

# New Media, Technology and the Law

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## Copyright Owners Must "Consider" Fair Use in Forming a Good Faith Belief to Support a DMCA Takedown Notice

A copyright owner must "consider" the doctrine of fair use in formulating the good faith belief required under the takedown provisions of § 512(c) of the Digital Millennium Copyright Act that use of copyrighted material "is not authorized by the copyright owner, its agent, or the law," a district court ruled. In an action seeking damages under § 512(f) for a wrongful takedown notice, the court noted that a determination of fair use may be a complicated question, but concluded that in most cases the determination would not be so complicated as to jeopardize a copyright owner's ability to respond promptly to an infringement. The court declined the defendant record company's motion to dismiss the plaintiff's claim under § 512(f) that the company had acted in bad faith in issuing the takedown notice in question, but expressed "considerable doubt" that the plaintiff would be able to establish the subjective bad faith necessary under the statute.

*Lenz v. Universal Music Corp.*, 2008 U.S. Dist. LEXIS 66335 (N.D. Cal. Aug. 20, 2008)

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**Editor's Note:** This ruling is [more fully discussed](#) on the New Media and Technology Law blog.

## Service Provider Qualifies for DMCA § 512(c) Safe Harbor Despite Processing and Reformatting of Files

An online service provider that maintains a Web site and software that permit the sharing of uploaded video files is protected by the "safe harbor" provisions of § 512(c) of the Digital Millennium Copyright Act even though its system automatically process and reformats the uploaded video files, a district court held. The court concluded that the processing and reformatting did not disqualify the provider from the safe harbor for storage of material at the direction of a user because the processing and reformatting was conducted at the volition of users. The court further held that the provider met the threshold requirements for the safe harbor set out in § 512(k) because it adopted and "reasonably implemented" a policy of terminating repeat infringers using its service, i.e., it had a working notification system and a procedure for dealing with DMCA takedown notices. The court also found that the provider had no knowledge of the infringing activity complained of because the copyright owner had not sent notices of infringing material to the provider prior to filing suit. The court rejected the copyright owner's contentions that the service provider had failed to take action with respect to infringing activity and failed to act expeditiously to remove infringing material because the undisputed evidence showed that the provider removed infringing material when it received a DMCA-compliant takedown notice.

*IO Group, Inc. v. Veoh Networks, Inc.*, 2008 U.S. Dist. LEXIS 65915 (N.D. Cal. Aug. 27, 2008) [Download PDF](#)

### **Presence of Copies of Sound Recordings in Shared Folder of P2P Application Constitutes Copyright Infringement**

The presence of unauthorized copies of copyrighted sound recordings in the shared folder of a P2P application violates the copyright owners' rights of copying and distribution, a district court held. The court rejected the defendant's argument that there was not sufficient proof of infringement of the sound recordings because complete copies of the files had not been downloaded from the defendant's shared folder by the copyright owners' investigator. The court ruled that download of complete copies was unnecessary because the owners "need only prove that the Recordings were available due to Defendant's actions." The court refused to award the requested \$750 per recording damages requested by the owners, however, finding that there was a material issue of fact as to whether the defendant, who was 16 years old at the time of the acts in question, should be assessed reduced damages as an innocent infringer. The court noted the defendant's unrefuted statements that at the time she did not understand file-sharing programs and was not "copyright sophisticated enough" to appreciate that her actions constituted copyright violations, and ordered a trial on the issue in the event that a settlement on the amount of damages was not promptly reached.

*Maverick v. Harper*, No. 5:07-CV-026 (W.D. Tx. Aug. 7, 2008) [Download PDF](#)

### **Copyright Act Preempts Rock Group's State Law Right of Publicity Claim Based on "Sound" of Recorded Song**

A claim by members of a rock group that the inclusion in a videogame of a sound recording based upon the same musical composition that they recorded violated their state law right of publicity is preempted by the Copyright Act, a district court ruled. The court concluded that the group's claim that they had a right of publicity arising from their "distinctive sound" in fact was "a claim regarding the licensing of the copyright in the sound recording of the song," and was not therefore distinct from a copyright claim. The court noted that the videogame company had obtained a synchronization license for the musical composition, and had not utilized the group's sound recording. The court also concluded that their claim to a right of publicity in the sound of a distinctive voice or combination of voices would not be recognized under Michigan law. The court further ruled that even if the group had presented a claim cognizable under Michigan law, the expressive features of the game entitled it to First Amendment protection as an artistic work.

