

## Exhibit 6c

**BNA, INC.**

# ELECTRONIC COMMERCE & LAW



VOL. 9, NO. 27 PAGES 601-628

**REPORT**

JULY 14, 2004

**HIGHLIGHTS****Supreme Court Affirms COPA Injunction, Cites Preference for Filters**

A federal law criminalizing the knowing communication for commercial purposes, by means of the Web, of "any material that is harmful to minors" likely violates the First Amendment's free speech clause, a 5-4 majority of the U.S. Supreme Court rules. The majority concludes that the Child Online Protection Act is not the least restrictive means to protect children from Web-based pornography because software filters may be able to achieve the same results without burdening adult speech. **Page 616**

**Critics Fear 'Inducement Act' Will Undo Sony Doctrine, Hurt Innovation**

A proposed bill that would make it easier for copyright owners to prevail in infringement lawsuits against providers of software used to illegally swap songs and movies over P2P networks could overturn a Supreme Court ruling that is crucial to innovation in the consumer electronics industry, some copyright law experts consulted by BNA warn. The bill, if enacted, could also provide firmer legal footing for a theory of liability advanced against Visa in a copyright infringement lawsuit pending in California. **Page 605**

**Caching of Songs Held Insufficient to Require ISPs to Pay Royalties**

The Canadian Supreme Court, in a 9-0 decision, rules that ISPs that cache files, including songs, to speed their delivery over the Internet are under no duty to pay royalties to the recording industry absent more active involvement in infringement. **Page 617**

**Copying E-Mail Before Delivery Isn't Unlawful Intercept Under Wiretap Act**

A majority of the U.S. Court of Appeals for the First Circuit rules that e-mail messages that are copied and redirected to the defendant, prior to delivery to their intended recipients, are not "intercepted" within the meaning of the federal Wiretap Act. **Page 618**

**Forwarding Spam Grips to ISPs Doesn't Strip Anti-Spam Firm of Immunity**

An anti-spam service that forwards consumer complaints about spam received from a bulk e-mailer to the bulk e-mailer's ISPs is immune from liability under the Communications Decency Act where the anti-spam service merely distributes the complaints without altering their contents, a federal district court in California rules. **Page 620**

**FTC Deems Retroactive Application of Changed Privacy Terms Unfair**

It is an unfair trade practice to retroactively apply a new privacy policy to previously collected data without complying with the revisions and modifications provision of the original policy, the FTC charges in reaching a settlement with a Web site operator. Where the original policy promises to provide consumers an opt out opportunity before subjecting their information to the changed terms, the operator must honor that commitment before it may use the previously collected information in a new way. **Page 622**

**ALSO IN THE NEWS**

**COPYRIGHTS:** A House subcommittee approves a bill seeking to give makers of DVD scene filter technology legal shelter to market their products free from copyright infringement claims by movie studios. **Page 607**

**TELECOMMUNICATIONS:** The House introduces a bill that asserts federal jurisdiction over VoIP and seeks to resolve a controversy over how the fledgling service should be categorized by the FCC. **Page 608**

**SPYWARE:** The Michigan Senate introduces an anti-spyware measure that includes criminal penalties and also targets adware services. **Page 612**

**CONSUMER PROTECTION:** Florida enacts law it claims is nation's first to regulate online pharmacies. **Page 611**

**E-MAIL MARKETING:** Massachusetts sues a bulk e-mailer in what state officials call the first state enforcement action brought under the federal CAN-SPAM Act. **Page 625**

**EXPERT REPORT**

**PRIVACY:** Scott Pink, a privacy law expert with Gray Cary Ware & Friedenrich LLP, examines the requirements and legal implications of California's Online Privacy Protection Act of 2003, which went into effect July 1. **Page 626**



BNA

# ELECTRONIC COMMERCE & LAW REPORT

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# In This Issue

**Lead Report** / Page 605

**News** / Page 607

**Court Proceedings** / Page 616

**Expert Report** / Page 626

**Electronic Resources** / Page 628

## FEDERAL NEWS

**ANTITRUST** Microsoft adds Vermont for \$9.7 million to list of settling states ..... 612

**CONTENT REGULATION** Lawmaker pulls amendment to punish purveyors of violent video games to kids .... 611

**COPYRIGHTS** Critics fear "Induce Act" will undo Sony; could *Perfect 10-Visa* be wave of future? ..... 605

IP panel ushers family movie bill to full House Judiciary Committee ..... 607

**ELECTRONIC COMMERCE** FTC adopts final rule on contact lens prescriptions ..... 615

**POLITICAL ACTIVITY** Electronic voting machines not secure, computer security experts tell House panel .... 609

**SPYWARE** Talks continue on California spyware notification bill; earlier measure declared dead ..... 611

**TAXATION** House may act on Internet tax moratorium when Congress returns in July, aide says ..... 609

Sponsors of SSTP bill offer demonstration to counter critics of uniform tax system ..... 610

**TELECOMMUNICATIONS** President moves to appoint Gallagher head of Commerce's NTIA ..... 609

Stearns-Boucher bill seeks to assert federal jurisdiction over Internet phone calls ..... 608

## STATE NEWS

**CONSUMER PROTECTION** Florida targets Internet pharmacies, requires permit for sales ..... 611

**SPYWARE** Michigan Senate introduces anti-spyware measure that also targets adware providers ..... 612

## INTERNATIONAL NEWS

**ANTITRUST** EC temporarily suspends Microsoft ruling until appeal is heard ..... 613

**COMPUTER CRIME** Experts group calls for revision of UK Computer Misuse Act ..... 615

**CONTRACTING** UNCITRAL says it is close to finalizing draft convention on e-contracting issues ..... 614

**E-MAIL MARKETING** Countries seek to coordinate enforcement of anti-spam laws ..... 614  
Ottawa extends comment period for anti-spam plan.... 615

**PRIVACY** Italy issues guidelines for drafting security rules for personal electronic data ..... 613

## COURT PROCEEDINGS

**ANTITRUST** Microsoft parties issue compliance report, indicate satisfaction with company's actions ... 624  
Nonsettling state may not upset judgment to regulate Microsoft's software practices ..... 621

