

Table of Contents

Chapter A	
The Latest in the World of Privacy, Security and Cloud Computing	A-1
Section 1	
PowerPoint Presentation:	
Privacy	A-5
<i>Dorothy M. Bollinger, Esq.</i>	
Personal Information and Data.....	A-8
<i>Gubala v. Time Warner Cable, Inc.</i> (7 th Cir. 2017)	A-8
Advertisers Push to Repeal FCC Privacy Rule	A-10
Biometric Data Laws.....	A-11
Pennsylvania Proposed Biometric Data Legislation.....	A-12
Face Scanning and Avatars	A-14
Internet of Things – Wearable Technology.....	A-15
Interconnected Devices.....	A-16
NTIA, U.S. Department of Commerce	A-16
Federal Trade Commission – Data Privacy Cases	A-17
<i>FTC v. ASUS</i> – Data Security.....	A-20
FTC Data Security Cases	A-21
FTC Publications.....	A-21
IoT Regulators & Bills.....	A-22
FTC & CDT – IoT Publications	A-23
Data Protection.....	A-23
Cybersecurity Whistleblowing	A-24
Social Engineering & Pretexting	A-25
Virtual Reality and Augmented Reality Privacy	A-25
President Trump’s Executive Order	A-27
Data Disclosures and Breaches	A-27
Data Breach Litigation.....	A-28
Hacking Techniques	A-29
Examples of Hacking Techniques	A-29
About the Hacking Techniques	A-29
1. Keylogging	A-29
2. Phishing.....	A-30
3. Brute-Force Attack	A-30
4. Traffic Sniffing.....	A-30

5. Rootkits	A-30
6. Ransomware.....	A-30
7. Injection Attacks	A-31
8. Bluesnarfing	A-31
9. Malvertising.....	A-31
10. Broken Authentication and Session Management Attacks.....	A-31
11. Cross-Site Scripting.....	A-32

Section 2

Privacy	A-33
----------------------	------

Submitted by: David G. Oberdick, Esq.

EU US Privacy Shield (Safe Harbor 1.1) (Feb. 2 nd , 2016).....	A-35
---	------

Statement of the Article 29 Working Party on the Consequences of the Schrems Judgment.....	A-37
--	------

Statement by Vice-President Ansip and Commissioner Jourová on the Occasion of the Adoption by Member States of the EU-U.S. Privacy Shield (Brussels, 8 July 2016)	A-39
---	------

European Commission Launches EU-U.S. Privacy Shield: Stronger Protection for Transatlantic Data Flows (Brussels, 12 July 2016)	A-41
--	------

European Commission Implementing Decision of 12.7.2016.....	A-43
---	------

1. Introduction	A-44
-----------------------	------

2. The “EU-U.S. Privacy Shield”	A-46
---------------------------------------	------

2.1. Privacy Principles	A-48
-------------------------------	------

2.2. Transparency, Administration and Oversight of the EU-U.S. Privacy Shield.....	A-51
--	------

2.3. Redress Mechanisms, Compliant Handling and Enforcement.....	A-53
--	------

3. Access and Use of Personal Data Transferred under the EU-U.S. Privacy Shield by U.S. Public Authorities	A-58
--	------

3.1. Access and Use by U.S. Public Authorities for National Security Purposes	A-59
---	------

3.2. Access and Use by U.S. Public Authorities for Law Enforcement and Public Interest Purposes	A-77
---	------

4. Adequate Level of Protection under the EU-U.S. Privacy Shield.....	A-80
---	------

5. Action of Data Protection Authorities and Information to the Commission.....	A-81
---	------

6. Periodic Review of Adequacy Finding.....	A-82
---	------

7. Suspension of the Adequacy Decision.....	A-83
---	------

Table of Contents

Chapter B	
Intellectual Property Update – Copyrights, Trademarks, Patents and E-Contracting	B-1
Section 1	
PowerPoint Presentation:	
Domain Names and Trademark Enforcement	B-7
<i>Steven M. Levy, Esq.</i>	
Domain Names on the Rise	B-11
Growth of New gTLDs (generic Top Level Domains)	B-12
Business Use – No Activity	B-13
Business Use – Still Waiting	B-14
Business Use – Enticing	B-15
Business Use – Almost There.....	B-16
New gTLDspam and Phishing	B-17
Have Legacy Domains Peaked?.....	B-18
Disputes are on the Rise.....	B-19
More New gTLD Disputes	B-20
Recent Enforcement Cases.....	B-21
Likelihood of Confusion	B-22
Influence of New TLDs.....	B-23
Spanning the DOT.....	B-24
Rights/Legitimate Interests	B-25
Rights/Legitimate Interest: ¶4(c)	B-26
<i>Bona Fide</i> Use in Another Country	B-27
Commonly Known by the Domain?	B-28
Fake Use or Fair Use?.....	B-29
Fair Use – Political Speech.....	B-30
Bad Faith	B-31