*The Romantics v. Activision Publishing, Inc.*, 2008 U.S. Dist. LEXIS 63281 (E.D. Mich. Aug. 19, 2008) [Download PDF](#)

### **Sales of Software Manufactured and Sold Outside the U.S. Not Subject to Copyright First Sale Doctrine**

Sales of software manufactured and sold outside the United States are not subject to the copyright first sale doctrine, a district court held. The court rejected the argument of a defendant in a copyright infringement case that its sales of the plaintiff's software that was manufactured abroad and purchased by it abroad were protected by the first sale doctrine, and that in order to overcome the defendant's motion to dismiss, the plaintiff was required to plead facts showing the place where the subject software was manufactured. The court concluded that the "prevailing view" was that sales abroad of works manufactured abroad do not extinguish the copyright owner's exclusive distribution right.

*Microsoft Corp. v. CietDirect.com LLC*, No. 08-60668 (S.D. Fla. Aug. 5, 2008) [Download PDF](#)

### **Sales of Digital Cable Filters Violate Anticircumvention Provisions of the DMCA and Cable Communications Policy Act**

Sales of digital cable filters that block the transmission of pay-per-view billing information from cable subscribers to cable providers violates the anticircumvention provisions of the Digital Millennium Copyright Act, the First Circuit ruled. The court found that the filters allow subscribers to "avoid" or "bypass" the cable company's pay-per-view delivery and billing system that scrambles programming unless the subscriber selects and views it. The appeals court also found that sales of the filters violate the prohibition in § 553 of the Cable Communications Policy Act, which prohibits the provision of assistance in the unauthorized reception of cable service. The court rejected the argument that sales of the filters did not violate the prohibition because filters do not interfere with incoming cable transmissions. The court reasoned that a subscriber using a filter to view pay-per-view programming was not authorized to "receive" the programming because the subscriber interfered with the operation of the cable provider's billing system in contravention of the subscriber's contract with the provider.

*Coxcom v. Chaffee*, 2008 U.S. App. LEXIS 16485 (1st Cir. Aug. 4, 2008) [Download PDF](#)

## **Antitrust, Copyright Misuse and Declaratory Judgment Relief Not Proper Counterclaims in P2P Infringement Action**

In actions in which defendants are alleged to have infringed the copyright in sound recordings via a peer-to-peer file-sharing network, the defendants may not assert counterclaims for antitrust and copyright misuse and a declaratory judgment of non-infringement, a district court ruled. The court concluded that the defendants failed to plead a plausible antitrust claim because the actions of record companies in collectively bringing copyright infringement actions is not anticompetitive, and even if it was, it would be protected by the Noerr-Pennington doctrine. The court rejected the copyright misuse counterclaim, also pleaded as an affirmative defense, on the ground that collectively bringing infringement actions is not copyright misuse as a matter of law. The court also dismissed the defendants' counterclaims for a declaratory judgment of non-infringement on the ground that they were "duplicative and entirely redundant."

*Maverick Recording Co. v. Chowdhury*, 2008 U.S. Dist. LEXIS 63783 (E.D. N.Y. Aug. 19, 2008) [Download PDF](#)

**Editor's Note:** A district court in another recent P2P file-sharing case also rejected a counter claim alleging that the infringement actions brought by record companies with respect to P2P file-trading constitute a conspiratorial scheme of racketeering and extortion in concert with the Recording Industry Association of America. The court similarly rejected that counterclaim on the ground that the prosecution of such actions is immunized by the Noerr-Pennington doctrine. *Atlantic Recording Corp. v. Raleigh*, U.S. Dist. LEXIS 62977 (E.D. Mo. Aug. 18, 2008).

## **UCC, Not Uniform Electronic Transactions Act, Governs Formation of Contract by Exchange of E-Mails**

Whether an exchange of e-mails regarding an order for a quantity of industrial steel formed a contract between the steel company and a buyer is governed by Article 2 of the Uniform Commercial Code, not by the provisions of the Uniform Electronic Transactions Act, a district court ruled. The court rejected the defendant's argument that under the UETA, parties cannot form a contract electronically without a prior agreement to do so, noting that it is the UCC rather than the UETA that "provides the substantive law that determines whether parties form a contract." The purpose of the UETA, the court found, is to validate the use of electronic records and signatures, and in the case before it "if the jury determines that the parties' e-mails were sufficient to form a contract, the UETA will not prevent its enforcement." The court concluded that as a "practical matter," if the evidence shows "that the parties reached an agreement electronically, they will likely also show that the parties agreed to conduct the transaction by electronic means."

