

LAWORLD

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A note about blogs

A weblog or “blog” is basically a personal internet journal cum bulletin board. An unrestricted weblog or “blog” is an internet website which enables anyone with internet access to post comments. A restricted weblog permits the posting of comments only by authorised users.

Although blogs are a relatively new phenomenon, they have grown like topsy in the recent past. Some reports put the current number of blogs at in excess of 15 million, up from 7.8 million a mere 6 months ago. These days, a brief surf of the internet will turn up blogs on just about any subject.

However, just because they are relatively new and cyberspace-based doesn't mean that blogs are immune from the law of the land.



John Baxter

The operator of a motor vehicle dealership was recently able to obtain an injunction in the Supreme Court of New South Wales against a blogger (the operator of a blog) who had set up a blog apparently specifically to disparage the dealership (the blogger's car having been stolen from the dealership). The motor vehicle dealer claimed that the name (www.hunterhold-ensucks.com) and content (uncomplimentary allegations) of the domain amounted to injurious falsehood, namely false statements concerning his business which were calculated to induce others not to deal with him. The injunction precluded the blogger from maintaining the offending domain name or displaying the material contained in that domain or similar material on any Internet website. The blogger was also ordered immediately to shut down the offending domain.


Defamation actions based on the content of blogs will undoubtedly become quite common in the future. However, injunctions restraining publication of allegedly defamatory material are only granted in the very clearest cases, so as to interfere as little as possible with the community's right to discuss in an open forum matters of public interest.

Blogs have given rise to other issues aside from the obvious concerns about injurious falsehood and defamation. Breach of copyright and theft of intellectual property are others another. Most bloggers are neither trained lawyers nor journalists. They are generally less attuned to the legal niceties which preclude the liberal use of others' work and claiming it as their own.

Yet another concern is potential breach of confidentiality. If an employee maintains a blog, there is always a concern that he or

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she may, even inadvertently, make public information about the employer's business which should remain private. Obviously such things happen all the time in everyday life, but there is a significant difference between gossiping about company business with one or two friends over a beer, and publishing that same gossip as fact on the worldwide web.

A few blogs of interest:

<http://www.froststreet.net/> The Culinary Adventures of a New York City Lawyer

<http://www.legalunderground.com/> A blawg that asks the questions - can lawyers be entertaining?

<http://www.texasbar.com/saywhat/weblog/index.html> A weblog of classic humor from U.S. District Court Judge Jerry Buchmeyer

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P2P website shutdown

Last August, after much work and preparation, a Spanish Court ordered the shutting down of a web site that provided *eLinks* (special file identifiers) for users of P2P (Peer to Peer) network eDonkey/eMule.

The ruling, adopted in an ongoing criminal procedure, is a new milestone to be added to the steady wave of cases against P2P networks and one of the first criminal procedures involving *eLinks*.

Earlier last year US federal authorities shut down some web sites that provided "torrents" (similar to *eLinks*) for downloading in BitTorrent P2P network the Star Wars Episode III before it was theatrically released. By the end of June, the "Grokster Decision" of the United States Supreme Court filled headlines around the world. In July, an Australian ISP was held responsible for copyright infringement for links on a website by the Federal Court of Australia, which in September also delivered judgement against the makers of KAZAA, another P2P program. And only one week after that, a Taiwanese Court ordered executives of another P2P network to serve up to three years in jail.

What all these cases have in common is that all of them are related to P2P networks and copyright infringement on the Internet, but they all differ in the way the different courts approached the issue.

While the Supreme Court of the United States considered Grokster and

StreamCast, P2P software owners, liable for "inducing" copyright infringement by third parties, the Federal Court of Australia in one case held that the owners of KAZAA (popular P2P software) had infringed the copyright of the sound recordings by "authorizing" users to make a copy and to communicate the said recording to the public without the appropriate license. The other Australian case is not exactly P2P, but it is relevant because the Federal Court held the ISP equally responsible for the infringing activity on the website they hosted, which provided links for direct downloading of sound recordings hosted elsewhere.

The facts in the eDonkey/eMule case were different from the other cases: a web site (www.cvcldgo.com) provided *eLinks* exclusively for movie files in certain formats that can be played in regular DVD players and only for downloading through the eDonkey/eMule network. The site had an average of 27,000 visits per day but hosted no infringing files, just comments, few pictures and lots of advertising.