Bad Faith: ¶ 4(b).....	B-32
Prior Relationship	B-33
Generic Meaning? – A Close Call	B-34
Pattern of Conduct/Willful Blindness.....	B-35
Procedural Issues	B-36
Reverse Domain Hijacking (RDNH).....	B-37
Reverse Domain Hijacking.....	B-38
Beyond Scope of the Policy.....	B-39
Summary	B-40
Outline Relating to Slides	B-43

Section 2

Copyright and Trademark Law	B-55
--	-------------

Peter M. Watt-Morse, Esq. and Frederic M. Wilf, Esq.

1. Copyright Law and the Internet	B-57
1.1 Article 1, Section 8 of the U.S. Constitution	B-57
1.2 Congress Adopted the Copyright Act of 1976	B-57
1.3 A Number of Definitions of the Act are Important.....	B-57
1.4 Copyright Notice – §§ 401-406.....	B-60
1.5 Copyright Registration – §§ 407-412.....	B-61
1.6 Idea/Expression Dichotomy	B-63
1.7 Originality	B-63
1.8 Publication v. Public Domain	B-64
1.9 Duration of U.S. Copyrights – §§ 302-305	B-64
1.10 Civil Remedies – §§ 501-505	B-67
2. Trademark Law and the Internet	B-69
2.1 Definition	B-69
2.2 No Assignment “In Gross”	B-69
2.3 Use of the Mark.....	B-69
2.4 Infringement v. Dilution.....	B-69
2.5 U.S. Trademark Law	B-69
2.6 International Trademark Law	B-72
2.7 Interplay of Common Law Rights, State Registrations and Federal Registrations.....	B-72
2.8 Level or Amount of Distinctiveness.....	B-72
2.9 Trademark Notices	B-73
2.10 Trade Dress	B-74
2.11 Color.....	B-74
2.12 Characters	B-74
2.13 Domain Names	B-75
2.14 Domain Names and Trademarks.....	B-76
2.15 Analogy to Telephone Numbers	B-76
2.16 Ownership and Use of Domain Names.....	B-76
2.17 Trademarks in Non-Domain Name Portions of URLs	B-77
2.18 Domain Names Held Hostage	B-77
2.19 Use of Dilution Claims for Domain Name Disputes.....	B-77

2.20	ACPA	B-78
2.21	UDRP	B-79
2.22	Domain Names as Trademarks Under the Law of Other Countries.....	B-79
2.23	Use of Trademarks in Internet Advertising – AdWords.	B-80
3.	References: Intellectual Property Law	B-80
3.1	Copyright Law.....	B-80
3.2	Trademark and Unfair Competition Law	B-81
3.3	Patent Law	B-81
3.4	Mask Work Law	B-82
3.5	Trade Secret Law	B-82
 Section 3		
	Patent Law Update	B-83
	<i>Christian D. Ehret, Esq.</i>	
	Overview of 2016-2017 Patent-Eligibility Decisions.....	B-85
	Appendix: Case Law	B-87
	<i>BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC, et al.</i>	B-89
	<i>Enfish, LLC v. Microsoft Corporation, et al.</i>	B-115
	<i>Amdocs(Israel) Limited v. Openet Telecom., Inc., et al.</i>	B-145
	<i>McRO, Inc., dba Planet Blue v. Bandai Namco Games</i>	
	<i>America, Inc., et al.</i>	B-207
	<i>Trading Technologies International, Inc. v. CQG, Inc., et al.</i>	B-235
 Section 4		
	An Overview of Current Issues in Electronic Contracting	
	and E-Commerce	B-245
	<i>Written by: Stephen M. Foxman, Esq.</i>	
	<i>Updated by: Michael D. Ecker, Esq.</i>	
	Introduction	B-247
	Contract Formation Issues.....	B-249
1.	Authentication and Integrity; Identity Theft.....	B-249
2.	Offer and Acceptance.....	B-252
3.	Electronic Agents	B-254
	Contract Enforceability Issues	B-255
1.	Adequate Notice of Terms	B-255
2.	Clear Assent to be Bound by Terms.....	B-258
3.	Methods of Enhancing Likelihood of Enforcement.....	B-258
4.	Enforceability of Specific Terms	B-262
5.	Implied Contract Terms and Conditions; Click-Wrap, Shrink-Wrap and Browse-Wrap Agreements.....	B-264
6.	Right to Unilateral Modification.....	B-266
	International Electronic Contracting Issues	B-268
1.	Jurisdictional Issues	B-268
2.	Special Areas of Concern	B-268
3.	EU Laws Protecting Privacy.....	B-269
4.	EU Laws Regulating E-Commerce	B-270
5.	The United Nations Convention on Contracts for the International Sale of Goods.....	B-271

