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## Cyberlaw Symposium Tackles Emerging Legal Issues

UB Law Forum

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# Law School Report

## Cyberlaw Symposium tackles emerging legal issues

**A**n imposing figure with shaved head and trademark bow tie, he's appeared on national news shows and been quoted in papers around the country. Daniel J. Weitzner '92 strode through a wet late-winter snow and back into O'Brian Hall to address one of the hottest topics in law.

Speaking before approximately 100 participants at the *Buffalo Law Review's* Cyberlaw Symposium, the UB Law graduate noted that the Internet is not only an unprecedented force for global democracy, but also a source of confusion for lawyers. "It raises extraordinary problems," opined Weitzner, now deputy director of the Center for Democracy and Technology in Washington, D.C.

The Cyberlaw Symposium sought to clear up some of the confusion and provide a framework for approaching the problems. The symposium brought experts from around the nation and practitioners from throughout the region together with UB Law faculty and students to discuss topics ranging from First Amendment rights to Web page design.

The gathering sparked e-mail inquiries from as far as Europe and Africa, according to Craig Hurley-Leslie, the 1997 graduate who first suggested the cyberlaw topic and who served as symposium coordinator. Now working at the New York Court of Appeals in Albany, Hurley-Leslie says the symposium was particularly timely because it came just as the Supreme Court was taking up the Communications Decency Act. Both Weitzner and the symposium keynote speaker, Mike Godwin of the Electronic Frontier Foundation, have been deeply involved in Internet censorship issues.

"They're two people I greatly



*Joseph Bermingham, chair of the New York State Bar Association's Task Force on Electronic Communications*

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PHOTOS: JOHN HICKENY

respect in the current movement to extend our rights into cyberspace," Hurley-Leslie says. "We thought it was great to have Dan Weitzner back as a UB alum who has gone out and been active on the issue. And Mike Godwin is also well-respected and well-known in this emerging field."

David R. Pfalzgraf Jr., the immediate past *Law Review* editor who also graduated in 1997, says the symposium resulted in a huge increase in the number of people checking out the *Law Review's* Web page. "It brought national attention not only to the *Law Review*, but the Law School," he adds.

*"We're starting to see the transformation in legal work... The skills and the knowledge that many of us worked a lifetime to master suddenly seem to be as obsolescent as buggy whips."*

For those who participated, the tone of the daylong event was set by UB Law Dean Barry B. Boyer's welcoming remarks. "I think this period that we're in is extremely exciting because the promise of this technology that we could see dimly in the '70s and a little clearer in the '80s has finally been realized," Boyer said. "We're starting to see the transformation in legal work and legal doctrines that we could only imagine a little while ago. It's a little bit scary, because the skills and the knowledge that many of us worked a lifetime to master suddenly seem to be as obsoles-

cent as buggy whips."

Boyer acknowledged the concern of those who fear that computers may encourage superficial skimming and diminish the quality of legal analysis. He said he generally does not share that concern, believing instead that computers will promote better understanding. But he does worry about professional stratification between those who are computer savvy and those who are not. "That's an unpleasant vision," he added, "because one of the things we have tried to preserve in the American legal system is the idea that everybody before the law is equal and that it is, if not a perfectly level playing field, at least reasonably level."

Weitzner spoke next, drawing from his experience as an electronic civil liberties lawyer to provide a conceptual introduction to the Internet.

"Especially from a constitutional perspective," he said, "the most important thing to understand about the Internet is that it is not just another broadcast medium." Nor is it analogous to the telephone, he added, because it can be used for much more than exchanging messages.

"The Internet also gives us grass-roots organizing ability on a nationwide basis that has only been available to people who

have the hundreds of thousands of dollars required to mount direct-mail campaigns," Weitzner continued. "When the U.S. Congress was debating the Communications Decency Act, within about two weeks we were able to put together an on-line petition of over 120,000 people."

Weitzner, who as a student designed the computer macros still used at the *Buffalo Law Review*, said the Internet also raises a variety of confusing legal issues in areas such as intellectual property, defamation and consumer protection. "Where is this product being

sold?" he said, citing one of the vexing questions increasingly being asked. "What state attorney general has the authority to regulate the sale of a product or a service in a particular place on the Internet?"

Tricia Semmelhack has been grappling with such issues as a partner at Hodgson, Russ. The 1974 UB Law graduate, who was part of a symposium panel on cyberlaw practice, said her work in intellectual property law brought her to the Internet when clients discovered that their trademarks were being misused there. Recent court decisions, she added, are expanding the legal implications of doing business on the Internet.

"If you put up a Web site offering something and begin to interact with customers in other jurisdictions, under the long-arm statute of that jurisdiction it's very probable you will be subject to jurisdiction wherever your customer is located," she explained. "That has a consequence for the individual practitioner who is just doing corporate law and normal business deals here in Western New York. They may think they don't need to have an understanding of Internet law, but when a client decides to put up a Web site, as lawyers they need to caution that client that he or she will be subject to jurisdiction in countless other locations. Now we routinely do advise our clients of that. We say, before you put up your Web site, let's talk about what's going to go on it."

Another panel member, Susan Schultz Laluk, of Boylan, Brown, Code, Fowler, Vigdor & Wilson in Rochester, said computers have even raised new issues in lawyer-client relations.

"Especially in the high-tech cyberlaw area, clients want you to be accessible by e-mail," she said. "One of the downsides is that they expect to have instant accessibility, and they tend to be pretty demanding. It's one step beyond the fax machine now."

