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Technology Fosters Trends

Arthur S. Leonard

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New communications technology is having a tremendous impact on the practice of law. In the "Legal Profession" course I teach, I keep my eyes focused on professional practice issues. One emerging trend is the willingness of courts to allow an increasing amount of their business to be conducted through fax, e-mail and teleconferencing. The New York State courts are now conducting experiments with filing certain kinds of documents via e-mail. E-mail assures simultaneous delivery of the same document to numerous parties. In multiparty litigation, for example, e-mail service of documents makes it possible simultaneously to file a paper with the court and distribute it to all counsel on both sides of the case. E-mail also reduces great distances to nothing in multidistrict federal litigation.

Another emerging trend that the courts are just beginning to confront is the problem of interstate and multistate practice, as exacerbated by two phenomena: the emergence of large multistate and international law firms, and the Internet. Until now, lawyers have accepted the idea that each state determines the qualifications to practice law and admits attorneys to practice, and that the federal courts have their own separate system for admission to practice. Lawyers with multijurisdictional practices have to undertake the laborious task of applying separately for admission in each state where they expect to engage in practice, as well as applying separately to each federal court. Although a system of admission *pro hac vice* (for the case only) has emerged, as courts have been stretching the definition of legal practice (especially in a recent decision by the California Supreme Court, the infamous *Birbrower* case), it seems that the *pro hac vice* process may be inadequate to deal with the complexities of modern multijurisdictional law practice. At the same time, the emergence of the Internet makes the old state jurisdictional lines appear even more porous. As law firms establish websites and even individ-

ual practitioners make their availability known on-line, the importance of physical borders will diminish, and potential clients are unlikely to feel constrained (if they even do feel constrained any more) about where to find the lawyer they want for their case.

Perhaps in this century we will see an evolution toward a truly national bar, with the multistate examination and a standardization of other credentials leading to one admission process good anywhere in the country. And, of course, through an inter-

national treaty process, could we envision the emergence of a world standard for accrediting lawyers who would be able to practice everywhere? That is much further off, but seems exceedingly possible in this brave new world.

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Copyright and the Internet | Edward Samuels

There is no doubt that the hot topic in the field of copyright is the Internet, and its impact on almost all aspects of copyrighted works. Some Internet watchers claim that the Internet is the end of copyright law as we know it; that two-hundred-year old laws are now "obsolete"; or that the Internet, designed to withstand nuclear attack, treats regulation (whether it be copyright or censorship) as a defect and simply routes around it.

But copyright is not an obsolete set of rules that has remained as it was at the time of the Constitution. It's been changing at an ever-accelerating rate in recent years. Composers in the 1920's and 1930's, when "free" music on radio was threatening to overturn the market in sound recordings, sounded an alarm just as hysterical as that sounded today about the Internet. Yet, the law adapted to the new market, and composers of music emerged even stronger than they were before. In the 1980's, some movie producers claimed that the VCR would put them out of business, and challenged Sony in the courts. Yet, just a few years later, the video market became a larger source of revenue to the movie studios than theatrical release.

Already, Congress has responded to the some of the copyright concerns by passing the Digital Millennium Copyright Act. The primary provisions of this massive new law grant special protection to technological systems for controlling the access and copying of digital copyrighted works, on the Internet and elsewhere, and for embedding "copyright management information" in digital versions of copyrighted works so that they can be tracked and accounted for. It's too early to tell exactly how successful this new system of regulation will be; but I think that it's safe to say that the problems are not insurmountable. Between the new act and the traditional principles of copyright, there is reason to believe that the law is perfectly capable of dealing with the most pressing issues raised by the Internet.

PROFESSOR EDWARD SAMUELS teaches courses in Bankruptcy, Commercial Transactions, Contracts, and Copyright and Literary Property. His book, *The Illustrated Story of Copyright*, will be published by St. Martin's Press in November 2000.