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Blog Law

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What is a Blog?

- People have been “blogging” since the Internet’s beginning
- Blog = “a web-based publication consisting primarily of periodic articles” (Wikipedia Apr. 2006)
 - Postings in reverse chronological order
 - No third party editors
 - RSS feed

Eric Goldman

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OCTOBER 2006

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Technology & Marketing Law Blog

October 25, 2006

NY v. DirectRevenue Hearing Transcript

By Eric Goldman

I previously blogged on the [New York v. DirectRevenue case](#) and the amicus brief that David Post, Scott Christie and I filed. Last week, there was a hearing on DirectRevenue's motion to dismiss. The [transcript](#). Note that all transcript references to "Mr. Christie" actually should be to Justin Brookman of the NYAG's office.

One exchange that caught my attention: the judge got feisty with Brookman over the NYAG's continued misuse of the term "spyware" to describe software that lacks a report-back feature (see the [Merriam-Webster definition of spyware](#)). On page 17, the judge says to Brookman:

Wait a minute. You called it spyware. And then when your adversary says wait a minute, none of this is alleged in their papers. Forget spyware. It's not spyware unless you tell me different.

I've [complained before](#) about the problems created by the lack of standard nomenclature for adware and spyware. This sloppy nomenclature can benefit plaintiffs to the extent they can use the term "spyware" as a scary smear tactic. But as the judge's retort indicates, it can also backfire when judges realize that the term is being used to misportray the facts.

Posted by **Eric** at 02:51 PM [Permalink](#) | [Adware/Spyware](#) | [Comments \(3\)](#) | [TrackBack \(0\)](#) | [Printable Version](#)

October 20, 2006

Courts Can't Figure Out if Buying Keywords Constitutes Trademark Use--Buying for the Home v. Humble Abode



- Posting
 - NEW ENTRY
 - ENTRIES
 - UPLOAD FILE
- Community
 - COMMENTS
 - COMMENTERS
 - TRACKBACKS
- NOTIFICATIONS
- Configure
 - TEMPLATES
 - CATEGORIES
 - SETTINGS
- Utilities
 - SEARCH
 - ACTIVITY LOG
 - IMPORT / EXPORT
 - REBUILD SITE
 - VIEW SITE »

Create New Entry

Search Entries

Title ?

Primary Category ?

Select

[Assign Multiple Categories](#)

Entry Body ?

B **I** **U**

Extended Entry ?

B **I** **U**

The Blogging Phenomenon

- 50M+ Blogs (Technorati Aug. 2006)
 - 2 new blogs every second
 - Doubling every 6 months
 - 1.6M new posts every day
- Boing Boing claims 1.7 million unique readers/day (Open and Shut?)
- Blogs influence MSM...
- ...and MSM is becoming more bloggy
- RSS as new desktop portal

- InternetCases.com
- internetnews.com
- IP and IT Conferences
- John Battelle's Search
- Law School Innovation
- Legal Ethics Forum
- Litigation Blog
- The Long Tail
- madisonian.net (0) (1)
- MIT Advertising Lab: future of advertising and advertising techn
- MoneyLaw
- Mouse Print
- News
- NYT > Education
- NYT > Media and Advertising (0) (1)
- NYT > Technology (0) (1)
- Official Google Blog (0) (2)
- Open Notebook
- The Patry Copyright Blog
- reality blurred
- Reality TV World: Reality TV News
- The Red Tape Chronicles
- Rethink(IP) - Full USPTO News and Notices
- Reuters: Oddly Enough
- Reuters: Technology
- Santa Clara University News
- SCU Law: High Tech Law Institute
- Search Engine Guide Blog (0) (1)
- Slashdot (0) (2)
- The Smoking Gun