Virtual Goods.....	B-272
eCommerce Contracting and Related Issues Update	B-275
<i>Michael D. Ecker, Esq.</i>	
Sales Tax and Quill Nexus.....	B-277
DCMA Safe Harbor Registration.....	B-277
Defend Trade Secrets Act	B-278
Contact Formation Online.....	B-279
 Section 5	
Patent.....	B-287
<i>Submitted by: Julie E. Chovanes, Esq.</i>	
Patent No. 7,062,749 B2	B-291
<i>Hewlett-Packard Company v. YYZ LLC, Case CBM 2015-00049,</i>	
<i>June 30, 2015</i>	<i>B-309</i>
<i>AYYZ LLC v. Hewlett-Packard Company, Case 1:13-cv-00136-SLR</i>	<i>B-341</i>

Table of Contents

Chapter C

PowerPoint Presentation:

The First Amendment on the Web – New Issues with Social Media..... C-1

Jeremy D. Mishkin, Esq.

Everyone is In Favor of Free Speech	C-5
The First Amendment is Not a Safe Space	C-6
There is No Exception in the First Amendment for Speech That Offends	C-6
What about Hate Speech?.....	C-7
Or Guess Who Else has First Amendment Rights?	C-7
There are Limits. The First Amendment Does not Mean...	C-8
Time, Place and Manner Restrictions.....	C-8
Libel	C-10
Defamation	C-11
Internet Defamation Case Law – Phase One	C-12
Internet Defamation – Phase Two	C-12
Communications Decency Act §230(c).....	C-12
What It Says.....	C-13
Who’s Protected? Who’s Not?	C-13
Creator or Content Can be Liable	C-14
Where’s the Line?	C-14
Protecting Speech Online: How Far Does §230 Immunity Reach?.....	C-15
Pushing the Boundaries of §230(c)	C-16
The Boundaries Push Back.....	C-16
Examples from the Front Line	C-17
Speech v. Conduct: Where is the Line?.....	C-19
“True Threat”	C-19
Higher Education Meets the Social Network.....	C-21
Anonymous Speech.....	C-24
How to Get in Trouble.....	C-24
LA Times.....	C-25
...Becomes	C-25
...In Chat Room Transcripts Released by the Department of Justice	C-26
The Rise of Self-Help Online.....	C-26

The Parable of the Boston Marathon Bombing.....	C-27
The Internet Police Take Action.....	C-27
First Amendment vs. Pro Wrestling.....	C-28
Sometimes Freedom of the Press is In Hands Like These.....	C-29
The Jury Speaks.....	C-29
Hijacked Memes	C-30
Some are Clever	C-30
Some are Creative.....	C-31
Clemson Bans Harambe.....	C-31
Meanwhile, at East Tennessee State University.....	C-32
Protestor is Arrested.....	C-32
A First Amendment Success Story	C-33
Takeaway from One Student	C-33
Private Institutions Get to Make Their Own Rules	C-34
Wheaton College and Prof. Hawkins.....	C-34
What First Amendment?.....	C-35
Student Perspectives on Free Speech	C-35
Students' Opinions	C-36
On the Other Hand.....	C-37
Kenyon College and “Respectful Difference”	C-39
What a Concept	C-39
Lessons Learned	C-40