CyberLaw and You:

What New Media Communicators Must Know

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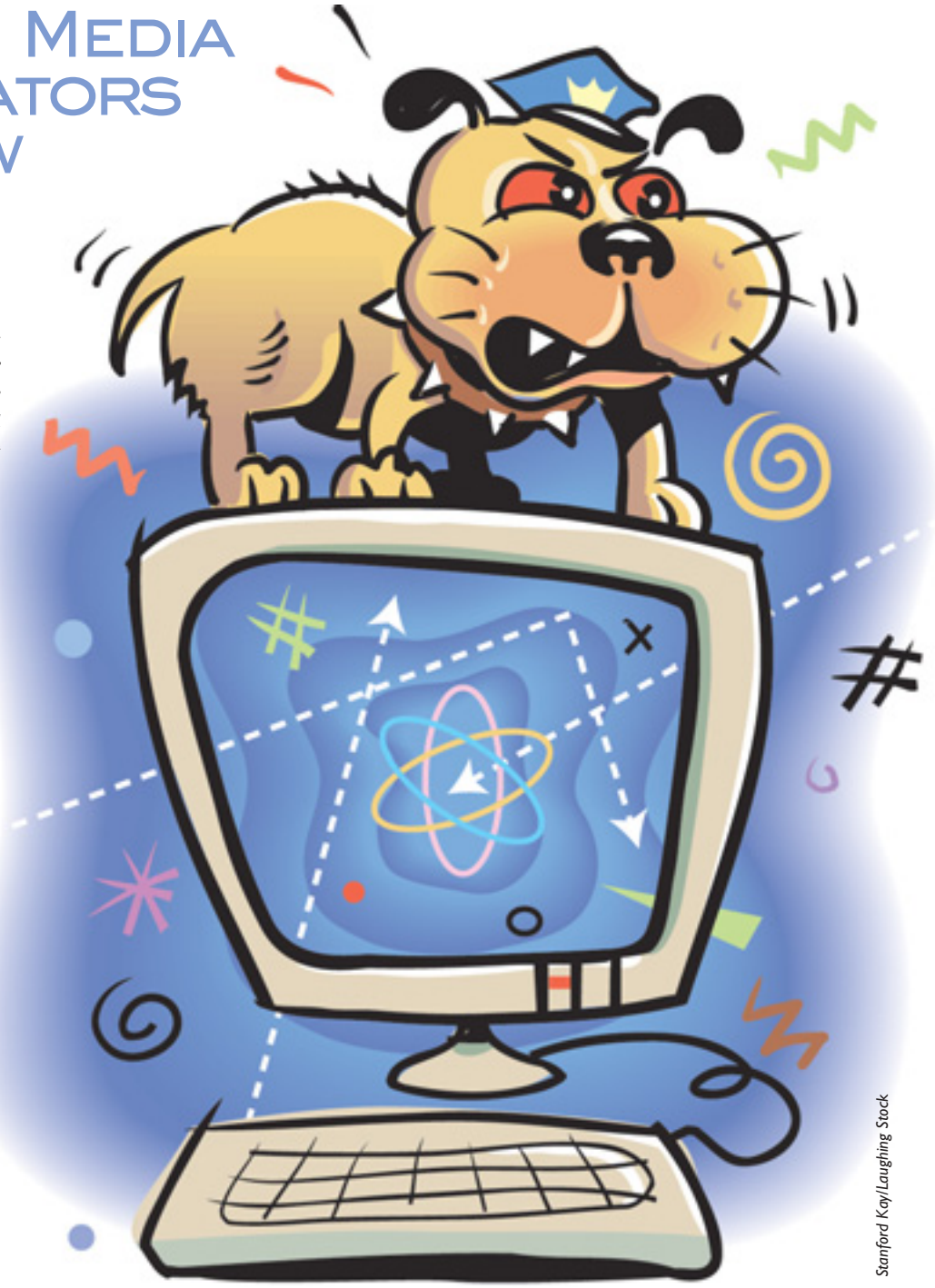
Editor's Note: This article is intended for technical communicators who, like the author, live and work in the United States. If you have an idea for an article about Internet-related legal issues in other countries, please contact ***intercom@stc.org****.*