*AllianceVThussenkrupp Materials, NA*, 2008 U.S. Dist. LEXIS 58985 (E.D. Wisc. Aug. 5, 2008) [Download PDF](#)

**Editor's Note:** This ruling is [more fully discussed](#) on the New Media and Technology Law blog.

### **Use of Pop-Up Ads Not Unfair Competition or Tortious Interference With Competitor**

A competitor's Internet pop-up advertisements that appeared when computer users accessed the plaintiff retailer's Web site did not constitute unfair competition or tortious interference with prospective economic advantage, a district court ruled. The court concluded that unfair competition was not shown because the ads appeared in separate browser windows and were labeled with the competitor's logo, and the retailer failed to allege specific facts showing that the ads were deceptive, infringed trademarks, passed off goods as those of the retailer, or were likely to cause confusion. The court rejected the tortious interference claim on the ground that the pop-up ads were used to compete with the retailer, and competition is not an improper purpose.

*Overstock.com, Inc. v. SmartBargains, Inc.*, 2008 UT 55 (Aug. 19, 2008) [Download PDF](#)

**Editor's Note:** The plaintiff also charged violations of the Utah Spyware Control Act, but the trial court ruled that the Act was an unconstitutional burden on interstate commerce that violated the Dormant Commerce Clause. The plaintiff did not challenge that ruling on appeal.

### **Purchase of a Trademark Term for Keyword Advertising a "Use in Commerce" Under the Lanham Act**

The purchase of a competitor's trademark term for use in keyword advertising is "a use in commerce" under the Lanham Act, a district court ruled. The court noted the split of authority on the issue, but concluded that the majority of courts have concluded that the use of a trademark term to create a sponsored link or other advertising is a use in commerce, regardless of whether the term appears in the sponsored link or other advertising. The court commented that this interpretation "adheres to the plain meaning" of the definition of the term in the Lanham Act, which "suggests that it is not limited to affixing another's mark to one's own goods but also encompasses any use of another's mark to advertise or sell one's own goods and services." The court declined to rule on the issue of likelihood of confusion resulting from the use, finding that further discovery was necessary to resolve that issue.

*Hysitron Inc. v. MTS Systems Corp.*, No. 07-01533 (D. Minn. Aug. 1, 2008) [Download PDF](#)

### **Finding of Bad Faith Registration of Infringing Domain Not Conclusive of Prevailing Plaintiff's Entitlement to "Exceptional Case" Damages and Attorney Fees**

A district court's ruling that a plaintiff was entitled to preliminary relief under the Anticybersquatting Consumer Protection Act because the defendant acted in bad faith in registering an infringing domain name does not automatically entitle the plaintiff to recover enhanced damages and attorney fees under the "exceptional case" provision of the statute, a district court ruled. The court noted that the Second Circuit requires more than just bad faith on the part of an infringer to establish a right to the type of statutory damages sought, such as a showing of the infringer's expenses saved or profits reaped, and the plaintiff's lost revenues. The court concluded that the evidence proffered by the plaintiff was insufficient to establish these factors, that there was no evidence of malice or intent to defraud on the part of the defendant, and that the defendant had immediately discontinued the use of the domain name after it became aware of the lawsuit.

*Multisorb Technologies, Inc. v. Impak Corp.*, 2008 U.S. Dist. LEXIS 65088 (W.D. N.Y. Aug. 20, 2008) [Download PDF](#)

### **Search Engine Immune Under CDA Section 230 From Defamation Claim for Article Displayed on Web Site**

A search engine is immune under § 230 of the Communications Decency Act from liability for alleged defamation contained in an article authored by a third party that appeared on its Web site, the Court of Appeals of Minnesota ruled. The court upheld the dismissal of the claim, noting that federal courts have consistently applied the statute to bar defamation claims against Internet service providers and concluding that federal case law, as well as the plain language of § 230, clearly barred the claim against the search engine.

*Steele v. Mengelkoch*, 2008 Minn. App. Unpub. LEXIS 927 (Minn. Ct. App. Aug. 5, 2008) (unpublished)

**Editor's Note:** See also the recent ruling in [Bauer v. Glatzer](#), No. L-1169-07 (N.J. Super. Ct. Law Div. July 21, 2008) (summarily dismissing the Wikimedia Foundation from a defamation action on the ground that it is a provider of an interactive computer service immune from third party liability under § 230). The summary ruling provides no details on the case but more extensive information is available on the Web site of the [Citizen Media Law Project](#).