**COMMUNICATIONS DECENCY ACT** Forwarding spam complaints to ISPs doesn't strip immunity from anti-spam service ..... 620

**CONTENT REGULATION** Fourth Circuit denies en banc review of *Chapman* ..... 625

**COPYRIGHTS** Caching of songs held insufficient basis to impose royalty obligation on ISPs ..... 617

**E-MAIL MARKETING** Lack of knowledge of recipient's state residency is no defense to state spam law ..... 621  
Massachusetts AG files first state suit over e-mails prohibited under CAN-SPAM Act ..... 625

**FILE SHARING** Australian court sets November trial date for Kazaa ..... 625

**FREE SPEECH** High court affirms COPA injunction, states preference for filters over sanctions ..... 616

**PRIVACY** Netherlands data privacy law falls short of EU directive, Court of Justice determines ..... 622  
Retroactive application of changed terms without obtaining consent deemed unfair ..... 622

**TRADEMARKS** Net name is no Rx for merely descriptive mark, Federal Circuit holds ..... 619

**COURT PROCEEDINGS**

*Continued from previous page*

**WIRETAPPING** Copying e-mail before delivery wasn't unlawful intercept under Wiretap Act ..... 618

**EXPERT REPORT**

**PRIVACY** "Online Privacy Policies: Is Your Web Site Ready for California's New Law?" by Scott W. Pink, Gray Cary Ware & Freidenrich, Palo Alto, Calif. .... 626

**TABLE OF CASES**

Ashcroft v. American Civil Liberties Union (U.S.) ..... 616  
 Canadian Ass'n of Internet Providers v. Society of Composers, Authors, and Music Publishers of Canada (Can.) ..... 617

Commission of the European Communities v. Kingdom of the Netherlands (E.C.J.) ..... 622  
 Gateway Learning Corp., In re (FTC) ..... 622  
 Massachusetts v. DC Enterprises (Mass. Super. Ct.) ... 625  
 Massachusetts v. Microsoft Corp. (D.C. Cir.) ..... 621  
 New York v. Microsoft (D.D.C.) ..... 624  
 Oppedahl & Larson LLP, In re (Fed. Cir.) ..... 619  
 OptInRealBig.com v. IronPort Sys. Inc. (N.D. Cal.) .... 620  
 PSINet Inc. v. Chapman (4th Cir.) ..... 625  
 U.S. v. Microsoft Corp. (D.C. Cir.) ..... 621  
 U.S. v. Microsoft Corp. (D.D.C.) ..... 624  
 United States v. Councilman (1st Cir.) ..... 618  
 Universal Music Australia Pty Ltd. v Sharman License Holdings Ltd. (Federal Ct. Austl.) ..... 625  
 Washington v. Heckel (Wash. Ct. App.) ..... 621

# Lead Report

## Copyrights

### Critics Fear 'Induce Act' Will Undo *Sony*, Could Perfect 10-Visa Be Wave of Future?

**A** proposed bill that would make it easier for copyright owners to prevail in infringement lawsuits against providers of software used to illegally swap songs and movies could overturn a Supreme Court ruling that is crucial to innovation in the consumer electronics industry, some copyright law experts consulted by BNA warn.

"If the Induce Act existed back in the 1970s, we wouldn't have the VCR," said Sarah Deutsch, vice president and associate general counsel of Verizon, in a July 6 interview with BNA.

Both Verizon and the American Library Association worry that the legislation could be applied broadly to chill innovation.

Some copyright attorneys, such as Stewart Baker, partner, Steptoe & Johnson LLP, question the need for the bill given that the courts already have in place well-established doctrines of secondary liability.

Sources told BNA that the Senate Judiciary Committee has tentatively scheduled a hearing on the bill for July 20, though officials from the Judiciary Committee have not confirmed that date.

If enacted, the law could provide firmer legal footing for a broad theory of liability advanced against Visa in a copyright infringement lawsuit pending in California.

**The Inducement Act "would endanger the 'Sony' decision that preserves consumers' and manufacturers' rights to fair use protection while also putting ISPs and other intermediaries at risk of liability."**

STEWART BAKER, STEPTOE & JOHNSON LLP

The Inducing Infringement of Copyrights Act of 2004 (S. 2560), introduced June 22 by Sen. Orrin Hatch (R-Utah), would amend Section 501 of the Copyright Act to create a new form of liability for "intentionally inducing" copyright infringement (9 ECLR 586, 6/30/04). The bill defines the key term as meaning:

intentionally abets, induces, counsels, or procures, and intent may be shown by acts from which a reasonable person would find intent to induce infringement based upon all relevant information about such acts then reasonably available to the actor, including

whether the activity relies on infringement for its commercial viability.

Any legislation involving secondary liability for copyright infringement related to the use of neutral technology inevitably implicates the *Sony* decision. In *Sony Corp. of America v. Universal City Studios Inc.*, 464 US 417 (1984), the U.S. Supreme Court held that Sony was not liable for contributory copyright infringement because the VCR was capable of "substantial noninfringing uses," such as time-shifting.

**Does Bill Change Standard?** In his remarks introducing the bill, Hatch emphasized that the legislation "would preserve the *Sony* ruling without reversing, abrogating or limiting it." But critics read the bill differently.

"It clearly overrules *Sony* and replaces it with a subjective standard," said Deutsch. In contrast to the bright line test of the *Sony* case, Deutsch pointed out, the bill moves to a subjective standard: intent.

Miriam Nisbet, legislative counsel for the American Library Association, shares that concern. "It looks like an attempt to change that rule," she said in a July 6 interview with BNA, adding that if enacted the new rule would amount to a "significant change" in the law.

Baker joined in that assessment. He said the bill, "would endanger the *Sony* decision that preserves consumers' and manufacturers' rights to fair use protection."

In a July 6 letter to the Senate Judiciary Committee, over 40 technology companies, trade associations, and public interest groups opposed the bill and implored the committee to hold hearings on the legislation.

