

# LAWORLD

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## Secondary screening procedures for airports: Putdowns for pat-downs

In September 2004, Phyllis Dintenfass, a 62-year-old retired school teacher from Appleton, Wisconsin, was going through the security checkpoint of Outagamie County Regional Airport when the primary metal detectors sounded. Dintenfass thought the problem was likely the bobby pins and barrettes in her hair. A female screening supervisor took Dintenfass to another screening area. There, she scanned Dintenfass with a handheld metal detecting wand, and then performed a manual pat-down search. As the screening official used the back of her hands to search the area underneath Dintenfass' breasts, Dintenfass suddenly reacted to what she felt was an invasion of her body. She stated to the agent, "How would you like it if I did that to you?" and placed her hands on the agent's breasts to mimic the agent's search. On July 26, 2005, a federal

jury convicted Dintenfass of assault because of her outburst, and she now faces up to a year in federal prison and \$100,000 in fines.

It is ironic that what would normally be considered "assault" on the street is often the standard practice of screeners at airport security checkpoints. Since 9/11, passengers have been told that additional "security measures" are necessary for safe travel, and that it comes at some expense to their privacy. Many women have reported rough, rude, and humiliating manhandling, and sometimes even overtly sexual groping by security officials. Rhonda Gaynier, a New York attorney claimed that a security screener at Tampa International airport would not let her board her flight until she allowed the screener to manually follow the outline of her bra around her breasts and then feel the area between



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### Inside this issue

- 🌐 Romania: The lawyer as mediator .....3
- 🌐 Israel: Lifting the veil.....4
- 🌐 Cyprus: Intellectual property law.....5
- 🌐 Contact LAWWorld members. 6

them. "Are the insides of women's bras really our top airline security vulnerability at the time when we are still not checking airline cargo containers or many check bags?" asks Barry Steinhardt of the American Civil Liberties Union (ACLU), a civil rights watchdog organization.

In November 2001, the United States Congress federalized and professionalized the airport screening procedures by creating the Transportation Security Agency ("TSA"), housed under the new Department of Homeland Security. The TSA is responsible for all the security measures in the nation's airports. TSA's stated mission is "To protect the nation's transportation systems by ensuring the freedom of movement for people and

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commerce." In so doing, it issues and administers Transportation Security Regulations, which are codified in Title 49 of the Code of Federal Regulations, Chapter XII, parts 1500 through 1699. In August 2004, TSA enacted stricter and more extensive "secondary screening" procedures of airline passengers, including use of handheld metal detecting wands, manual pat-downs, and detailed baggage inspections for explosives. These procedures were implemented in response to two Russian plane bombings by Chechen terrorists that same month. Authorities believe these women boarded their flights with plastic explosives likely strapped to their bodies. Now, TSA tags an estimated one in every seven passengers for this secondary screening for explosives. The extensive secondary screening has raised many concerns about individual privacy, especially among women, where there have been many complaints about TSA's manual pat-downs. In addition to Dintenfuss and Gaynier, many other women claim humiliating experiences from the screening. As of November 2004, TSA has received over 652 complaints regarding its screening procedures. Organizations such as the ACLU are getting involved, warning passengers about these incidences of impropriety with airport screeners, and threatening litigation. Additionally in late 2004, Gaynier retained Norman Siegal, a prominent New York civil rights lawyer, to investigate if legal action was appropriate. Siegal then assembled a legal team to research grounds for a class action lawsuit. Secondary screening procedures are also questioned by security experts who explain that when someone is identified as suspicious, there is no procedure for questioning the person. On October 25, 2005, the Wall Street Journal quoted Rafi Ron, former director of security at Ben Gurion Airport in Tel Aviv, now a security consultant: "The missing element is the ability to interview someone suspicious. We cannot respond to the fact that someone is acting strangely." Critics also cite high failure rates in detection and warn that long lines at

checkpoints could make waiting passengers themselves the target of terrorists.