In Spain, as in the European Union, it is clear that making available to the public (uploading) a file without authorisation is a copyright infringement. The perpetrators responsible for those infringements are the individuals who upload the files, mainly users of P2P software but, in this case, no copyrighted files were hosted under the domain cvcldgo.com, just the *eLinks*. Thus, when faced with these facts there

was no precedent to serve as reference, not even those mentioned, which were unknown at the time, so a different approach that would allow prosecution of the owners of the site, who were profiting from the infringement done at their site, was required.

It was argued that the owners of the web site acted to infringe the copyright of individuals making available the files as cooperating partners, placing them in roles equivalent to perpetrators under the Spanish Criminal Code. Note the distinction from a mere accessory; without the cooperation the crime could not be committed. It was argued that the *eLinks* provided were necessary for the later downloading of the movies, since downloading using those *eLinks* was a guarantee for the users that the file containing the movie was not fake and had the quality claimed in the comments.

Even though there is still a long way to go until a final ruling is made, what matters is that the Court accepted the approach and ordered preliminary injunctions against the owners of the site, confirming that, although not perpetrators, those that profit directly from the infringement done by others may also be held liable before a criminal court.

This case, and the others mentioned, are new steps in setting a clear path preventing the use of P2P technology for copyright infringement.



María Suárez Pliego



Javier Aragonés

María Suárez Pliego is acting as counsel for the prosecution; article prepared by Javier Aragonés, also involved in the case. Ms Suárez and Mr Aragonés are from Suárez de la Dehesa Abogados, LAWorld member firm in Madrid, Spain.



Romania – Speeding up Commercial Litigation



Daniela Calin, principal of Calin & Trifan

After the 1989 Revolution, significant political changes occurred, leading to a series of major economic changes. The evolution of a market economy has led to the passing, in the last 15 years, of a legislative package designed to regulate the new situation. In particular it was necessary to speed up the process of resolving matters of commercial litigation.

One of the means of recovering *certain*, *liquid* and *exigible* (chargeable) debts is represented by the payment summons. This procedure was adopted through Government Ordinance no. 5/2001 and subsequent modifications. According to the Romanian Civil Procedure Code, a debt is *certain* if “its existence derives from the debt document itself or from other documents as well, even un-authenticated, which are issued by the debtor or that are recognized by him/her”. The debt is *liquid*

when its amount is determined through the debt document itself or from other un-authenticated documents, as well, which are either issued by the debtor, recognized by him/her or which are opposable to him/her on the basis of a legal disposition or of the dispositions contained within the debt document, even if for this determination there might be needed a special calculation”. A debt, when it becomes due is considered *exigible*.

According to art. 1 of the above-mentioned Ordinance,

... the procedure of the payment summons is deployed, at the creditor's request, for the purpose of willingly or through forced execution achievement of certain, liquid and exigible debts that represent

payment obligations of certain amounts of money, undertaken through a contract, registered in an instrument or determined according to a statute, regulation or other document, appropriated by the parties through signing or in another manner allowed by the law, and which certifies the rights and obligations regarding the performing of certain services, works, or any other labour conscription.

By means of the payment summons, the parties have the opportunity to settle their debts in a speedy manner. Depending on the situation in each case, the creditor may decide if he/she will choose the common law path or use the payment summons.

The payment summons presents a series of advantages: the cases are solved rapidly; the stamp fee is low and fixed, regardless of the value of the claims; in principle, only documentary evidence is allowed;

and the legal procedures are different. If the judge considers that the creditor's claims are justified, he/she will issue a decision that will award the payment summons to the debtor. The period within which the debtor must pay is from 10 to 30 days. If the parties reach an agreement on their own, the judge will be able to set another deadline.

If the judge rejects the creditor's petition, the decision is final but the creditor can still resort to common law to recover the debt. If the creditor's petition is admitted in part, he/she can choose common law for solving the aspects that the court concerned with the payment summons did not solve.

The debtor can formulate a petition for annulment, against the decision containing the payment summons, within 10 days.

With respect to the annulment petition, the judge can admit it, pronouncing an irrevocable decision. If the petition is rejected, the decision is also irrevocable. The only legal avenue for the annulment petition is an appeal.

