) The subject matter is within the jurisdiction of the entity, and, if the entity is funded by mandatory State Bar dues, is within the scope of ideological activity in which the State Bar of Michigan is itself permitted to engage;
- (b) The policy position is adopted by a voting majority of the membership of the Section, Section Council, Committee or other entity in accordance with its bylaws, and after written notice that such action would be considered was given to the voting members of the entity prior to its taking action;
- (c) The report, recommendation, amicus brief or other statement disclosing the policy position taken states that notice was given and the vote on the matter; and
- (d) The report, recommendation, amicus brief or other statement disclosing the policy position taken states at the outset that the policy expressed is that of the Section, Section Council, Committee or other State Bar entity only and does not necessarily represent the policy of the State Bar of Michigan.





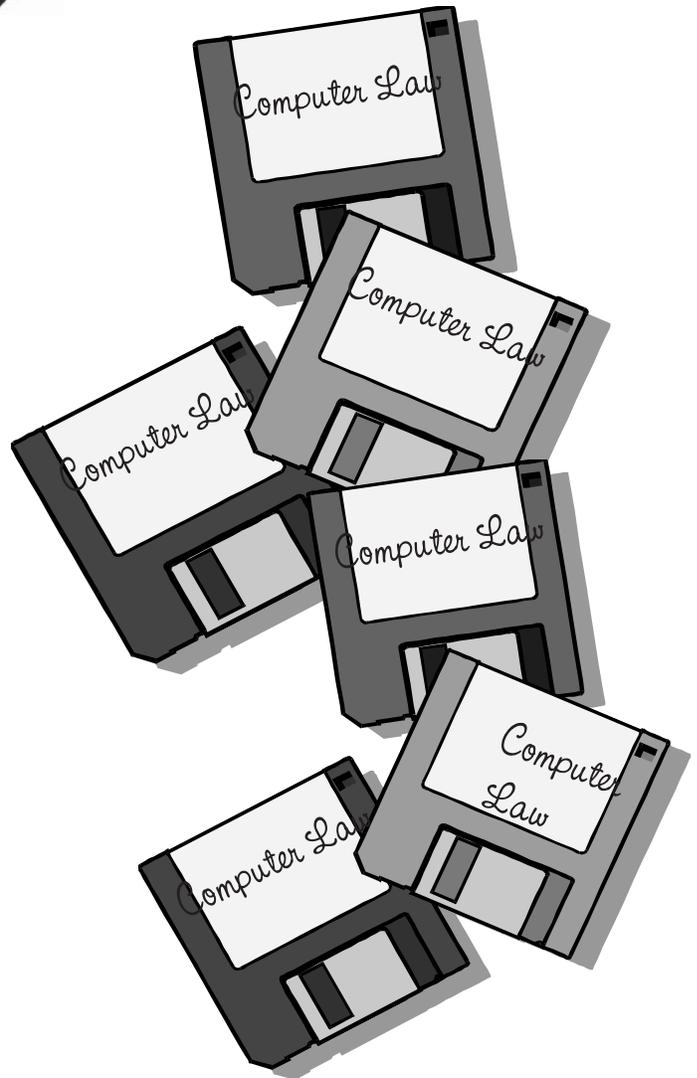
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Statement of Editorial Policy

The aim and purpose of the Michigan Computer Law Section of the State Bar of Michigan is to provide information relative to the field of computer law, and other information that the section believes to be of professional interest to the section members.

Unless otherwise stated, the views and opinions expressed in the Michigan Computer Lawyer are not necessarily those of the Computer Law Section, or the State Bar of Michigan.



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State Bar of Michigan Computer Law Section

“Laws are like sausages” – An Appeal for Section Advocacy

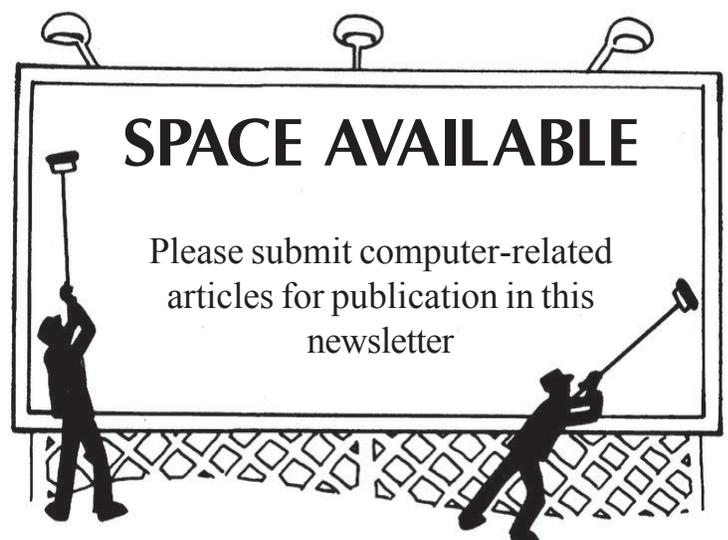
By Anthony Targan

As lawyers, most of our involvement in the practice of law is based on the interpretation of existing laws and the case precedents that apply those laws. In law school, we read dusty tomes with ancient case law and were taught to revere the doctrine of stare decisis - “to stand by that which is decided.” The basic legal principal is that courts should follow precedent decisions. “What is past, is prologue” is also engraved on the Department of Justice building in Washington, DC. While these are valid principals, I think it is indicative of the fact that we lawyers, as a whole, are a pretty reactive bunch.

As computer lawyers in the Internet age, however, I believe it is incumbent upon our profession to be a bit more proactive in the legislative process. If we can have input on and improve laws while they are being formed, hopefully we will help generate a sound foundation for the legal precedents that ultimately follow. While many people think “Laws are like sausages. It’s better not to see them being made.” (Otto von Bismarck), I think we have a duty to be part of the solution.

It is not well known that Sections such as ours can actually review legislation and publish statements indicating our position on these matters. We can, and should, become involved in this process. According to the State Bar of Michigan’s web site, “One of the fundamental purposes of the State Bar is to aid in promoting improvements in the administration of justice” through the Bar’s legislative program. More than 4,000 bills are introduced in the Michigan legislature in a typical two-year session. The Bar selectively takes positions on pending legislation that is of “significant interest to the legal profession and the

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