



Fairfield County BUSINESS JOURNAL

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Week of February 1, 1999

Tangled Web

The freedoms once associated with the Internet are beginning to erode, according to Westport attorney Patrick Begos. Page 3

Attorney offers primer to cyber-based businesses

By DON DZIKOWSKI

If the pundits are right, 1998 was the year the Internet went mainstream. Millions of people signed on and millions of dollars were made through Web marketing and electronic commerce.

Yet, the freedoms once associated with the emerging medium are beginning to erode, according to Patrick W. Begos, an attorney with the Westport law firm of Begos & Horgan L.L.P.

Begos, who specializes in dispute avoidance and resolution for Internet commerce, said laws designed to protect the rights of businesses in cyberspace are now being tested in the courts.

Out of this developing legal arena have come decisions that affect anyone who creates a Web site for online sales.

Begos' presentation, "Steering Through the Anarchy of Cyberspace — A primer on Laws Pertaining to the Internet," covered Web site domain, content and jurisdictional legal issues.

The Jan. 21 meeting at the Westport Public Library was held by F.I.N.E. & Associates, a networking group of entrepreneurs from Fairfield and Westchester, N.Y., counties.

Domain names and trademarks

One area of conflict has developed when a Web site domain name conflicts with an established registered trademark.

The domain name, which includes the Web address (followed by .com, .org, .net, or .edu) and the name, address and telephone number of the party or firm sponsoring the site, is registered with Network Solutions (NS), the international entity responsible for logging all domain names.

The Internet's international character has changed the traditional landscape where several entities in different geographic areas could maintain the same or similar trademarks because they previously did not compete with one another, Begos noted.

Network Solutions (NS) holds the entity that registers a domain name liable for ensuring it is not infringing upon the rights of a third party in either domain name or trademark.

In the event of a dispute, NS will determine the certification dates of the trademark registration. In general, if the creation date of the domain name came before the trademark registration, NS will take no action.

If the trademark went into effect prior to the domain name, then NS will, in general, put a hold on use of the disputed domain name by any party until the courts settle the issue.

NS first affords the holder of a domain name an opportunity to show whether it registered a corresponding trademark prior to the trademark of the complaining party.

Begos advised Web-based business to protect themselves from liability or undue competition by securing a trademark registration "as soon as possible once having established a domain name."

Since NS doesn't care in which country the trademark has been registered, Begos advised speeding up the process by filing in countries without the bureaucratic delays of the United States.

In general, Begos said that to win a trademark infringement/domain name dispute in court requires demonstrating:

- The trademark rights existed prior to the domain name;
- Proving that duplicate use will create

confusion among the public; and,

- The parties are not competing for the same market or within the same territory.

Linking and framing

The Internet has opened a second area of potential legal liability. "Once a Web site is established, it is easy to violate someone else's Web site through linking and framing," Begos said.

Although businesses generally welcome links to their Internet sites, problems have surfaced over concerns about advertisers whose ads appear on the sites, said Begos.

In one case, Ticketmaster sued Microsoft for linking to its Web site, arguing the connection allowed browsers to skip over several pages of paid advertisements placed by the ticket vender's clients.

Framing allows the owner of a Web site to include two or more additional sites — hosted by others — to appear on the same Web page.

Begos cited the example of a news site having a report from the Washington Post appear in the corner.

Although many Web sites contain written disclaimers about allowing such links to their page, "real questions" continue over the legal-

ities involved, Begos said.

In general, the courts have upheld linking and framing as long as the practices are not conducted "in a way to mislead or pass off someone else's work as your own," he said.

The courts have generally allowed copying of artifacts, news reports and other materials onto a Web site without permission as long as the materials are used for educational or information purposes, he said.

Metatags

Web site originators also have to be careful about how they set up metatags, or keywords placed in search engines to generate traffic to a site.

The use of a trademark as either a metatag or in a description designed to entice people to a site generally must not contain someone else's trademarks.

Begos said an exception would be for product distributors, i.e., a Pepsi distributor using the name Pepsi in the description or metatag.

The courts have made other exceptions as well. Playboy magazine sued a former Playboy bunny for using the magazine's name to attract traffic to her site, but the court ruled that since Playboy was her former employer,

she could use the trademark.

Site sponsors should know the laws in all the territories in which they plan to do businesses. For example, sales of securities are subject to different security laws in various U.S. states, while commerce in the European Union must follow consumer privacy protection laws governing exchange of mailing lists and demographic information.

Begos said a Web site sponsor generally can be held liable for trademark infringement issues when it can be demonstrated the violations occurred in territories where it conducts business. A site geared to making sales to New York, for example, is subject to New York laws.

Begos advised businesses to make the best possible effort at complying with the sometimes ambiguous laws governing the vast reaches of a new frontier of Cyberspace.

Enforcement so far has been lax, and the complainant in most cases offers an out-of-court remedy: "You've infringed upon my Web site. Please don't do it again."

The temptation is to challenge such laws in an entrepreneurial attempt to heighten profits or exposure. "But why put yourself through the agony and expense of having to defend a lawsuit?" Begos asked.