As our world changes, so, too, do the laws to which we are subject. Gone are the days of the "wild, wild Web." Here are the days of increasing regulation of the Internet, at both the state and federal levels. Recently enacted federal legislation includes the Copyright Extension Act, the Digital Millennium Copyright Act, the Digital Theft Deterrence Act, and the Anti-Cybersquatting and Consumer Protection Act. Looming on the horizon in a number of states is the Uniform Computer Information Transactions Act (UCITA), which, when enacted by individual states, will mandate significant changes for the conduct of business in the computer industry. In addition, case law continues to evolve in trademark, jurisdiction, and other areas related to the Internet and electronic content.

This article discusses a few developments from the last few years that stand to affect the work of technical communicators.



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Copyright

Copyright is, in its most straightforward form, the "right to copy" or the "right to make copies." It is provided for in the U.S. Constitution and by international treaty.

In the U.S. and (generally) internationally, the creator's exclusive rights to original creative works, such as writings, drawings, music, performances, and sculptures, are protected from their inception. Whereas under earlier U.S. law, copyright needed to be registered and the ubiquitous "circle-C" copyright symbol affixed to the product to indicate ownership, registration and notice are no longer required. Copyright "attaches" (lawyer-speak for "comes into existence") immediately when the work is set down in a tangible form.

The duration of copyright protection varies depending on who holds the copyright. For an original author, the term is now the author's life plus seventy-five years, extended from fifty years with enactment of the Sonny Bono Copyright Extension Act of 1998 (named posthumously for the singer and congressman). The act also extended the term for works made for hire (generally owned by a company) from seventy-five years to ninety-five years from the date of creation, ensuring that Mickey Mouse and George Gershwin's *Rhapsody in Blue*, for example, will remain under copyright protection for the next twenty years rather than pass into the public domain.

Another relatively recent change to U.S. copyright law is the Digital Millennium Copyright Act, enacted in 1998. This legislation brought the U.S. into closer alignment with World Intellectual Property Organization (WIPO) treaties. Among its provisions are safe harbors for online service providers, such as America Online, CompuServe, and MSN, to protect them from liability when their users infringe the copyrights of others.

Trademarks

Federal protection of trademarks traces its inception from enactment of the Lanham Act in the first half of the 20th century. The act protected word marks, logos, designs, slogans, and trade dress (the distinctive look of a particular packaging style). When it was discussed and enacted, legislators certainly had no thoughts of how it might apply to Web domains. Indeed, until quite recently, domain names were widely thought of as mere addresses along the information highway. The resulting "land grab" of domain names and subsequent attempts to sell them to companies whose registered names and trademarks were, in a sense, being held hostage created the impetus for enactment of the Anti-Cybersquatting and Consumer Protection Act of 1999.

Strongly promoted by the business sector, the act prohibits "bad-faith" registration of a domain name that is identical or "confusingly similar" to a registered trademark. Generic domains, like ***www.lawyers.com*** (yes, it's out there) are allowed and can be sold or brokered, but registering ***www.biffco.com*** is not, if the intent is to attempt to sell the domain to Biffco.

Also coming under increased consideration by the courts is the use of trademarks in metatags to attract traffic to one's Web site. The practice is generally allowed if the use is an accurate and truthful representation. For example, if my Web site includes a page comparing my product, MadHat, to a competing product called GladHat, my use of GladHat in a metatag will likely be held to be noninfringing. If, however, I include the GladHat trademark name as a way of capturing and diverting users who are looking for the GladHat Web site, the courts will generally hold that the use infringes my competitor's trademark.

Jurisdiction

From the Latin, *juris* ("the law") and *dictus* ("to speak"), "jurisdiction" embodies a court's "power to speak to law" or, more commonly, its power to compel one to be present in that court to answer to it.

Traditionally, a court has exercised jurisdiction over individuals who were physically in the area where the court is situated. Someone present in Michigan was answerable to a Michigan court, but that same court could not, for example, order into court someone from, say, Ohio, unless the unfortunate Ohioan were physically located in Michigan.