"Congress should not rush to revise fundamentally a well-established Supreme Court doctrine without a process in which the implications for the individuals and the industries that have relied on it for the last two decades are fully and publicly aired and discussed," said the letter.

Though Hatch pitched the bill as a response to crafty P2P software developers that promote illegal file sharing, the implications of the bill reach beyond that controversy.

**Bill Has Broad Reach.** "The actual language is much broader than that," said Deutsch, who described the bill as a "very blunt instrument" that could lead to unintended consequences and create greater liability than under current doctrines of secondary liability.

"The bill doesn't limit itself to any particular means of infringement," commented Nisbet. She worries that the bill could chill innovation in consumer electronics and thus hamper libraries and schools which rely more and more on technology to deliver content.

ISPs could also be at risk. Deutsch hypothesized that content owners might rely on the act, in conjunction with an ISP's advertising for broadband service, to claim that some ISPs facilitate unauthorized file swapping. Baker agrees that the bill "put[s] ISPs and other intermediaries at risk of liability," he said.



**Analogy to Patent Principles Challenged.** In introducing the bill, Hatch said that “[t]he Inducement Act will simply import and adapt the Patent Act’s concept of ‘active inducement’ in order to cover cases of intentional inducement that were explicitly not at issue in *Sony*.”

But Deutsch believes that importing the active inducement principle to the Copyright Act is problematic. She explained that proving “active inducement” of patent infringement requires a showing of particular intent to infringe a particular patent. But Hatch’s bill requires no showing of intent to infringe a particular copyrighted work; it could be read to require merely an intent to do some act or intent to make copies of copyrighted works in general. That could make it much easier for rights holders to establish inducement under the amended Copyright Act than it is to establish inducement under current patent law.

Another key difference, Deutsch added, is that patent law contains an important counterbalance to discourage frivolous infringement claims: the potential threat of a patent invalidity counterclaim.

But because the standard for copyrightability is significantly lower than the standard for patentability, it is unlikely that a defendant could successfully raise a counterclaim of copyright invalidity.

“There’s absolutely no downside to bringing these frivolous lawsuits,” said Deutsch.

**Bill Should Be Narrowed.** If the bill moves forward, Deutsch would like to see tweaks that narrow the bill’s scope to reflect its original intent and avoid unintended consequences. For example, under the bill as currently worded, whether the activity in question “relies on infringement for its commercial viability” is one factor among several that a court may consider in determining whether there is an intent to induce infringement. Among other changes, Deutsch would like the language tightened to make that factor a predicate for finding infringement by inducement.

How might copyright litigation change if the bill became law? An infringement lawsuit pending in California may provide some early insights.

**Lawsuit May Foreshadow Problems.** Perfect 10, the publisher of an adult entertainment magazine and related Web site, sued Visa, Mastercard and related payment processing entities in January for copyright infringement, among other causes of action. *Perfect 10 Inc. v. Visa Int’l Inc.*, N.D. Cal., 5:04-cv-00371-JW, filed 1/28/04. Applying common law doctrines of secondary liability, Perfect 10 alleged that the credit card companies are indirectly liable for copyright infringement because they provide payment processing services to renegade Web sites that have filched Perfect 10’s copyrighted images and charge users for access to them.

“Defendants have knowingly induced, caused, encouraged, and assisted others to infringe, and/or materially contributed to the infringement by others of Perfect 10’s copyrights . . .,” the complaint alleged.

Specifically, the complaint charges defendants with “knowingly and systematically inducing” the “unauthorized reproduction, public display and distribution of, and creation of derivative works.”

“Defendants are aiding and abetting unfair competition against Perfect 10 and the infringement of Perfect 10’s intellectual property rights, by providing critical support for the sale of vast quantities of content misappropriated from Perfect 10 . . .”

The complaint seeks statutory damages in the amount of \$150,000 per work infringed. Perfect 10’s copyright portfolio includes registrations for over 50 separate works.

Underlying Hatch’s proposal is the presumption that there is a gap in protection under current doctrines of secondary liability. But not everyone agrees.

“I’m quite skeptical,” said Baker. “A lack of third party liability does not seem to be a burning problem in copyright law.”

By MICHAEL WARNECKE

☞ The text of S. 2560, along with Hatch’s introductory remarks, is available at <http://pub.bna.com/eclr/s2560.htm>.

☞ The text of the July 6 letter opposing S. 2560 is available at <http://pub.bna.com/eclr/letter070604.pdf>.

☞ The text of the “Perfect 10” complaint is available at <http://pub.bna.com/eclr/perfect10.pdf>.

26 of 46 DOCUMENTS

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National Law Journal

June 14, 2004

**SECTION:** NEWS; Vol. 26; No. 41; Pg. 16

**LENGTH:** 651 words

**HEADLINE:** Voir Dire

**BODY:**

Strange bedfellows

How do you stop a charging porn thief? Take away his credit card.

That's what a Beverly Hills, Calif., pornographer is aiming to do in filing a copyright and trademark suit against Visa International Service Association and MasterCard International Inc.

Perfect 10 Inc., which publishes an adult magazine and operates an adult Web site, claims that hundreds of Web site operators around the world are selling its trademarked images. While Perfect 10 has sued many of these outfits, its biggest beef is with the credit card companies that process the infringers' transactions. The porn company said that without the support of these financial institutions, infringers wouldn't be able to steal their stuff.

The credit card companies said that requiring them to enforce the property rights of a third party is unheard of and would have ramifications for all service providers.

"It's an attempt to enforce copyright and trademark liability far beyond any published case ever," said Mark Jansen, a partner at San Francisco's Townsend and Townsend and Crew who is representing Visa.

"If the court were to impose liability in that context and make companies subject to contributory liability on the basis of aiding and abetting infringement, that would extend across commerce," he added. "It would convert financial institutions into judges, juries and policemen."