New technologies and industry partnerships may mute much of the criticism, however. They would allow the government to make airport screening even more effective, but much less intrusive, and the invasive manual pat-downs could be a thing of the past. TSA is deploying new technology to detect weapons and explosives on passengers that would eliminate the need for pat-downs and additional screening beyond metal detectors. For example, explosive detecting trace portals, or "puffer" machines, are now used in two dozen airports across the country. These machines scan passengers for explosives using puffs of air: Passengers step into the portal, which then shoots bursts of ion-charged air at them, starting with their head, and moving down to their feet. The air blows minuscule particles to the ground, where they are sucked into vents and instantly analyzed for explosives. An alarm sounds if traces of explosives are found. If not, the passenger is told to step out of the machine. The entire process takes 20 to 30 seconds per passenger.

General Electric and Smith Detection, a unit of London-based Smiths Group PLC, both make these machines for TSA at a cost of \$160,000 each. TSA has announced plans to install 147 more machines in various airports by January 2006.

Another example is the "Backscatter," which aims to solve the problem of detecting guns or other weapons hidden on a person without a physical pat-down. The Backscatter is an x-ray machine that "sees" under a person's clothing.

Though physical contact is eliminated, the Backscatter raises some other personal privacy concerns because it displays an image of the subject without clothes. In response, the two companies which manufacture different versions of the Backscatter machines have already made modifications to the technology. AS&E's Smart Check machine creates only an outline of the person's body and any hidden items. Rapsican Systems' machine

has a sliding scale where the image gets sharper and fuzzier as needed. Both companies also promise that passengers' privacy is ensured because the screeners can screen the images in a remote room and the pictures will not be saved. TSA plans to deploy test machines in both the Baltimore/Washington, D.C. and San Francisco airports shortly.

Additionally, TSA launched a pilot program geared at allowing frequent fliers to expedite the screening process in airports, and frees cardholders from secondary searches and manual pat-downs altogether. Called the "Registered Traveler Plan," it is operating in airports in Minneapolis, Houston, Boston, Washington's Reagan airport, and Los Angeles. To participate, frequent fliers are required to give thumb and index fingerprints, as well as complete paperwork and must submit to an iris scan. The program is currently capped at 10,000 members and is available only to frequent fliers invited by participating airlines. TSA is also evaluating the implementation of other private-public partnership programs that would allow participants to bypass these screening lines and secondary screenings for an annual fee.

Of course, United States airport screening procedures will never be without some inconvenience and intrusion. However, these two new trial programs may go a long way in helping the government ensure the safety and security of all passengers as well as avoiding the costly expense of defending Gaynier's and others' threatened class action lawsuits.

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## Romania: The lawyer as mediator

For 15 years, since the fall of the Communist regime, Romanian society has been going through a series of political, economic, social and legislative transformations in its transition to a market economy and in its adhesion to the European Union. These transformations have also affected the legal system, where Romanian courts found themselves called on to settle numerous actions such as thousands of cases related to assets abusively confiscated before 1990.

In these circumstances, it was felt that there was a need for regulation of mediation activity

The status of the legal profession, as recently amended, defines mediation activity and establishes its governing principles, as well as the obligations of lawyers who act in this area.

Mediation is defined as negotiation assisted by a third party (the mediator) as a consensual technique of settling disputes, in which the parties communicate in order to reach an agreement and to avoid differences of opinion and dissensions, which might necessitate formal arbitration or trials.

Mediation is an optional procedure, before litigation, but not a mandatory stage. The parties may or may not resort to mediation.

The guiding principles of the lawyer performing the mediation are:

- \* the principle of equality of the parties;
- \* the confidentiality principle;
- \* the principle of abiding by the rule of law.

The parties may choose mediation through an agreement into which they enter either by separate convention, or by a clause inserted in a contract.

The mediation lawyer brings before the parties a solution, which however does not have a mandatory character, the parties being free to accept or refuse the mediation proposal in writing

When performing the mediation activity the lawyer has the following obligations:

- \* to gather information concerning the dispute and each party's point of view;
- \* to inform the parties about their rights and obligations;
- \* to ensure good communication among the parties, for which their physical presence is not mandatory, the lawyer being able to contact them separately after having previously informed them of the process;
- \* to ensure that neither party misuses mediation in order to prevent the other party from exercising its lawful rights and interests;

- \* to be impartial and neutral and not to give legal advice regarding the object of mediation to the parties, with the signing of any legal assistance agreement, apart from the one under which mediation is performed being absolutely forbidden;
- \* to maintain confidentiality of the information brought to his knowledge during the mediation process, during its unfolding or subsequent to it, after completion;
- \* to ensure a quick, flexible procedure, which has a reasonable conclusion, in complete conformity with the law.