The ordinance for the total or partial admission of the creditor's petition can be invested with executory formula at the moment when it becomes irrevocable, constituting executory title. Aspects pertaining to the core matter cannot be resolved by means of the payment summons.



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10th Annual LAWORLD Conference in Mexico City

Members of LAWORLD will gather at the Nikko Hotel in Mexico City from 22-24 March 2006 for the organisation's annual Conference. The event will be hosted by Luís González and Gustavo Carvajal of Solórzano, Carvajal, González y Pérez-Correa, SC, LAWORLD member firm in Mexico City. Members will be involved in Regional and plenary sessions for the three days, discussing a variety of issues related to practice management and international referrals.

A feature of this year's Conference will be the attendance of new members from North and South America and Europe.

Even though LAWORLD members are in frequent contact with each other by internet and telephone, the annual Conferences and other Regional meetings held from time to time provide an excellent opportunity for personal relationships to develop. These relationships are essential when firms refer clients to other members around the world.

22-24
March
2006

Excerpts from articles from LAWORLD member firms

See www.laworld.com <<http://www.laworld.com>> for full details

Luxembourg: Corporate Vehicles for Doing Business

The Grand-Duchy of Luxembourg is one of the smallest Member States of the European Union. It is the largest center for private wealth management in the European Union. With 156 international banks and numerous investment funds domiciled in the Grand-Duchy, Luxembourg has become leader of the European investment fund industry and is today the second fund domicile in the world behind the United States of America. Last year, Microsoft, AOL, Amazon and Apple decided to set up their European headquarters in Luxembourg. They were followed this year by Skype which based its world headquarters in the Grand-Duchy.

Will Power

LAWORLD member firm, Best Hooper, of Melbourne, Australia, acted during 2005 in a case which attracted considerable publicity in Australia and overseas.

On 9 February 2005, Maria Korp failed to arrive at work in the morning, or to collect her 11-year old son from school in the afternoon. Her car had also disappeared. Her disappearance was reported to police. Her husband, Joe, and her 26-year old daughter, Laura De Gois, made appeals through the press to her and the public for information on her whereabouts.

On 13 February, Maria's car was found near the Melbourne Botanical Gardens. When police opened the boot, they found Maria's body inside. She was alive, but in a coma. She was taken to hospital.

On 16 February, police arrested Joe Korp, (Maria's husband) and a Ms Tania Herman.

Singapore: Competition Act 2004

The Act is a welcomed framework for a bustling economy such as Singapore and is expected to help create a level playing field where all businesses will thrive under healthy competition. Its benefits are also predicted to cascade down to the consumer-level where consumers will enjoy more choice, lower prices and better products and services.

LAWorld's US members meet in Chicago

Val Stieglitz, Laura Christa, James Nelson, Larry Barnett, Helen Chaitman and Rick Perlman, representing the six US member firms of LAWorld, met for a day of discussion in Chicago during December. They were joined by Luís González from Mexico City – who happened to be in Chicago at the time – and by three prospective members from key US locations.

Topics discussed included the flow of referrals between members, membership issues, making the website more of a business driver, and the agenda for the upcoming AGM (Mexico City, 22-24 March 2006).

Val Stieglitz, LAWorld chairman for the Americas, was very happy with the session. He commented: "Although we are in regular contact by email, there are still many advantages in meeting face-to-face to increase the benefits which we can obtain from the network".



Standing: Luís González (México City), Larry Barnett (Los Angeles), Val Stieglitz (Columbia SC), Rick Perlman (Chicago), Douglas Cohen (guest, Las Vegas), Laura Christa (Los Angeles).
Seated: Joseph Pallot (Miami), Helen Davis Chaitman (New York), Linda Klein (guest, Atlanta), James Nelson (Seattle).

LAWorld welcomes new member firms

Luxembourg, Miami, Copenhagen and Moscow – these cities are now all on the LAWorld map.

We welcome:

- **Kaufhold Ossola & Partners**, represented by *Aloyse May*
- **Devine Goodman Pallot & Wells, P.A.**, of Miami, represented by *Joseph Pallot*
- **Krasnik & Partnere**, of Copenhagen, represented by *Max Krasnik*
- **Legalife LLC**, of Moscow, represented by *Marina Zinovieva*.

Full contact details for these and other member firms are set out on the final page of this Newsletter.

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