### **CFAA Employee Unauthorized Access Issue Certified for Interlocutory Appeal to Circuit Court**

The issue of whether an employee's disloyal conduct renders his access to an employer's computer network "unauthorized" within the meaning of the Computer Fraud and Abuse Act is one on which there is "substantial ground for difference of opinion" under the statute authorizing interlocutory appeals, a district court held. In July, the court ruled that a departing employee who allegedly copied confidential and proprietary employer information for the benefit of a new employer is not liable under the CFAA. In certifying the issue for immediate appellate review, the district court noted that there is a split of authority among federal courts, and the Sixth Circuit has not ruled on the issue. The court's opinion referenced the numerous and conflicting opinions that have dealt with this issue in the last several years, including *International Airport Centers, L.L.C. v. Citrin*, 440 F.3d 418 (7th Cir. 2006) (holding that an employee's breach of loyalty to the employer negates his authorization) and *Shamrock Foods Co. v. Gast*, 535 F. Supp. 2d 962 (D. Ariz. 2008) (holding that the statute targets unauthorized procurement or alteration of information, not its misuse).

*Black & Decker (US), Inc. v. Smith*, 2008 U.S. Dist. LEXIS 63054 (W.D. Tenn. Aug. 15, 2008) [Download PDF](#)

### **Stored Communications Act Does Not Bar Disclosure of Text Message Contents Via Civil Document Discovery Request**

The federal Stored Communications Act does not prohibit disclosure of the contents of archived text messages pursuant to a civil document discovery demand under Fed. R. Civ. P. 34 to the subscriber of the text messaging service, a district court held. The court ruled that because the text messages were archived by a service provider that no longer provided text messaging services to the subscriber, the defendant City, the messages fell under the SCA provision that permits the subscriber to a "remote computing service" to consent to disclosure. The court concluded that the messages were effectively under the control of the subscriber within the meaning of Fed. R. Civ. P. 34 because the subscriber could request the messages from the text messaging service. The court rejected the defendant City's argument that the SCA prohibits any civil discovery of electronic communications stored by a non-party provider, commenting that such a conclusion "would dramatically alter discovery practice, in a manner clearly not contemplated by existing rules or law, by permitting a party to defeat the production of electronically stored information created by the party and still within its control \*\*\* by the simple expedient of storing it with a third party."

*Flagg v. City of Detroit*, 2008 U.S. Dist. LEXIS 64735 (E.D. Mich. Aug. 22, 2008) [Download PDF](#)

**Editor's Note:** The district court in *Flagg v. City of Detroit* expressly disagreed with *Quon v. Arch Wireless Operating Co., Inc.*, 529 F.3d 892 (9th Cir. June 18 2008), in which the Ninth Circuit concluded that the text messaging provider was an "electronic communications service" under the SCA, and thus only an "addressee or intended recipient" of the messages, not the subscriber, could consent to disclosure. The district court also rejected the approach taken in *Quon* to the employer's electronic communications policy, concluding that in this case, the defendant Mayor could not be heard to argue that he was not aware of the provisions of the City's electronic communications policy:

*"It is problematic, to say the least, for someone in [the Mayor's] position to attempt to deny or diminish the import of the City's electronic communications policy as it applies to him, when an important purpose of this policy is to provide notice to rank-and-file employees that their communications are subject to access and disclosure as public records and as property of the City. As Quon well illustrates, a municipal policy governing city employees may be undermined by a policymaker's or supervisor's inconsistent or contrary practice, see Quon, 529 F.3d at 906-07, thereby impairing the city's ability to investigate employee wrongdoing."*

The ruling in *Quon* is more fully discussed on Proskauer's [Privacy Law Blog](#).

### **User of P2P Software Has No Reasonable Expectation of Privacy in Files in Shared Folder**

The user of peer-to-peer software has no reasonable expectation of privacy in his files that are contained in the P2P application's shared folder, the Court of Appeals for the Ninth Circuit ruled. The panel upheld a lower court's refusal to suppress evidence collected by a federal law enforcement investigator who accessed the shared files without a warrant via the P2P network. The court concluded that the user knew or should have know that others could access the files contained in the shared folder, commenting that the argument that the user "lacked the technical savvy or good sense" to configure the P2P application to prevent access to his files "is like saying that he did not know enough to close his drapes."

