



Attorneys at Law

Glenn E. Benckendorf
David A. Benckendorf
James W. Benckendorf
Lynne M. Binkele

101 N. E. Randolph Ave. ■ Peoria, IL 61606 ■ 309-673-0797 ■ Fax: 309-673-8759
204 N. Main St. ■ Morton, IL 61550 ■ 309-266-6121 ■ Fax: 309-266-8759

January 2001

Points of Business Interest

The first part of this newsletter is dedicated to technology problems many modern businesses face. I call it **Technology: can't live with it, can't unplug it.**

- *Hey, It's Only E-Mail.*

In *Strauss v. Microsoft Corporation*, the plaintiff sued Microsoft for sexual discrimination after it failed to promote her. The court allowed the case to go to trial, finding that her supervisor's behavior, including sexist e-mail messages, could lead a jury to conclude that Microsoft intentionally discriminated against her.

- *A Picture Is Worth A Thousand Words*

A computer bulletin board operator was sued by Playboy Enterprises for having unauthorized copies of Playboy magazine's copyrighted photographs on its bulletin board. Although the defendant operator claimed that the photographs were uploaded into the system without his knowledge, and the photographs were removed as soon as he knew that they were copyrighted, the court still found him liable. Under copyright law, even an innocent infringement gives rise to a right to sue. It is, therefore, essential that an employer be aware of what is sent, received and stored in its computer system.

A similar problem with personnel accessing data is viruses. Unauthorized receipt of e-mails and uploading of computer data and programs can introduce viruses that can cripple a business' computer system.

- *Cyber Defamation*

A person can commit defamation by posting defamatory statements in chat rooms. In some situations, the service provider, such as an ISP or bulletin board host, can be charged with libel as a publisher. It is essential that employees be informed that it is improper to make or release information online that could lead to such a lawsuit.

- *OK, You Have My Attention, But What Does All This Mean To Me?*

It is essential that every business have an information technology (IT) policy. Such an IT policy should be easily understood by employees (simple and in plain English), should be explicit and should warn of discipline or termination for violation. The policy should make it clear that any voice mail, e-mail, computer files and other materials stored on or in the company's equipment belongs to the company, and employees have no expectation of privacy. Sexist, racist and other similar material will not be tolerated, whether stored in the system or communicated to anyone else. If you are online all or most of the time, you should have a firewall system in place. *Do not create this policy on your own, as it could give rise to enforceable rights in your employees that could cause you to be named a defendant when you discipline them for doing what they should not be doing in the first place.* Let us help you, in order to avoid any problems. You should also use a password control system to control access and regularly back up all of your data (how else will you prove that the allegations made against your company are false?).

Finally, install virus-checking software on every computer. They hurt less than the vaccinations we all received as kids, and the computer viruses of today are meaner than the ones back then too.

- *Illinois Securities Law, Business Broker's Act and Business Opportunities Law*

The Illinois Securities Law, Business Broker's Act and Business Opportunities Law were amended to restrict or eliminate some of the exemptions for offering unregistered securities to individuals based upon the net worth of the investor.

- *OSHA's Ergonomic Rules*

OSHA's ergonomic rules have been adopted, requiring businesses to deal with repetitive stress and other ergonomic injuries of their workers. This rule applies to almost all business covered by OSHA (The Occupational Safety and Health Act), and takes effect on January 16, 2001. Covered businesses must disseminate by October 14, 2001, basic information to their employees about muscular-skeletal disorders (MSDs), the risk factors of work activities, the signs and symptoms of an MSD, a description of OSHA standard and instructions about how to report an MSD. No further action is required unless an employee reports an MSD.

- *Who Would Have Thought That the Internet Grinch Is French*

A French court has held Yahoo accountable and threatened fines for over \$12,000.00 per day unless Yahoo installs a keyword-based blocking system that prevents French citizens from seeing the contents of Yahoo's auction sites. If this stands, it sets a precedent imposing an obligation on every Internet business to comply with the laws of every country in which a viewer may see its web sites.

- *Federal Computer Fraud and Abuse Act Has Been Held to Protect Corporations*

Even though the Computer Fraud and Abuse Act provides that damages may be recovered by individuals, the 9th Circuit Court of Appeals has held that damages can be recovered by corporations in a case involving a former employee's manipulation of a company's computer system.

- *New Standards Are in Effect for Accessibility of Office Equipment to People With Disabilities.*

On December 21, 2000, the Architectural and Transportation Barriers Board (I bet you didn't know they even existed) issued a final standards on what makes computers, software and electronic office equipment accessible to people with disabilities, all pursuant to the Rehabilitation Act. If you wish to know more about this, you can read about the standards at www.access-board.gov/news/508-final.htm.

- *And You Thought the Law Was Dry!*

A prisoner filed a lawsuit against *Penthouse* magazine; an equally creative federal judge dismissed the case in verse. You can read about it at <http://abcnews.go.com/sections/us/DailyNews/paulajones001220.html>

- *Y2K Law Used Only 18 Times.*

The Y2K legislation passed by Congress in 1999 has been invoked in only 18 cases nation wide.