Perfect 10's attorney, Howard King of Los Angeles' King, Holmes, Paterno & Berliner, agrees that the suit is treading new territory. "It's a seminal lawsuit," he said. "It's the first time someone has gone to the heart of the financial system and big entities that are drawing huge profits from funding illegal activities. We may fail; we may win."

King likened the case to the litigation against Napster, whose file-sharing software enabled consumers to swap music over the Internet. "It is the same general idea," said King, who represented Metallica and Dr. Dre in their suit against Napster. "Napster wasn't distributing [music] but providing the means to infringe copyrights."

Perfect 10 Inc. v. Visa International, No. 040371, was filed in San Jose, Calif., federal court in January. A hearing on the defendants' motion to dismiss is set for June 28 before Judge James Ware.

Perfect 10 also claims the financial institutions are abetting the theft of supermodel photos from other magazines and nude scenes of movie actresses.

-American Lawyer Media

Pagan inmate sues prison officials



National Law Journal June 14, 2004

Salt Lake City [AP]-Inmate Phillip Leishman has sued Utah Department of Corrections officials for prohibiting him from having wooden tablets bearing mystical symbols-runes that he says are used in the practice of his pagan religion.

Corrections authorities contend that the runes could be used for magical rituals to frighten other inmates.

U.S. Magistrate Judge Samuel Alba of the District of Utah has recommended that Leishman get a hearing on his contention that the federal Religious Land Use and Institutionalized Persons Act supports his right to runes.

The federal law prohibits prison officials from imposing a substantial burden on the religious exercise of an inmate unless it is to further a compelling government interest and it is done in the least restrictive way.

Leishman, 26, who killed two men and is serving life in prison with possibility of parole, said in court papers that he is a follower of a branch of Asatru, a pagan religion of pre-Christian northern Europeans. In 2001, he sued after he was prohibited from having a rune set in his maximum-security cell.

The runes are characters of Teutonic alphabets that were used for ordinary communication, but also were attached to deities and were and are used for practicing magic and divination.

Prison officials have said runes are not essential to practice Asatru and that the ban promotes prison safety.

**LOAD-DATE:** June 21, 2004

33 of 46 DOCUMENTS

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Truth (Auckland, New Zealand)

February 13, 2004

**SECTION:** NEWS; NATIONAL; Pg. 2

**LENGTH:** 377 words

**HEADLINE:** Porn pirates net millions

**BODY:**

THE porn industry is losing millions of dollars because of internet pirates.

Porn piracy is a big problem on the worldwide web and Kiwi porn companies say they're losing profits when pirates pinch pictures from their sites and sell them as their own.

The porn companies say it's impossible to track down their pictures after they've been stolen from their sites.

In most cases they don't even know it's happened.

An Auckland web designer told Truth: "I spend about half my day surfing the net and trying to track down my pictures.

"I wasn't aware other companies were stealing them until I stumbled across one of my girls on an international site.

"They used her as a teaser to get into their pay-per-view site."

The process of stealing pornography from the web was relatively simple, he explained.

Porn thieves simply cut a picture from the original site with one click of the mouse and then paste it on to their own porn web page with another click and advertise it for sale.

"You can install software to stop them but most serious pirates will have a program to undermine it," said our source.

In the US the problem of porn piracy is so bad that porn publisher Perfect 10 is suing credit card companies that knowingly process the sale of stolen material.

The Californian company reckons credit card companies are just interested in the bucks that come from processing transactions and so are turning a blind eye to some sites that peddle stolen x-rated pics.

Perfect 10 says it's losing billions of dollars to porn piracy and so is prepared to get ruthless.

It's suing big players, including Visa and MasterCard.

The suit states: "The defendants in this case . . . are knowingly providing crucial transactional support services for the sale of millions of stolen photos and film clips."

Auckland porn distributor Vixen Direct says while internet piracy may be affecting online porn firms badly, it's had no effect on movies and magazines.

"People prefer to have hard copies of what they're looking at," a spokesperson told Truth.

"The internet is basically just a teaser for hard-copy porn products."

Truth (Auckland, New Zealand) February 13, 2004

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CAPTION:

TEASE: Porn pirates steal sexy images off the net and use them as their own.

**LOAD-DATE:** February 13, 2004

# The New York Times

## Money & Business

### The East Joins the Low-Fare Bazaar

By MICHELLE MAYNARD

LIKE well-dressed wallflowers at a Valentine's Day ball, travelers on the East Coast once watched with envy as people in other parts of the country were courted assiduously with low fares.

Not that the airlines shunned their business. In fact, the East Coast has long been the industry's top market for corporate travel, with flights to and from New York, Boston and Washington accounting for huge chunks of the airlines' revenue.

Therein lay the rub. Major airlines could afford to keep prices low on the West Coast and in the South, areas dominated by vacation travel, knowing that they could milk the East Coast with high fares that business travelers had no choice but to pay.

Not anymore. In the last three years, the East Coast market has become the equivalent of an air-fare bazaar. Low-fare airlines, led by JetBlue, Southwest and AirTran, are luring customers with prices that in some cases are 50 percent less than the going rate in 2001.

To protect their turf, major airlines like American and Delta are fighting back, expanding services, offering more frequent flights and slashing fares to once-unimaginable levels, like \$78 each way from New York to Los Angeles.

And the price wars are just heating up. "The East Coast is shaping up to be a real battleground," said Darin Lee, a senior managing economist at LEGG, a consulting firm in Cambridge, Mass.



Ted, United's low-fare carrier, on the East Coast later this year.

Already, that brawl has drawn blood. Song, the much-ballyhooed low-fare carrier started last year by Delta, said last week that it would reassess its expansion plans. And analysts say US Airways, which emerged from bankruptcy last year, could be topped right back in if it cannot come up with a new strategy.

New competition is stacked up like planes in a holding pattern over La Guardia, just waiting for its chance to land. Southwest, the nation's sixth-largest airline and the low-fare leader, will begin flying out of Philadelphia in May. Ted, the low-fare airline from United that began service in the West this week, said on Thursday that it would add flights at Washington Dulles International Airport later in the year.