*United States v. Ganoë*, 06-00019 (9th Cir. Aug. 15, 2008) [Download PDF](#)

### **Privacy Activist's Web Site Posting of Government Officials' SSNs Entitled to Same First Amendment Protections as Traditional Media**

A privacy activist who posted land records containing the social security numbers of public officials as a protest against the Virginia Legislature's failure to fund a law requiring redaction of such records is entitled to the same First Amendment protections as traditional news media, a district court held. The court reasoned that the activist's Web site was "analytically indistinguishable from a newspaper," and that there was "no jurisprudential basis for according the Internet differential treatment under the First Amendment." The court concluded that a Virginia statute that prohibited the public posting of such records was unconstitutional as applied to the activist, because she had lawfully obtained and posted the records prior to the enactment of the provision that prohibited the intentional display of another's social security number to the general public. The court rejected the state's argument that the protection of social security numbers is a state interest "of the highest order," because the failure of the Legislature to provide funds that would enable the redaction of the numbers from the land records "significantly undercuts" that assertion.

*Ostergren v. McDonnell*, No. 3:08cv362 (E.D. Va. Aug. 22, 2008) [Download PDF](#)

**Editor's Note:** With respect to the privacy right in social security numbers, compare the ruling in [Burnett v. County of Bergen](#), 2008 N.J. Super. LEXIS 184 (N.J. Super. Ct. App. Div. Aug. 22, 2008), in which the New Jersey appeals court found that there is a right based in the New Jersey Constitution and various state and federal statutes to have social security numbers redacted from public land records before the records are provided in bulk to a commercial entity under the New Jersey Open Public Records Act. Concerning the privacy interest in such information, the court commented:

*"When diverse pieces of information, such as a name, SSN, address, bank or mortgage holder and simulated signature, are assembled into a package -- as they are in the records sought by plaintiff to be compiled in a database and sold for commercial purposes -- a privacy interest is implicated. \*\*\* Under these circumstances, the SSN becomes a key to access a myriad of information about an individual, such as government filings containing a person's physical description, race, nationality, gender, family life, marital relationship, residence, location, contact information, political activity, financial condition, employment, criminal history, health and medical condition, and other personal information."*

## **Teacher's Tort Claim Against Students For Fake MySpace Page Rejected Under Texas Law**

A trial court properly granted summary judgment dismissing a teacher's action for intentional infliction of emotional distress against students who posted a fake MySpace page in the teacher's name, a Texas appeals court ruled. The court concluded that teacher had failed to show that her claims for intentional infliction of emotional distress alleged facts independent of her defamation claim that had been previously dismissed. One judge concurred, expressing "frustration" about the ability of plaintiff's to recover under Texas law for the type of "outrageous" conduct of the defendant students and commenting that the "Internet capabilities of modern society present numerous opportunities for individuals to engage in extreme and outrageous conduct that can produce severe emotional distress."

*Draker v. Schreiber*, 2008 Tex. App. LEXIS 6117 (Tex. Ct. App. Aug. 13, 2008) [Download PDF](#)

## **"Negligible Harm" to ISP From Unsolicited E-Mails Insufficient to Establish Adverse Effect Under CAN-SPAM**

An individual who provided e-mail forwarding services for a small group of customers, family and friends did not establish an "adverse effect" sufficient to maintain a civil action under the federal CAN-SPAM Act, a district court ruled. The court concluded that the Act was intended to provide a remedy for harms relating to network functioning, bandwidth usage, increased demands for personnel and new equipment needs that would ultimately result in costs to consumers. The court found that the individual had not shown problems related to network functioning as a result of unsolicited e-mails, and that in fact the individual did not own a server or directly employ anyone repairing or maintaining servers. The court noted that the individual indicated that he had upgraded from a dial-up connection to a broadband connection in order to deal with the unsolicited e-mails that he received, but concluded that the additional cost of less than \$13 per month was "negligible."

*Ferguson v. Quinstreet, Inc.*, 2008 U.S. Dist. LEXIS 60743 (W.D. Wash. Aug. 5, 2008) [Download PDF](#)

**Editor's Note:** Compare the view expressed in *Asis Internet Services, Inc. v. Active Response Group, Inc.*, 2008 U.S. Dist. LEXIS 60535 (N.D. Cal. July 30, 2008) to rulings that apply a heightened standard to standing requirements for Internet access providers seeking to bring civil actions under the CAN-SPAM Act:

*"Defendant urges the Court to follow several recent decisions construing § 7706(g)(1), and hold that an IAP must allege it suffered discrete economic loss directly attributable to the deceptive emails alleged in the complaint in order to be "adversely affected by a violation" of the Act. The Court declines to do so. In an effort to place practical limits on the private right of action, those courts imposed additional standing requirements that are neither grounded in the language of the statute itself nor warranted by the legislative history. Their progressively more restrictive interpretations of the Act create a virtually insurmountable barrier to standing that is inconsistent with the statutory structure and purpose. Instead, this Court finds that a provider of Internet access services has standing if it can show that it suffered spam-related harm or costs of the type typically experienced by ISPs rather than consumers, and carried the allegedly unlawful deceptive email over its facilities."*

### **Government Seizure of Attorney Computers Containing Client Files Not Impermissibly Broad Under Fourth Amendment**

The seizure of an attorney's computers and electronic media containing client documents, under a warrant that authorized a search with respect to documents on only 43 listed individuals, was not impermissibly broad under the Fourth Amendment, a district court ruled. In denying the attorney's motion for a preliminary injunction against the Government's review of the documents, the court found that proposed use of a "privilege team" to review the documents for relevance and the presence of privileged material was sufficient to prevent undue disclosure. The court rejected the attorney's alternative request for the appointment of a Special Master to review the materials, finding that the concerns that an Assistant U.S. Attorney would encounter material relevant to other investigations currently pending or in the future was "speculative." The court directed the AUSA to cease reviewing materials that he perceived to be relevant to other investigations and alert the court, and noted that individuals who believe that privileged materials improperly viewed were being used in a later criminal proceeding could move for suppression on those grounds.

*Manno v. Christie*, 2008 U.S. Dist. LEXIS 65106 (D. N.J. Aug. 22, 2008) (unpublished)

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### **Federal Courts Have Jurisdiction Over TCPA Claims Under Federal Class Action Fairness Act**

A federal court has jurisdiction over claims under the Telephone Consumer Protection Act under the provisions of the federal Class Action Fairness Act of 2005, the U.S. Court of Appeals for the Fifth Circuit held. The court ruled that a class action brought with respect to the transmission of 4,000 unsolicited fax messages was properly brought in federal court because the total claimed damages, calculated to include the possibility of treble damages for a willful and knowing violation of the TCPA, exceeded the \$5 million amount in controversy required under the CAFA. The court noted the split in the circuit courts regarding the existence of federal diversity jurisdiction over actions under the TCPA, but deemed it unnecessary to address that issue due to the presence of jurisdiction under the CAFA.

*Gene and Gene LLC v. Biopay LLC*, 2008 U.S. App. LEXIS 17302 (5th Cir. Aug. 14, 2008)

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**Editor's Note:** The TCPA provides for actions to be brought in state courts, and federal circuits have differed over whether federal courts may nevertheless exercise jurisdiction over such suits under their federal question jurisdiction or their diversity jurisdiction. In *Chair King, Inc. v. Houston Cellular Corp.*, 131 F.3d 507 (5th Cir. 1997), the Fifth Circuit ruled that TCPA cases may not be brought in federal court under the federal question jurisdiction, while the Seventh Circuit has ruled that they may. *Brill v. Countrywide Home Loans, Inc.*, 427 F.2d 446 (7th Cir. 2005).

### **Use of Wikipedia Encyclopedia Improper in Assessing Documents Submitted in Immigration Proceeding**

An immigration judge improperly considered an entry in the Wikipedia online encyclopedia in assessing the authoritative nature of a Ethiopian travel document submitted by an applicant for asylum to establish her identity, the U.S. Court of Appeals for the Eighth Circuit ruled. The appeals court agreed with the Bureau of Immigration Appeals that the Wikipedia entry, proffered to the immigration judge by the Department of Homeland Security, was a resource that should not be used "in reaching pivotal decisions in immigration proceedings." The court noted that the Wikipedia encyclopedia itself acknowledges in its disclaimers that the content of the encyclopedia can be edited by anyone, that entries may give a singular viewpoint on a topic that may be "heavily unbalanced," that any article can be edited at any time and "may be, at any given moment, in a bad state" from the process of editing or an instance of vandalism.

*Basada v. Mukasey*, 2008 U.S. App. LEXIS 18603 (8th Cir. Aug. 29, 2008) [Download PDF](#)

## **Developments of Note**

**Target Settles Web Site Accessibility Lawsuit With National Federation of the Blind Settlement**

**FTC to Host Workshop on Privacy Implications of RFID Technology** [Press Release](#)

**FTC Telemarketing Sales Rule Amended to Prohibit Prerecorded Telephone Calls Without Prior Express Consent** [Press Release](#)

**Court Vacates Restraint Against MIT Students' Smart Card Hacking Talk** [Press Release](#)

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