Hot Topics in Internet Law

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Perennials—Keyword Advertising

- Four pending suits against Google (Jurin, Rosetta Stone, CYBERsitter, Home Décor Center)
- Habush v. Cannon in Wisconsin Supreme Court
- STK v. Backrack (TTAB May 21, 2012): no policing duty over competitive keyword advertising
- Franklyn & Hyman, Trademarks as Keywords: Much Ado About Something?
  - “although a majority of consumers use trademarks to search for the trademarked product only, sizeable minorities use trademarks to search for the trademarked product along with similar competing products sold by other companies”
  - “the actual probability of diversion turns out to be quite modest. ...the task of differentiating diversion from ordinary search behavior is going to be challenging”
Perennials—Marketplace Liability

  - Amazon not liable for merchants’ counterfeit sales despite receiving NOCIs
  - Lesson for Manufacturers
    - Verify your NOCIs
  - Lessons for Marketplaces
    - Reject unreasonable TM owner demands
    - Earn consumer trust
Perennials—Web Host Liability

- **Flava Works v. Gunter** (7th Cir. Aug. 2, 2012)
  - Viewing embedded video isn’t direct infringement, so linking site isn’t contributorily liable irrespective of 17 USC 512(d)
  - Sidelading is direct infringement

- **David v. CBS** (C.D. Cal. July 13, 2012)
  - Distributing P2P software could be inducement even if no secondary liability
Odds ‘n’ Ends

- **Copyright as “Right to Forget”**
  - Monge v. Maya Magazine (9th Cir. Aug. 14, 2012)
  - Scott v. WorldStarHipHop (SDNY May 3, 2012)

- **Latest Anti-Consumer Review Technique**
  - Renter shall not “discuss or disclose the occupancy of the subject property with any entity not bound by the terms of this agreement without the expressed written authorization of the homeowner and the property agent representing the homeowner”

- **Initial Interest Confusion is Dying**

- **Battles Over Social Media Accounts**

- **Idea/Expression Dichotomy in Apps** (cf. EA v. Zynga)

- **Cleaning Up after Trademark Injunctions**
Enforcement Deputization

Uploader

Downloader

Host/P2P

Investors

Consultants

Internet Access

Directories/Search Engines

Registrar

Ad Network

Payment System

Landlord

Phone/Power
Post-SOPA Battlegrounds

- DOJ criminal prosecution (ex: Megaupload)
- ICE domain name seizures (ex: Dajaz1 and Rojadirecta)
- International trade agreements (ex: ACTA, TPP)
- Ex parte TROs purportedly binding non-litigants

“Voluntary” initiatives. Ex:
- “Graduated response”/Center for Copyright Information
- ANA/4As + blacklist
- Verisign’s proposed “anti-abuse” policy
- Google’s algorithmic downgrade and customized auto-complete

**SOPA WILL HAPPEN WITHOUT ANY LEGISLATION**