Independence Air, an offshoot of Air

Continued on Page 11

Apple, Dell and other companies are piling into consumer electronics. Bring it on, Sony says. By Ken Belson. 4

The biggest problem for American manufacturers isn't China. It's rising health care costs. Economic View, by Daniel Gross. 6

Making sense of fund fees. By Riva D. Atlas. 7

BlackRock, the newfangled bond firm, gets a new Mr. Spock. By Landon Thomas Jr. 8

Baby boomers are putting lots of cash into (and not under) their mattresses. By Elizabeth Olson. 9

DataBark and stock tables. 15

# OUR NATIONAL DEBT

## YOUR Family share \$

### THE NATIONAL DEBT CLOCK

The National Debt Clock in Midtown Manhattan was put up as a political message in the 1980's. It was turned off in 2000 by the government run surpluses, and restarted in 2002.

## That Big Fat Budget Deficit. Yawn.

By DAVID LEONHARDT

DEMOCRATS grouse that President Bush has recklessly frittered away the surplus of the 1990's. Foreign finance ministers plan to express their alarm about America's straggling budget deficit at a Group of 7 meeting in Boca Raton, Fla., this weekend. Even a growing number of Republicans argue that Mr. Bush needs to stop making excuses and cut government spending.

So what is the reaction from the bond market vigilantes, those disciplinarians who

bid up interest rates whenever past deficits started looming?

Since Mr. Bush released his budget proposal on Monday, forecasting a \$21 billion shortfall for the current fiscal year, the interest rate on 10-year Treasury notes has actually fallen slightly, closing on Friday at 4.38 percent. Since August, the rate has dropped from about 4.4 percent.

The bond market, it seems, has stopped worrying and started to love the deficit. The question, of course, is whether everybody else can relax, too.

There are some basic economic reasons for low rates, like an influx of foreign capital

and the improvement of the American economy, but there still is to be done with the deficit. But there also appear to be psychological reasons. Many economists say the bond vigilantes' visceral reaction to both a symbol and a cause of the misplaced calm about the deficits, at least outside the Washington beltway.

Most people old enough to vote or make investments can remember the 1980's, another time when the federal government spent more money than it had. Few people can think of any lasting harm done because of it. So it may come as a surprise that only 2 percent of Americans named the deficit as the main issue they would like to hear

candidates discuss in the 2004 presidential election, according to a recent New York Times/CBS News poll.

"Under Reagan in the 80's, I remember headlines every day after day saying we were leveraging our children's future," said Lundy R. Wright, a managing director and top bond trader at Morgan Stanley. "But in good times, we got back to surplus. I think the lesson is, you can borrow when times aren't so good and cyclical factors will help get you out of it."

N. Gregory Mankiw, chairman of Mr. Bush's Council of Economic Advisors, said

Continued on Page 10

## The Pornography Industry vs. Digital Pirates

By JOHN SCHWARTZ

THOUSANDS of Web sites are putting Playboy magazine's pictures on the Internet — free. And if you're Nicolas, the president of Playboy.com, is loving it. "It's direct marketing at its finest," he said.

Let the music industry sue those who share files, and let Hollywood push for tough laws and regulations to curb movie copying. Playboy, like many companies that provide access to virtual flesh and magazines, is turning online freeloaders into subscribers by giving away pictures to other sites that, in turn, drive visitors right back to Playboy.com.

When Mr. Nicolas is asked whether he thinks that the entertainment industry is making a mistake by taking a different approach to piracy, he replies: "I haven't spent much time thinking about it. It's like asking Henry Ford, 'what were the buggy-whip guys doing wrong?'"

The copyright trouble is playing out a little differently in the red-hot districts of cyberspace. That neighborhood is increas-



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The photographer Steve Randell in her Los Angeles studio with a model. Operators of Web sites like hers don't always fight digital piracy the same way the music industry does.

nevertheless has sales of as much as \$1 billion each year, said Tom Hynes, the editor of AVNOnline, a business magazine for the industry.

And the pornography industry, which has always been among the first to exploit new technologies, including the VCR, the World Wide Web and online payment systems, is finding novel ways to deal with the threat of online piracy as well. The mainstream entertainment industry, some experts say, would do well to pay attention.

MUSIC executives say their campaign of lawsuits has been successful. They say they have spread the word that downloading free music infringes on copyrights and that they could be consequences for large-scale file sharers.

But the pornography industry has been dealing with Internet copyright issues since the 1980's. By comparison, the movie and music businesses are relatively newcomers. Mr. Hynes said companies in his industry had come to realize that suing consumers and promoting "dracoonian laws" were not

Continued on Page 10

MARKET WATCH  
GRETCHEN MORROWSON

## Executive Pay, Hiding Behind Small Print

Filings that barely begin to detail the total take.

INVESTORS have been understandably irate over executive pay recently. But because disclosure in the area is so woeful, they don't know the half of it.

Summary pay tables, required by the Securities and Exchange Commission since 1995, help investors get where their money goes. But three areas cry out for reform by regulators: deferred compensation, supplemental executive retirement plans and executive pay-in-kind when a company undergoes a change in control.

An 81-page Policy, a compensation report in White Plains, N.Y., "The big print greets but the small print gives even more."

Consider deferred compensation, the career-saver for Richard A. Glavin, former chair of the New York Stock Exchange. The only thing companies must reveal about deferred compensation is the difference between the market rate of the stock and the rate offered by the company. That is the

only clue to how maintainable deferred compensation can be.

At Wyeth, a drug maker, executives can earn an astonishing 10 percent interest rate annually. The 2003 proxy reported that John R. Stafford, Wyeth's former chairman who is a consultant, earned \$1.6 million in above-market interest alone on deferred compensation. A Wyeth spokesman declined to say how much Mr. Stafford has in total.

Robert J. Ulrich, chief executive of the Target Corporation, a retailer, earned \$66.2 million on deferred pay in 2002, the most recent year for which data is available. Four top colleagues there made a total of \$476,000.

