



SCHOOL OF LAW

CASE WESTERN RESERVE
UNIVERSITY

Journal of Law, Technology & the Internet

VOLUME 3

FALL 2011

NUMBER 1

JOURNAL OF LAW, TECHNOLOGY & THE INTERNET
2011 – 2012 EDITORIAL BOARD

Managing Editor
Rachel Wolbers

Editor-in-Chief
Eben McNair

Production Editor
Rebecca Gilbert

Executive Articles Editor
Daniel Cronin

Executive Notes Editor
David Myers

Associate Coordinator
Carla DiBlasio

Executive Contributing Editor
Philip Blanco

Contributing Editors
Daniel Smith & Mitch Kline

Senior Editors
Jolie DeForrest, Abbey Jahnke, Alex Mechling, Nada Mohamed, Ashtyn Saltz

Associate Editors

Sana Ahmed
Thomas Au
Kyle Colonna
Claire Davis
Casey Fitzpatrick
Zachary Griffin
Emily Gurskis
Sara Kohls
Christopher Kolmer

Sara Kuehne
Nicholas Lanphear
Jenna Leventoff
Neal Robin
William Samore
Derek Scheurer
Kenneth Smith
Amy Wojnarwsky
Benjamin Zimmermann

Faculty Advisors
Raymond Ku
Craig A. Nard
Jaqueline D. Lipton

Reference Librarian
Judith Kaul

The JOURNAL OF LAW, TECHNOLOGY, & THE INTERNET (“JOLTI”) is published by the students of Case Western Reserve University School of Law. The views expressed in this issue are those of the authors and do necessarily reflect the views of JOLTI, its Editors and Staff, or the Case Western Reserve University School of Law.

JOLTI welcomes submissions of original articles. Possible topic areas include: patent law, copyright law, trademark law, entertainment law, cyber law, telecommunications law, and law regulating nascent technologies. JOLTI conforms to THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (19th ed. 2011). The JOLTI Executive Board will consider submissions for publication. The Executive Board regrets that it cannot return submissions to authors unless a self-addressed stamped envelope accompanies the manuscript. Correspondence and manuscripts should be sent to:

Managing Editor

Journal of Law, Technology, & the Internet
Case Western Reserve University School of Law
11075 East Blvd.
Cleveland, OH 44106
Telephone: (216) 223 – 8529
Email: JOLTI@case.edu

All accepted manuscripts are subject to editing. Manuscripts selected for publication are accepted with the understanding that editorial changes may be made to improve readability and to ensure conformity with style policy. Accepted manuscripts become the permanent property of JOLTI and may only be published on SSRN without prior written permission. Any correspondence regarding subscriptions or reprints should be sent to the Managing Editor at the address listed above.

For all photocopy or republication requests, please contact Copyright Clearance Center, Inc. by mail: 222 Rosewood Drive, Danvers, MA 01923; info@copyright.com; or online at www.copyright.com.

Selected JOLTI articles are available on LexisNexis, Westlaw, and HeinOnline. This issue went to press in December 2011.

ISSN 1949-6451

Cite as: CASE W. RES. J.L. TECH. & INTERNET

PREFACE

Students created the Journal of Law, Technology & the Internet to provide academics, practitioners, and students with a forum to discuss topics relating to technology and the law. The Journal of Law, Technology & the Internet also provides its student editors with rigorous academic research and writing experiences that expose them to a wide variety of topics; the breadth of our subject matter is tremendous, ranging from scientific and social to commercial and political, on scales from the subatomic to the universal.

Furthermore, articles published in the Journal of Law, Technology & the Internet are peer-reviewed. Our peer-review process is used to ensure quality, accuracy, and that all our articles meaningfully advance legal scholarship. We thank the entire Case Western Reserve University School of Law community, especially the Center for Law, Technology & the Arts and Professor Raymond Ku, Professor Craig Nard, and Professor Jacqueline Lipton.

JOURNAL OF LAW, TECHNOLOGY & THE INTERNET

Volume 3

Fall 2011

Number 1

ARTICLES

- WISDOM OF THE AGES OR DEAD-HAND CONTROL? PATENTABLE SUBJECT
MATTER FOR DIAGNOSTIC METHODS AFTER *IN RE BILSKI*
Rebecca S. Eisenberg..... 1
- THE SELFISH PATENT
Bratislav Stankovic and Mirjana Stankovic..... 67
- ARE TECHNICAL DIFFICULTIES AT THE SUPREME COURT CAUSING A
“DISREGARD OF DUTY”?
Mark Grabowski..... 93

NOTES

- TO DISCLOSE OR NOT TO DISCLOSE: WHY THE UNITED STATES PROPERLY
ADOPTED THE EUROPEAN MODEL FOR THIRD-PARTY PARTICIPATION DURING
PATENT PROSECUTION
Dylan M. Aste..... 113
- 2 OBSCENITY STANDARDS, 1 NEAT SOLUTION: HOW GEOTARGETING
EXTENDS TRADITIONAL OBSCENITY LAW TO THE INTERNET
J. Mason Kjar..... 155
- THE WARRANTLESS USE OF GPS TRACKING DEVICES: FOURTH AMENDMENT
PROTECTION RESTORED THROUGH APPLICATION OF AN ANALYTICAL
FRAMEWORK
David Myers..... 183
- WHEN EVERYONE IS THE JUDGE’S PAL: FACEBOOK FRIENDSHIP AND THE
APPEARANCE OF IMPROPRIETY STANDARD
Daniel Smith..... 207