In case the parties reach an understanding, it shall be registered in a *trans actio n* which shall have the effects stipulated by the law.

The fact that mediation has been regulated is not sufficient for it to be adopted by the parties involved in a potentially litigious situation before resorting to the courts. Further education in the issue will be necessary, and the lawyer will have an influential role by informing clients of this possibility.

Article prepared by Daniela Calin of Calin & Trifan, Bucharest, Romania. With this issue, LAWORLD welcomes Calin & Trifan as a member firm.



LAWORLD welcomes Helen Davis Chaitman and Michael Galligan as its contacts within Phillips Nizer LLP, its member firm in New York and New Jersey, USA. Both Helen and Michael serve on the firm's Executive Committee and frequently deal with transnational matters. Helen's practice is in litigation with a concentration in matters involving financial institutions, while Michael's is in trusts and estates with a particular emphasis on cross-border tax and planning issues and sophisticated immigration matters.

In welcoming Helen and Michael we say farewell and thanks to David Jacoby, who will be moving from Phillips Nizer LLP. David has been a very keen and active contact and we will miss him professionally and personally.

Editor



## Israel: Lifting the veil

In a recent judgment (16 October 2005) the Israeli Supreme Court decided a case of lifting the veil of incorporation on the grounds of good faith. Although the Companies Law of 2000 addresses the issue of lifting the veil in a very detailed way, the court held that because this issue is unclear and "not free of doubts" it prefers to decide it on the grounds of the obligation to conduct business in good faith. The court says that the obligation to behave in good faith is, in the Israeli legal system, a "Royal principle" and it may be applied on this issue although the Companies Law addresses it specifically. The facts of the case were that the company in question was incorporated by a



Yoav Salomon

married couple to handle a business they already operated. Later the husband transferred his shares to the wife, and resigned from the board, but he continued to work in the company. The company did not inform its suppliers of the changes. Eventually the business collapsed, and a supplier filed a claim against the company and the couple (who had divorced in the meantime). The court held that 12 years of commercial relations and the personal relations created through this period formed relations of enhanced faith between the parties and that the husband, who conducted the relations with the supplier, had an obligation to report the changes in the ownership and management to the supplier; furthermore he owed the supplier an obligation to reveal the deterioration in the financial situation of the company and to advise it that the company would not be able, most probably, to pay for the goods it purchased. The court held the husband (who did not own shares of the company and was not a director of it) liable to the debt, as well as the wife.

The importance of the case lies, at least, in two issues: (1) Israeli courts may now lift the veil even when the law does not provide this relief, on the basis of good faith; (2) The obligation to behave in good faith becomes the compass of the Israeli legal system and the courts will not hesitate to apply this principle to any commercial situation, over-riding detailed legislative arrangements.

This situation affects, of course, the certainty of the system, as no one can foresee how the general principle of good faith would be applied in certain situations. It seems that Israeli courts rephrase now the English saying that equity is as the Chancellor's foot.

Our advice to foreign clients is to operate in Israel through dedicated companies incorporated outside Israel, and to hold the shares of the Israel companies through such companies, to protect themselves from this rather flexible lifting of the veil.

Article prepared by Yoav Salomon of Avniel Salomon & Co, LAWWorld member firm in Haifa, Israel.

## 9th LAWorld Annual Conference: Amsterdam, May 2005

With the three principal venues — Banks Mansion Hotel, the offices of the host van der Steenhoven Advocaten, and the meeting facility in the 17th century canal house, Heren aan de Gracht — all located within walking distance along the magnificent Herengracht Canal, this was clearly going to be a Conference to remember. And it was. Starting with a professional development seminar on customer relationship management (CRM), the program included discussion on the expanding European Union, emerging markets in India and China, electronic storage of documentation, class actions, technical innovations in communications and other issues facing legal firms around the world. The deputy mayor of Amsterdam gave an address on transportation issues, and a visit was made to a courtroom to listen to proceedings of the International Criminal Tribunal for the former Yugoslavia at The Hague. LAWorld thanks the staff of the host firm, van der Steenhoven Advocaten, and particularly Jan van der



Steenhoven and Diana Huizing, for their hospitality and organisational skills in making the Conference such a success.