Over time, state statutes were enacted to define special circumstances and

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mechanisms for hauling a defendant into the courts of another jurisdiction. These devices included long-arm statutes and various legal doctrines, such as having sufficient business contact with individuals situated in the state.

In the online world, where one's only contact with another state may be viewing a Web site created by a citizen of that state, jurisdiction may hinge on whether the Web site owner has engaged in "sufficient contact" to reasonably expect to be subject to another state's laws and jurisdiction. An information-only site, for example, is less likely to meet that criterion than a Web site that solicits orders for products or services or otherwise actively solicits or engages in commerce with citizens in that state.

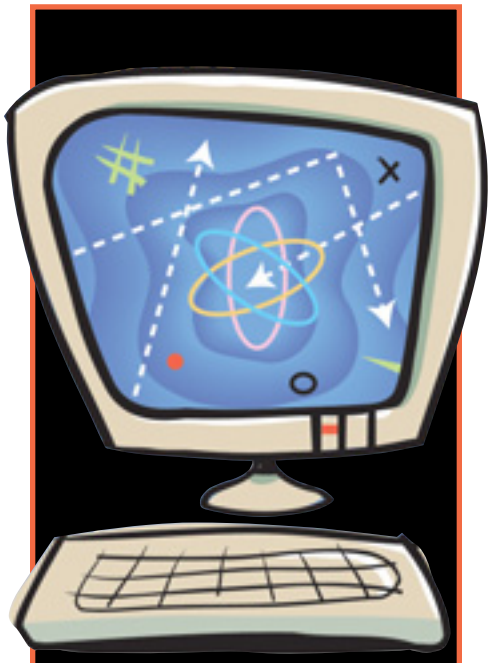
UCITA

Promulgated in 1999 by the National Conference of Commissioners on Uniform State Laws, UCITA (the Uniform Computer Information Transactions Act) will, when enacted by individual states, provide for a variety of protections, as well as increased liabilities, for companies and individuals working in the computer industry. The act applies broadly to information transactions involving computer systems.

Provisions include language to allow enforcement of those "click to accept" agreements appearing on an increasing number of Web sites. The act also allows software manufacturers to use so-called "self help" to enforce their software copyrights. The practical upshot of this act may be that software manufacturers can disable specific programs on a computer if they determine that the user has installed programs that are not properly licensed. This verification will most likely be accomplished by inspecting the contents of the computer hard drive while the computer is connected to the Internet.

If enacted as drafted, UCITA also will provide that a self-employed writer's "online publication" rights automatically go to the client (for works made for hire) unless the contract states otherwise.

Of import to technical communicators, particularly to independent consultants, are provisions that give "merchant" status to anyone delivering "products," such as programs or even technical publications and help messages, by way of a computer system. Thus, when an independent contractor delivers the user guide she has written by electronic mail or on a computer disk, she is making express and implied warranties as to the accuracy, completeness, and quality of that user guide (even if she is not the subject matter expert).



SINCE EACH STATE LEGISLATURE CAN MAKE ITS OWN REVISIONS TO UCITA, IT IS IMPORTANT TO RESEARCH AND UNDERSTAND THE PROVISIONS ADOPTED IN YOUR STATE.

Such warranties can be disclaimed in writing. However, a better way to limit liability may be for a consultant to form either a corporation or a limited liability company. Such an arrangement generally protects one's personal assets from liability. Errors and omissions insurance, available from a variety of sources, can protect company assets.

UCITA has been adopted in Maryland and Virginia and been introduced in the legislative bodies of the District of Columbia and the U.S. Virgin Islands. Since each state legislature can make its own revisions to the act, it is important to research and understand the provisions adopted in your state. For additional information about UCITA, visit the Web site of the National Conference of Commissioners on Uniform State Laws at ***www.nccusl.org*** and select *Computer Information Transactions Act* from the pull-down menu.

Conclusion

If anything is clear in the sometimes murky waters of our new "wired world," it is that those who suggest that existing law will continue to be sufficient to deal with electronic and online content overestimate the ability of these rules to address our rapidly changing world. Congress and the state legislatures, as well as the courts, are only beginning to come to grips with the power, promise, and pervasiveness of the Internet as we enter the 21st century.

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