Supplemental executive retirement plans are also annoyingly opaque. Actual amounts in executive plans are undisclosed; tables

outline only what executives may receive based on years of service, salary and bonus.

Such plans can look large. Last month, Hercules Inc., a chemical maker, revealed third-quarter 2003 results to account for a \$4.7 million pension benefit paid to William Joyce, former chief executive. Hercules' net income was cut by \$2.8 million or 14 cents a share.

Tim Ransatt, president of Equifax, a consumer services analyst firm, said: "The disclosure of the varied executive compensation plans — pension, supplemental executive retirement plans, deferred compensation, split-dollar life insurance — is not adequate in answering a fundamental question: What is the proposed value of these plans to the executive upon his retirement?"

Finally, there are the potentially huge payouts to executives in a merger, a matter

of consternation among shareholders at MONY, the insurance concern weighing a bid from AXA, the French insurance giant.

If the deal goes through, MONY executives will receive \$86.2 million — more than 6 percent of the \$1.3 billion transaction.

Executives' take in a merger is rarely detailed in routine filings. In last year's proxy, MONY discloses only broadly what executives could get: a lump sum of three times an executive's salary, bonus, long-term performance pay and other things. Such disclosure, or lack of it, is typical at companies.

Jose M. Brill, a securities and compensation lawyer and chairman of the National Association of Stock Plan Professionals, is urging lawyers to disclose all compensation received by chief executives this year, not just where it is paid. He says that is not just where it is paid. He says that is not just where it is paid. He says that is not just where it is paid.

West Coast and in the south, areas unimpaired by vacation travel. Knowing that they could make the East Coast with high fares that business travelers had no choice but to pay.

Not anymore. In the last three years, the East Coast market has become the equivalent of an air-fare bazooka. Low-fare airlines, led by JetBlue, Southwest and AirTran, are luring customers with prices that in some cases are 50 percent less than the going rate in 2000.

To protect their turf, major airlines like American and Delta are fighting back, expanding service, offering more free tickets to frequent fliers and slicing fares to once-unimaginable levels, like \$79 each way from New York to Los Angeles.

And the price wars are just heating up. "The East Coast is shaping up to be a real slugfest," said Darin Lee, a senior managing economist at LEGG, a consulting firm in Cambridge, Mass.



Little known fact: The New York Times' Ted United's low-fare airline will arrive on the East Coast later this year.

Already, that brawl has drawn blood. Song, the much-ballyhooed low-fare carrier, started last year by Delta, said last week that it would reassess its expansion plans. And analysts say US Airways, which emerged from bankruptcy last year, could be toppled right back in if it cannot come up with a new strategy.

New competition is stacked up like planes in a holding pattern over La Guardia, just waiting for its chance to land. Southwest, the nation's sixth-largest airline and the low-fare leader, will begin flying out of Philadelphia in May. Ted, the low-fare airline from United that begins service in the West this week, said on Thursday that it would add flights to Washington Dulles International Airport later in the year.

Independence Air, an offshoot of Air  
Continued on Page 11

Apple, Dell and other  
companies are piling into  
consumer electronics.

Bring it on, Sony says.  
By Ken Belson. 4

The biggest problem for  
American manufacturers

The National Debt Clock in Midtown Manhattan was put up as a political message in the 1980's. It was turned off in 2000 as the government ran surpluses, and restarted in 2002.

# That Big Fat Budget Deficit. Yawn.

By DAVID LEONHARDT

DEMOCRATS grouse that President Bush has recklessly frittered away the surpluses of the 1990's. Foreign finance ministers plan to express their alarm about America's Broddingnagian budget deficit at a Group of 7 meeting in Boca Raton, Fla., this weekend. Even a growing number of Republicans argue that Mr. Bush needs to stop making excuses and cut government spending.

So what is the reaction from the bond market vigilantes, those disciplinarians who bid up interest rates whenever past deficits started looming? Yawn.

Since Mr. Bush released his budget proposal on Monday, forecasting a \$921 billion shortfall for the current fiscal year, the interest rate on 10-year Treasury notes has actually fallen slightly, closing on Friday at 4.08 percent. Since August, when the deficit estimate was \$475 billion, the rate has dropped from about 4.4 percent.

The bond market, it seems, has stopped worrying and learned to love the deficit. The question, of course, is whether everybody else can relax, too.

# The Pornography Industry vs. Digital Pirates

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THOUSANDS of web sites are putting Playboy magazine's pictures on the Internet — free. And Randy Nicolson, the president of Playboy.com, is loving it.

It's direct marketing at its finest," he said. Let the music industry sue those who share files, and let Hollywood push for tough laws and regulations to curb movie copying. Playboy, like many companies that provide access to virtual flesh and naughtiness, is turning online freeloaders into subscribers by giving away pictures to other sites that, in turn, drive visitors right back to Playboy.com.

When Mr. Nicolson is asked whether he thinks that the entertainment industry is making a mistake by taking a different approach, he replies: "I haven't spent much time thinking about it. It's like asking Henry Ford, 'What were the buggy-whip guys doing wrong?'"

The copyright rumble is playing out a little differently in the red-light districts of cyberspace. That neighborhood is increas-

ingly difficult to confine, what with a few tishwear-clad Janet Jackson Flashing a Super Bowl audience of millions, and Paris Hilton making her own version of a "Girls Game Wild" video. Professional peddlers say



Photo by Reuters/Chris Wedel

The photographer Suzie Randall in her Los Angeles studio with a model. Operators of Web sites like hers don't always fight digital piracy the same way the music industry does.

nonetheless has sales of as much as \$2 billion each year, said Tom Hyman, the editor of AVNOnline, a business magazine for the industry.

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Music executives say their campaign of lawsuits has been successful. They say they have spread the word that downloading free music infringes on copyrights and that there could be consequences for large-scale file sharers.

But the pornography industry has been dealing with Internet copyright issues since the 1980's. By comparison, the movie and music businesses are relative newcomers. Mr. Hyman said companies in the industry had come to realize that suing consumers and promoting "dramatized laws" were no

Continued on Page 10



The board that was given the 1990s. If Woody Jay, a managing director for once demanded such measures.

