

INTERNET AND COMPUTER LAW

CASES — COMMENTS — QUESTIONS

Second Edition

Peter B. Maggs
John T. Soma
James A. Sprowl

American Casebook Series®

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INTERNET AND COMPUTER LAW

Cases — Comments — Questions

Second Edition

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Introduction

Is there such a subject as "Internet and Computer Law"? If so, what should an "Internet and Computer Law" casebook include? The answers to these questions are not obvious. Certainly there are many cases involving computers. A recent WESTLAW search for the word "INTERNET" found 7635 cases in the "allfeds" data base and 4120 cases in "allstates". A similar search for "SHOE" found 41,662 Federal and 70,593 state cases! No one is suggesting that law students should study "shoe law" as a separate course. Students will read *Brown Shoe Co. v. United States*, 370 US. 294 (1962), a leading vertical merger case, in their antitrust course and may read a few more cases involving shoes in other courses. Little or nothing in these cases turns on anything peculiar about shoes. Cases involving shoes do not cite other cases involving shoes. Internet and computer cases, in contrast, often turn on the special nature of the Internet and of computer software and hardware, and regularly cite other cases involving the Internet or computers.

Why are computers "special" when shoes are not? First, computer software and hardware are the most complex and rapidly developing intellectual creations of modern man. Second, computers provide unprecedented power in accessing and manipulating data. Third, computers work in complex systems that require standardization and compatibility to function. Each of these special features has engendered one or more bodies of law. Complex intellectual creation demands comprehensive intellectual property protection. Computer technology, however, differs fundamentally from previous objects of intellectual property protection, and thus does not fit easily into traditional copyright and patent law. Courts and legislatures, consequently, have had to exert great efforts to adapt old legal forms and create new ones. The power of the computer to access and manipulate data requires new types of government regulation. Antisocial individuals may steal or destroy information in ways that involve no physical trespass on property and thus may fall outside traditional regulatory and criminal prohibitions.

Potential enemies seek access to our computers and data banks to catch up with our high technology military power. Litigators seek access to opposing parties' computer data. The Internet cuts down barriers to communications and commerce. Standardization is essential, but provides opportunities for companies that can set standards to exploit the public by monopolizing software and hardware markets.

These special qualities of computers and the Internet have determined the scope of this casebook. The book opens with chapters on copyright and patent issues. These chapters serve a dual purpose. They have the utilitarian purpose of introducing an area of law that is of considerable importance in practice. But they also attempt to build an under-

standing of the unique features of computer technology as an intellectual creation. The book continues with other intellectual property issues, with particular focus on attempts by businesses to use intellectual property to seize or maintain ownership of industry standards. This theme also appears in the antitrust chapter. A chapter on electronic commerce explores the issue of definition further—just what is the seller of computer hardware and software selling—pieces of metal and plastic or solutions to problems? The book ends with chapters dealing with public law issues, particularly the right to privacy and freedom of speech.

This casebook deals with one of the fastest-moving areas of the law. Groundbreaking cases will forge new precedent and the next generation of statutes will carve new boundaries soon after this book is published. Many of the cases in this book are further discussed in law review articles, and will continue to be analyzed as this area of law develops at a rapid pace. Therefore any reader interested in following up these cases in depth is urged to use West Group's KeyCite system to find current information supplementing the cases reproduced or mentioned herein.

Preface

Fifteen years ago we created a casebook on the then uncharted area of computer law. Five years ago we began work on a new edition of that book, but soon realized that the development of the Internet and the rapid change of legal institutions required us to create an almost entirely new casebook. There have been many important developments in recent years. As we began work on the current edition, we soon realized that we again needed to make substantial changes. We have tried to choose cases that are both important and teachable. Each case has been edited, trying to preserve the key ideas, but removing irrelevant issues, lengthy string citations, and minor footnotes. We have retained the original numbering of those footnotes that we have kept.

We owe thanks to those who have helped us with the volume. University of Denver Law students Reid Bumgarner, Timothy Edstrom, Charles Gray, Dave Howell, and Abe Kean, provided valuable research assistance. The technology aspects of various chapters were much improved by comments from Computer Consultant Robert T. Voorhees, Littleton, Colorado. And thanks to the 2005 summer law student associates at *Foley & Lardner* who reviewed the revised patent chapter.

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