10th LAWorld Annual Conference: Mexico City, March 2006

Arrangements are now under way for the 2006 Annual Conference in Mexico City. Luis González, Ben Rosen and Gustavo Carvajal of Solórzano, Carvajal, González y Pérez-Correa, SC will be hosting the event which will take place from 22-24 March 2006.

## Cyprus: Intellectual property law

Throughout the years, Cyprus has developed as a world-renowned International Business Centre. Its political and economic stability, solid legal infrastructure and efficient administration have proved to be fundamental factors in its steady advancement.

Cyprus's accession to Europe on the 1 May 2004 resulted in numerous legal reforms which were necessary for adherence to the Acquis Communautaire. These reforms included the area of Intellectual Property Law. Legislation as to various sub-sectors of intellectual property was harmonised to meet the demands of the Community and Cyprus officially became a member to The Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).

As a result, a single successful application via a Cyprus Legal Representative for the registration of a Community Trademark or Design means that the same can be protected in all the member states automatically. Cyprus has also become a member of the World Intellectual Property Organisation (WIPO) and of numerous related conventions.

A very brief overview of Intellectual Property in Cyprus will follow, along with an introduction of the relevant amendments which established compliance with European Union Laws.

### Intellectual Property

Protection in Cyprus of Intellectual Property is essentially divided into two categories:

- a) Industrial Property which includes trademarks, industrial designs and patents and
- b) Copyright which includes literary and artistic work.

### Trademarks

Trademarks are used to distinguish one trader's goods or services from those of another. The unique and distinct character of goods or services is thus identified. The Trade Mark Law CAP 268 and its amendments govern trademarks and their registration in Cyprus. By passing the Trademarks (Amendment) Law 176/2000, the government has implemented the EU Council Directive 89/10/EEC and thus brought Cypriot trademark legislation in line with European trademark legislation. The relevant procedure to apply for the registration of a national trademark must be followed. A successful trademark is protected as from the date of its filing and not the date of its eventual registration. A trademark is initially registered for seven years. Thereafter it must be renewed every 14 years in order to remain valid. Designs

The registrability of a design, depends on it being appealing to the eye in terms of aesthetics. Its registration does not protect the technical features of the product. Previously no independent statutory vehicle existed for registration of designs in Cyprus as the UK Designs (Protection) Law applied. Subsequently however, the Law on the Protection of Designs and Models No 4(I)/2002 adopting the provisions of EU Directive 98/71 was passed.

Designs may be protected for an initial period of five years, renewable every five years up to a maximum duration of 25 years.

### Patents

A Patent may be a product or a process. Patents confer on an inventor the exclusive right to use, distribute or sell a new invention. In addition, the registration of a Patent stops third parties from using, distributing or selling a new invention without the inventor's permission.

Until 1998, the registration of a Patent in Cyprus required registration in the United Kingdom. Subsequently however, the Patents Law of 1998 as supplemented by Regulations 46/1999 came into effect. This law was further amended by Laws 21(I)/1999, 153(I)/2000 and 163(I)/2002. In particular Law 153(I)/2000 introduced supplementary protection certificates in respect of plant protection products and Law 163(I)/2002 harmonised the Cyprus Basic Law with European Directive 98/44 on the protection of biotechnological inventions.

Patent protection is conferred for 20 years from the date of filing of the application and is subject to the payment of an annual maintenance fee.

### Copyright

Copyright protects creations such as works of art, literature, music, broadcasts and computer software against copying and certain other uses.

Copyright is protected by the Intellectual Property Law 18(I)/1993 as amended by Law 128(I)/2002. The Amending law has adopted various EC Directives thus bringing Cypriot legislation in line with European Copyright law.

Protection of copyright extends to different terms of years depending on the work in question. It may extend to several years beyond the creator's own death, therefore benefiting the creator's descendants through the collection of royalties.

### Conclusion

Intellectual Property rights in Cyprus are comprehensively safeguarded. Due to Cyprus' accession to Europe, these laws are reviewed and conscientiously updated in order to keep abreast of developments in this area.



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