# Pornography Industry Fights Piracy Its Own Way

Continued From Page 1

The answer: "No law written can stem the tide," he said. And so he said, companies are seeking ways to live with the technologies that threaten them and are trying to turn them to their advantage.

That is not to say that the companies have not been harmed by free copying and distribution of copyrighted material online. Mr. Hynes' magazine warned recently that such companies were "losing incalculable amounts of cash" to peer-to-peer file-sharing networks like Kazaa, LimeWire, Grokster and Bit Torrent.

"As the networks continue to grow and even more sophisticated programs are created, the P2P networks might prove a bigger threat to the revenue stream of the porn world than all the censorious right-wingers in the country put together," the article stated.

Maybe. But many companies that distribute X-rated material say they do not worry too much about consumers sharing among themselves; they often unleash their lawyers only when someone is trying to profit by copying their goods and trying to sell them.

When people in the industry talk of copyright, there is none of the grand speechifying about reverting artists and rewarding creativity, and the near-tearful pleas to the yeoman key grips and stunt men, as favored by movie and record executives. Instead, there is just this: We spent a lot of money to get this stuff out to the market. Somebody else is making money off of it. We want the money.

"We haven't gone after Joe Citizen who's sharing something he printed off something from the Hustler Web site with another guy," said Paul Cambria, a lawyer who represents Hustler. Vivid Video and other companies on copyright issues. He does send out some 20 letters a week, he said, warning for-pay Web sites to remove material owned by his clients.

Mr. Cambria suggests that the mainstream entertainment industry is much more combative when it comes to consumers partly because the songs and movies are so carefully and expensively made and distributed. Movies in the industry, by contrast, are often made in a few weeks, and on budgets that a major studio may spend on office and salaries so director is not taken quite as seriously. "Maybe a classic is one thing," he said, "but they're not all classics."

Woody Jay, a managing director for the line on spending outside Social

A few merchants in the industry who have tried the kind of aggressive methods used by mainstream entertainment companies say they have not received much in return for their efforts. One company that tried to track down copyright infringers and demand that Internet service providers shut down their sites used BayTSP, an Internet monitoring service that also serves the music and movie industries. "It was costing us a lot of money and was producing absolutely zero results," said Humphry Knipe, who manages the business operations of Size Randall, a photographer in the field who has her own Web site.

Mr. Knipe, who is married to Ms. Randall, said many Web sites were taken down as a result of more specific legal threats by subpoena to Internet service providers. But even then, "it was extremely doubtful that any of this activity had any effect at all in the real world of improving our sales by restricting piracy," he said.

MARK ISHIKAWA, the chief executive of BayTSP, disputes that. He said that almost four years ago, before the threat of lawsuits became common enough to present a real danger to downloaders, "it would have a much different effect today," he said of Mr. Knipe.

In general, Mr. Ishikawa said, pornography businesses have not been a good market for his services, which can cost from \$10,000 to \$50,000 a month, depending on the volume of work. "Nobody wanted to spend the money," he said. "We don't want to be known in the porn space."

Many of the businesses, however, are trying various techniques to make paying customers out of people who take their content. Titan Media, a provider of gay pornography, says it tracks down people who violate its copyright and, as an alternative to a lawsuit, offers amnesty if the infringer becomes a subscriber. Identifies are not easy to find in the virtual world, and the company must track the infringement through Internet service providers, who are often reluctant to reveal the names of their customers.

So Titan does what many copyright holders do: It sends infringement notices to the service providers, asking them either to pass along the offending material or to pass along the notice to the customer. If

the line on spending outside Social the Internal Revenue Service.

# Turning online freeloaders into subscribers.

tan initially tried to unmask infringers by using the same controversial provisions of copyright law used by the music industry to track down the sharers, a streamlined system of subpoenas that do not require a judge's approval. Titan backed away from the tactic when it prompted privacy protests; a federal court has since ruled that the music industry cannot use these subpoenas against peer-to-peer file traders.

Wendy Seltzer, an advocate for online civil liberties, says the Titan approach may point the way for other industries to enforce their copyrights. Ms. Seltzer, a staff attorney for the Electronic Frontier Foundation, a high-tech policy group that has fought the record industry over copyright issues, acknowledged that the amnesty offer "sounds a little extortionate when they say it, perhaps." But she said it was "a much more sensible approach" than the music industry's litigation strategy. "People always want this stuff," she said, referring to pornography. "Seeing some of it just whets their appetite for more. Once they get through what's available for free, they'll move into the paid services."

Gill Sperlein, general counsel for Titan, said his company must be tough in combating file-sharing networks because of the nature of the content. "When we're trying to maintain control of our product, it's not just to protect our financial interest but also our moral obligation to keep it out of the hands of minors," he said. Once an image or movie has been taken from his site, the company's elaborate precautions to ensure that minors cannot gain access to the material through the site are defeated. "We are very careful about who we sell our products to," he said.

Companies are finding that free images can be a selling point, but just a problem. Playboy.com Webmasters, \$25 or more for every subscription they funnel to Playboy.com and provides sales and marketing tools to help make the free Web sites more effective. Mr. Nicolau of Playboy.com said that the subscription business grew 74 percent in 2002 and that the company's revenue growth

Others in the industry are using bare-knuckled legal tactics, but they are suing other companies, not individuals. An emerging industry of lawyers and self-appointed Internet monitors is leading off-provisions in copyright law that allow automatic damages when infringement is proved in court. Groups like the Association for the Protection of Internet Copyright, which works mainly for pornography-related businesses, scour the Internet for signs of copyright infringement that they can present to the original owners of the material. They then collect a bounty from a portion of the settlement or statutory penalties, which can reach as much as \$150,000 an infringement.

Some people who have been approached by APIC say tactics of the organization's founder, Steve Easton, go out of bounds. According to papers filed by an Internet service provider in the United States District Court for the Northern District of California last fall, Mr. Easton sent copyright notices with links to pornography sites to the company and business associates "to bludgeon, harass and embarrass" the service provider.