She told of e-mailing a document after putting her children to bed one night, thinking she had gotten a jump on the next morning's work. Instead she received an e-mail back from the client 10 minutes later. "These clients are up and working at all hours," she said. But

Tricia T.  
Semmelhack '74



*“Now that your clients’ and your opponents’ records are no longer on paper but are entirely digitalized, to understand the computer is no longer an option. You must understand it or you simply are not in the game anymore.”*

offices, and they look at this citation and click on it, they see precisely the exhibit and the part of the exhibit you want them to see — do you understand what you have done to advance the process of persuasion? This is exciting stuff.”

Later in the day, UB Law Lecturer Howard L. Meyer provided more examples of the emerging electronic practice as he described his upper-division course, Computers and the Law.

“Now that your clients’ and your opponents’ records are no longer on paper but are entirely digitalized, to understand the computer is no longer an option,” he warned. “You must understand it or you simply are not in the game anymore.”

The symposium also featured a variety of discussions on specific legal topics. UB Law Associate Professor Michael J. Meurer, the symposium’s faculty sponsor, gave a presentation titled “Personal Use or Copyright Infringement? The Role of Copyright Law in Facilitating Digital Price Discrimination.”

Other speakers included:

- Dan L. Burk, assistant professor at Seton Hall University School of Law, on “Trademarks and Territory on the Global Internet.”

- Edward A. Cavazos, adjunct professor at the University of Houston Law Center, on “Copyright on the World Wide Web: Linking License and Liability.”

- Robert B. Charles, staff director and chief counsel of the Subcommittee on National Security, International Affairs and Criminal Justice, on “Tort Liability in Cyberspace: Where Virtual Reality Meets Reality.”

- Frank A. Cona, adjunct professor at Drexel University and consultant to the Virtual Magistrate Project, on “Applications of On-Line Systems in Alternative Dispute Resolution.”

- Diana Jarvis, staff counsel for Voters Telecommunications Watch, on “State Internet Regulation.”

- April Major, teaching fellow and director of technology at the Villanova Center for Information Law and Policy, on “International Human Rights Law as a Source of Rights to Access Content and as a Protection Against Regulatory Restrictions in Cyberspace.”

Associate  
Professor  
Michael J.  
Meurer



like it or not, she added that e-mail is a virtual necessity for anyone with computer-oriented clients. “It has to be on your business card,” she said. “And you have to be responsive to it, because it’s an expectation. That’s the way these people communicate with each other and that’s the way they expect to be able to communicate with you.”

Joseph Bermingham, Buffalo lawyer and chair of the New York State Bar Association’s Task Force on Electronic Communications, brought symposium participants into the computerized courtroom with a discussion of electronic exhibits. Traditionally, he noted, exhibits must be appended to briefs, but that is not always practical. “Sometimes the exhibits are rather lengthy,” he explained. “But if this is on disk and available to the judge and the judge’s clerks in their chambers and



Susan Schultz Laluk '85

• David E. Sorkin, assistant professor at John Marshall Law School, on "Unsolicited Commercial E-mail and the Telephone Consumer Protection Act of 1991."

• Buford Terrell, professor at South Texas College of Law, on "Life after Copyright: From Type to Bits."

Many of the presentations will be featured as papers in the *Law Review's* Cyberlaw Symposium Issue, due out later this year.

The symposium ended with the keynote address by Godwin, who as staff counsel to the Electronic Frontier Foundation has become a national figure in promoting free speech on the Internet.

Meurer says it was an inspiring highlight to an eventful day. "He gave a fascinating account of public interest lobbying and litigation," Meurer recalls. "It was a narrative of the litigation and lobbying strategy behind opposition to the Communications Decency Act."

When the Supreme Court handed down its ruling on the controversial law several months after the symposium, Pfalzgraf remembers seeing Godwin again. "I was watching NBC News and Tom Brokaw was talking to him," the former *Law Review* editor says. "We couldn't have picked a better topic. It was so timely. It left a great mark for our class." ■

## Law firms on the Net

Approximately 2,000 law firms already have their own World Wide Web pages, with dozens more coming on each week, according to Mark Pruner, president of Web Counsel, LLC, a Connecticut consulting firm for legal Web pages.

Pruner, a member of the Cyberlaw Symposium's "Practice of Cyberlaw" panel, offered several bits of advice for law firms interested in getting on the Net.

First, think of a domain name and make sure it hasn't been taken already. A domain name is the key part of an Internet address, such as "www.webcounsel.com," which is Web Counsel's address. More specifics on registering a domain name and creating a Web page can be found at that site.

"Domain names are really the most valuable intellectual property that any firm can have," Pruner told the symposium. "In a digital age, a domain name is the way that people find you. It encapsulates all the good will that a company has created. The problem is they are disappearing at an incredibly rapid rate."

When designing a Web page, Pruner advised simplicity. "Graphics are incredibly powerful, but on the Internet, graphics are worth more than 1,000 words. They're worth 10,000 to 20,000 words, because they take that long to download. So make sure that they have the impact of 10,000 to 20,000 words."

One worthwhile addition to a law firm page is a section with links to other Web sites organized according to the firm's individual practice areas, Pruner suggested. Not only will clients see it as a service, but firm members can use it, too. He showed an example of a page with links to state insurance commissions.

"Say you're trying a case in Michigan and all of sudden you hear there is a new press release out by the Idaho insurance commission that directly affects the case you're arguing," Pruner said. "You can go directly here, pop down to the insurance commission and look it up."

Overall, however, Pruner doesn't think much of most legal Web pages he has seen. "Two-thirds of them are fair to poor," he said. "Unfortunately, lawyers think in 8 1/2-by-11 sheets, but the screen is wider than it is tall. So turn the sheet sideways, at a minimum, and then think in screenfuls." ●



Mike Godwin of the Electronic Frontier Foundation was keynote speaker