IP and IT Conferences: 0 unread, 0 kept new

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More Options

4,690 subscribers related feeds mark all new unsubscribe edit subscription

Slashdot



News for nerds, stuff that matters

60 Items | Sort Oldest First | Updated: Sun, Oct 29 2006 6:53 PM

Tackling Global Warming Cheaper Than Ignoring It

By kdawson on ounce-of-prevention

Coryoth writes, "In a report commissioned by the UK government, respected economist Sir Nicholas Stern concludes that mitigating global warming could cost around 1% of global GDP if spent immediately, but ignoring the problem could cost between 5% and 20% of global GDP. The 700-page study represents the first major report on climate change from an economist rather than a scientist. The report calls for the introduction of green taxes and carbon trading schemes as soon as possible, and calls on the international community to sign a new pact on greenhouse emissions by next year rather than in 2010/11. At the very least the UK government is taking the report seriously; both major parties are proposing new green taxes. Stern points out, however, that any action will only be effective if truly global."

[Link](#)

Posted on: Sun, Oct 29 2006 6:03 PM | [Email This](#) | [Clip/Blog This](#)

Keep New:

How To Make Your Friends Call You More

By kdawson on not-funny-mcgee

B0bReader writes, "Simply sign up to something called jajah (a VOIP service that connects real telephones) using your friend's number (mobiles included), then log in and dial your own number. Your friend's phone will ring and after they hear a brief 'Jajah is connecting your call' they will be calling you and incur all charges. As an added bonus you will quite probably receive your friend's latest voice-mail message as your own (at least on Irish networks), which you may or may not wish to hear. There is even a Jajah Firefox extension — which at the time of writing is the Firefox featured add-on — so you can do it right from your browser. This is about the best example of a bad idea, with terrible implementation, that I have seen all day. And with the wonderful publicity the Firefox page offers it should reach a wide audience in no time."

[Link](#)

Posted on: Sun, Oct 29 2006 4:26 PM | [Email This](#) | [Clip/Blog This](#)

Keep New:

Greek Blog Aggregator Arrested

By kdawson on careful-what-you-link-to

Blogs and Publishing

- **Blog law = publishing law**
- **Major blogger liability concerns**
 - Defamation
 - Invasion of privacy
 - Copyright infringement
 - Trade secret misappropriation
- **Selected blog-specific legal issues (non-IP)**
 - Blogs as journalists
 - Blogs as advertising
 - Blogs and election laws
 - Blogs, anonymity and retaliation

Blogs and Publishing

- 47 USC 230 eliminates most non-IP claims based on third party content
 - “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider”
 - Scieneter and editorial control irrelevant
- Examples
 - DiMeo v. Max, 433 F. Supp. 2d 523 (E.D. Pa. 2006)
 - D'Alonzo v. Truscello, 2006 WL 1768091 (Pa. Ct. Common Pleas 2006)

Blogs and IP

- Bloggers as Copyright Defendants
- Bloggers as Copyright Plaintiffs
- Bloggers as Trademark Defendants
- Bloggers as Trademark Plaintiffs
- Blogs and Trade Secrets/Patents

Group/Guest Blogs

- **Legal issues**
 - Liability
 - Legal compliance
 - Asset disposition
- **Legal paradigms**
 - Partnership
 - Employment
 - Contribution to collective work
 - Joint work
- **Proactive steps**
 - Form entity/joint blogger agreement
 - 512 registration
 - Investigate insurance options

Blog Law Resources

- **EFF Legal Guide for Bloggers**
 - <http://www.eff.org/bloggers/lg/>
- **Bloggership Conference Papers**
 - http://papers.ssrn.com/sol3/JELJOUR_Results.cfm?form_name=journalbrowse&journal_id=890371
- **Eric Goldman, Co-Blogging Law**
 - http://papers.ssrn.com/sol3/papers.cfm?abstract_id=898048
- **Eric Goldman, Blog Law Recap**
 - http://blog.ericgoldman.org/archives/2006/07/blog_law_recap.htm
- **Eric Goldman Blogroll**
 - <http://www.bloglines.com/blog/ericgoldman>