Mr. Easton said that he was the one being victimized by the lawsuit, but conceded that his tactics had made him vulnerable. "I've said things to people that I probably should not have bothered," he said, "instead of sending notices and keeping to the straight and narrow."

A pornography merchant, Norman Zada, has sued Web sites that use pictures from his site. Perfect 10, and has also sued the companies that

the country to a permanent conviction that the deficits are not going their kids' problem."

# process, payments for those sites. (Those suits are still working their way through the courts.) Last month, he took his campaign a step further and sued MasterCard and Visa, which he said contribute to online piracy by processing bills for Web sites that post pornography that rightfully belongs to his site and magazine.

Mr. Zada argues that piracy has cost him some \$20 million. "If you create a product and everybody else can sell your product" without paying for it, he said, "you can't survive."

Neither credit card company would comment for attribution, but a lawyer from one of the companies scoffed at the suit, saying that it had no legal basis and that the company was too far removed from copyright infringement to have any liability.

Mr. Zada said his lawsuits were legitimate. "They're all accusing me of using litigation as a profit center — I'm out \$29 million!" he said. "This is not a profit center." He said he believed, however, that he could make back that sum and more if he could only have the courts give him total control over internet's own.

He has the right to make his case in court, he said. "This wonderful country gives you the opportunity to fight the playing field." Companies like his, he said, must litigate aggressively because they do not get the kind of support from law enforcement that the music and movie industries receive.

TOUGH industry tactics should cause no surprise, said Charles Carreon, the lawyer suing Mr. Easton. Pornography, after all, is a business with a history. "Everybody forgets that somebody shot Larry Flynt," he said.

Pornography merchants say that they have the advantage over free file-sharing networks, at least for now. They say the networks are not well suited to the needs of their consumers, who like images and movies that push their very specific buttons for, say, blondes or cheerleaders.

Free is very attractive and hard to deal with, and you don't know what you're getting," said a pornography entrepreneur who goes by the online pseudonym T. Lassiter. Jones "Cheap is more convenient."

That notion could be the great hope of the mainstream entertainment industry, where fledgling services like the iTunes store and Amazon.com offer inexpensive, easy access to legal music and beginning to catch on. So yes, sex sells, but so can music. □



© The New York Times. Kandy Nicolau, the president of Playboy.com, sees file sharing as a form of direct marketing because it ends up bringing more people to his site.

35 of 46 DOCUMENTS

Copyright 2004 Nationwide News Pty Limited  
Gold Coast Bulletin (Australia)

January 30, 2004 Friday

**SECTION:** WORLD BRIEFING; Pg. 12

**LENGTH:** 78 words

**HEADLINE:** PORN WARS

**BODY:**

INTERNET piracy has devastated the music business, threatened the movie industry and may now undercut one of the most successful corners of the web, pornography.

A California publisher of a pornographic magazine and website has sued Visa, MasterCard and other financial institutions, alleging they facilitated the illegal sale of pirated sex images flooding the Internet.

Perfect 10 based the case on claims other websites were stealing their sexual imagery.

**LOAD-DATE:** January 29, 2004



36 of 46 DOCUMENTS

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WASHINGTON INTERNET DAILY

JANUARY 30, 2004

**SECTION:** Vol.5, No.20

**LENGTH:** 223 words

**HEADLINE:** Courts

**BODY:**

Verio remains barred from mining Register.com's Whois database for e-mail solicitations as a result of a 2nd U.S. Appeals Court, N.Y.C., decision affirming a lower court's grant of a preliminary injunction. The appeals court said Verio was using the database information for mass solicitations. Verio had argued that ICANN rules prohibited Register.com from imposing conditions on how the database could be used. The appeals court did require the lower court to modify the preliminary injunction to require Register.com to delete a phrase that would have prohibited Verio from using the term "first on the Web," as well as some other provisions, including allowing Verio to use the data for telephone and direct mail marketing. Register.com CEO Peter Forman said the decision "shows that we will not tolerate attempts to co-opt our valuable brand and goodwill." Gen. Counsel Roni Jacobson said the company was confident the injunction would be made permanent and would "serve as a warning to others" on mining the database. -----

A Web site pornographer sued Visa and MasterCard for aiding Internet piracy. Perfect 10 filed in U.S. Dist. Court, San Francisco, charging that rival Web sites were selling images copyrighted by Perfect 10 and that Visa and MasterCard assisted theft by conducting transactions for the sites.

**LOAD-DATE:** January 29, 2004

37 of 46 DOCUMENTS

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The Evening Standard (London)

January 29, 2004

**SECTION:** A; Pg. 38

**LENGTH:** 245 words

**HEADLINE:** Porn website sues Visa in 'piracy' push

**BYLINE:** BILL CONDIE

**BODY:**

AN ONLINE pornographer in California has joined the music industry in seeking legal redress for alleged internet piracy.

Perfect 10 of Beverly Hills, whose slogan is "The World's Most Beautiful Models Expose All", is suing Visa, Mastercard and other financial institutions, alleging they facilitated the illegal sale of pirated sex images over the internet.

"The defendants in this case are knowingly providing crucial transactional support services for the sale of millions of stolen photos and film clips worth billions of dollars that belong to Perfect 10 and third parties," the company's filing with court says.

Perfect 10 says Visa and Mastercard have made huge sums from the sale of erotica in violation of the company's copyright. "Perfect 10 has concluded that the only way to stop the proliferation of such websites is to go to the top, namely the payment card associations and the primary third-party processor, each of which is knowingly and effectively acting as a fence for the sale of billions of dollars of stolen content," the company said.

Perfect 10 publisher Norman Zada told reporters he was spending thousands of dollars for nude photography sessions while many internet sites were stealing his and other images.

"The reason it was so hard to make money is because while we were paying for our content, there were many websites out there that were competing against us that were stealing theirs," said Zada said.

END

**LOAD-DATE:** February 2, 2004