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Wired to the law: Internet is newest frontier for lawyers

By Jenni Bergal
Business Writer

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When Robert Kain graduated from Vanderbilt Law School in 1978, he never dreamed he'd become an attorney practicing computer law.

But today Kain is one of a growing number of attorneys who specialize in "cyber law," the law dealing with the Internet. Cyber law can encompass everything from domain name protection to defamation to the digital distribution of music.

"No one knew what cyber meant when I graduated. I never imagined it would be like this," said Kain, a registered patent attorney who practices in Fort Lauderdale and specializes in intellectual property, which involves trademarks and copyrights.

Attorneys such as Kain have flocked to cyber law because they realize that traditional specialties, such as intellectual property, contracts or corporate law, need to keep pace with changes in technology. Much of cyber law deals with commercial transactions that have been negotiated through the Internet.

For example, it used to be that when you signed a written agreement on the dotted line, you had signed a contract. Now, when you log onto a Web site and click "I agree" to a list of conditions before being allowed to see the site's contents, the law is murkier. While many courts have ruled that this type of contract -- often called a "click-through agreement" -- is binding, the latest legal question is whether the language was clear and unambiguous to the customer.

In cyber law, issues that arise in the area of the Internet and computer technology can be more complex and uncertain than in traditional law.

While courts have taken up such issues only in the past few years, there have been some significant rulings dealing with the Internet. Among them:

Last June, the ACLU won a federal appeals court case that struck down as unconstitutional the Child Online Protection Act passed by Congress, which makes it a crime to use the World Wide Web to communicate "for commercial purposes" material considered "harmful to minors." The act makes it illegal to knowingly put objectionable material, such as pornography, where a child could access it on the Web. The U.S. Supreme Court has agreed to review the case.

Earlier this year, a federal appeals court ruled that Napster, a free online music file-trading service, was infringing on the copyrights of major record companies. Napster is appealing the ruling, arguing that it violates its First Amendment right to free speech.

Computer law is "very popular because everyone is working on the Internet," said cyber law attorney Bruce Fischman of Miami.

Fischman, a partner in the firm of Fischman, Harvey & Dutton, said this new breed of law is challenging and interesting because the Internet is largely unregulated. Because the Internet is global, no one country's legal system can govern commerce on the Web. And Internet-related case law or legal precedent seems to be evolving constantly.

"It's sort of the old Wild West," he said. "We try to tame it."

Waiting for courses

Many law schools across the country have begun offering computer law courses, and students are lining up to take them.

Harvard Law School, for example, has its own cyber law research center, which studies issues ranging from privacy to antitrust to e-commerce.

Jonathan Zittrain, a Harvard law professor who teaches a course called Internet and Society, said the student response has been overwhelming.

"We started with about 25 students in 1997. This fall, there are several hundred on the wait list," Zittrain said.

Betty Taylor, a law professor at the University of Florida, has seen the same degree of interest at her school.

"Cyber law is a growing area," said Taylor, who teaches a seminar on computers and the law that touches on everything from copyright to identity theft to privacy issues. "Students find it fascinating."

But some attorneys say that a classroom really isn't the place to learn about computer law.

"The real problem is that you can't really teach cyber law. It's a combination of at least four or five distinct legal fields," said attorney Kain.

For example, those who practice contract law need to advise clients about how to set up user contracts on the Internet, Kain said. Those who specialize in patents and copyrights need to know about domain registration. Tax attorneys need to know about the laws affecting sales tax on the Internet.

Widening reach

For Kain, a partner in the firm of Fleit, Kain, Gibbons, Gutman & Bongini, the move to cyber law wasn't that far a stretch from the work he already does: patents and copyrights.

"It was a natural expansion for my practice," Kain said, who helps companies patent computer programs and represents them in domain name disputes.

But attorney Fischman, who specialized in commercial litigation, has developed expertise in a more uncharted territory: Internet defamation cases in which companies have been "cyber-smearred" -- or attacked on Web sites or Internet message boards.

"If I want to find out about a company, I'm not going to call my broker. Or wait to read tomorrow's *Wall Street Journal*. I'm going to get on the Internet and find out whatever I can about that company. I'm going to look at stock charts, at bulletin boards," Fischman said. "If someone gets on there and manipulates that information by putting a false earnings report up or phony information on a bulletin board, it can be devastating to the company."

Fischman said he thinks cyber law is reaching into all levels of his profession, affecting even those lawyers who deal with more traditional clients who might have little experience with the Internet.

"It develops for lawyers or firms that are servicing clients and suddenly an Internet issue comes up," Fischman said. "Someone may have stolen a company's name. Or a company may be attacked on the Internet."

Specialized field

Some cyber lawyers say, however, that not just any attorney can start practicing computer law, which they say is extremely specialized.

"Two or three years ago, when the Nasdaq was exploding, everyone was a tech lawyer and everyone had a tech practice," said Mark Grossman, a cyber lawyer in the Fort Lauderdale office of Becker & Poliakoff. "But there are just a handful of us in the state of Florida who are legitimate technology attorneys. We know who we are."

Grossman, who works on cases that include domain names, Web site licensing agreements and software development, said attorneys who take up cyber law and are not familiar with it are getting into sticky territory.

"So much of the law is not yet developed. There are so many areas where the answer is gray," he said. "It's almost impossible for someone who doesn't live and breathe this stuff."

Grossman said about a dozen years ago, he moved from corporate law to handling technology issues, such as software agreements. Since then, he said, he has concentrated on computer and Internet law. He writes a weekly newspaper column on the subject, has lectured about it and served as an expert on Florida's Internet Task Force, a 34-member panel created to promote the growth of information technology.

Grossman, like many of his colleagues, agrees that one of the fastest growing areas of cyber law is litigation. Investors are suing in securities fraud cases, such as pump-and-dump schemes. Clients are suing software developers.

"Last year's deal looked so good, when they did it in minutes on the back of a napkin," he said. "Now it doesn't look so good and everybody is suing."

Cyber lawyer Bradley Gross, who works in Becker & Poliakoff's Miami office, said much of the litigation he sees revolves around how technology is used or abused.

"A client might buy someone's software, license it and use it to run their business. Then they find other uses for it, and they customize it and add features to it. So the software company says, 'Wait a minute. If you're going to use our software for something else, we could have done it for you and charged you more,'" Gross said.

This type of dispute frequently ends up in a lawsuit.

Ed Mullins, an attorney who specializes in intellectual property and defamation cyber law at Astigarraga Davis Mullins & Grossman in Miami, said computer law is permanently altering his profession.

"I think every attorney will be changed by the Internet, because their clients are on the Internet and are affected by it," Mullins said. "Who else are they going to come to with their legal problems?"

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