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Tom Enneking, Editor

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## Cybersmearing

Christopher Ernst  
Weston Hurd Fallon Paisley & Howley LLP  
Cleveland, OH  
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Had a disgruntled customer recently? What about that employee you fired last week? Do you know if they are smearing your business' name over the Internet?

Cybersmearing has become a popular form of revenge for those who feel wronged by a business. People will post hundreds of messages a day on a variety of bulletin boards and discussion groups. Frequently fueled by anger or a spirit of revenge, these messages are almost uniformly negative and often encourage the public to take action against the business in one way or another. Legend tells of a corporate IT director who took to posting messages on the corporation's shareholder bulletin board, urging all shareholders to sell their stock immediately. While one or two random complainers might not be bad,

*Cont'd on page 3*

## Who's On Your Buddy List? The Business Applications of Instant Messaging

Tom Enneking

Since its birth in the early 1990s, the Web has revolutionized the ways in which businesses operate, and the practice of law is no exception. The World Wide Web, defined by the W3 Consortium as the universe of networked-information, allows attorneys to advertise their services to clients around the world. Email allows for inexpensive communication and transmittal of documents between users. Often overlooked is instant messaging (IM), which permits you to communicate with colleagues and clients at a distance in real time, like the telephone, while avoiding long distance charges that apply during business hours.

Research indicates that corporate IM usage is expected to make up nearly 60% of online traffic by 2005. Many firms encourage the use of IM, which they believe improves productivity in two ways: 1) it reduces coworker interruption; and 2) it keeps employees stationed at their desk. IM windows do not command your entire attention; you may do other tasks as you chat.

*Cont'd on page 4*



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*Cybersmearing, cont'd from page 1*

imagine the consequences if they were to band together and institute a class action lawsuit.

For those who have been smeared, one of the problems behind cybersmearing is the ease with which these attacks may be posted anonymously. Yahoo! and America Online, as examples, are notorious for fiercely protecting their users' identities.

What can be done to remedy this situation? Many businesses are now employing third party services to review the Internet for such attacks. Some are even employing counsel to do this, given the broad variety of legal issues that could be raised. The businesses are reviewing their own bulletin boards and weeding out the gripers. Perhaps most importantly, they are imposing strict employee policies to preclude such activity from coming from within the business.

When transgressions are found, they should be dealt with swiftly and severely. Litigation is a ready alternative. Juries have returned verdicts approaching one million dollars for businesses that have been unfairly attacked. By the same token, though, one cybersmearer turned the tables on the business, countersued for libel (and won) and tipped off the Securities and Exchange Commission, which promptly launched a fraud investigation that resulted in a multi-million dollar fine. The cybersmearer then used his award to start a website dedicated to maintaining anonymity on the Internet.

*Mr. Ernst may be reached at (216) 687-3212 or at [CErnst@westonhurd.com](mailto:CErnst@westonhurd.com).*

**Case Update Service**

The Library has been experimenting with a case update service, which will be available on February 1. Each day, we check for new opinions for the Ohio Supreme Court, First District Court of Appeals, and the U.S. Sixth Circuit. These updates are posted to the Library's Web site each weekday afternoon, excluding holidays, at:

<http://www.hamilton-co.org/cinlawlib/resources/cases/>

If you would like to receive these case updates via e-mail each day, please sign up for the service on our Web site:

<http://www.hamilton-co.org/cinlawlib/interact/list.html>

or call us at 946-5300 or e-mail us at [reference@cms.hamilton-co.org](mailto:reference@cms.hamilton-co.org) and let us know you would like to receive case law updates.

**Extra! Extra!  
Newsletter Going 100% Digital!**

The Library has been getting terrific feedback about the monthly newsletter. You can now access it online, at our Web site:

<http://www.hamilton-co.org/cinlawlib/newsletters/>

We post the newsletter at the beginning of each month, in Portable Document Format (PDF). You can also read past newsletters.

Starting in **April**, we will begin distributing the newsletter **in electronic format only** to all of our members for whom we have an e-mail address. If you are not already receiving an electronic copy, please send your e-mail address to David Whelan ([dwhelan@cms.hamilton-co.org](mailto:dwhelan@cms.hamilton-co.org)).

Likewise, if you would prefer to continue receiving the newsletter in print, as well as by e-mail, let us know that, too. Our goal is to get you the information you need in the format you prefer. We are continuing to look for ways to improve the newsletter, so please let us know if you have suggestions.

*Instant Messaging, cont'd from page 1*

At its most basic, IM is likened to a text version of a phone call. IM programs work by connecting two users (or more in a chat room) through a server, allowing them to type messages to one another in real time. Most programs will deliver your messages only when they are complete and you send them, whereas others allow you to see what the other user is typing as he types it. Essentially, one user sends a message that the other receives immediately, instead of waiting for it to maneuver its way to the recipient's email inbox.

IM programs generally allow users to see what other users are online via self-created user lists (so-called "buddy lists"). Users who are online appear differently from those who are offline; when two users are online, they can exchange instant messages. Some programs allow you to conceal the fact that you are online, or indicate that you are unavailable.

Many IM programs permit the exchange of documents or files in real time while users chat with one another. This provides an alternative to emailing or faxing, especially when those methods prove unreliable, untimely or inefficient. Depending on the program, IM may incorporate audio and video abilities; however, participating computers must have sound cards, speakers, microphones, cameras and software.

**Benefits of IM**

Like other technological advancements, IM has much to offer the business world.

1. Save on long distance charges – IM permits you to communicate with people in other parts of the world, which can reduce long-distance phone bills.
2. Real time interaction – IM makes possible quick and simple communication. It has an immediacy that email can't provide.
3. Reduce spam – IM has effective popup blocking techniques and transmits fewer unwanted messages than email.
4. Host conferences – Most IM programs let you create invitation-only conference rooms where your workgroups can meet.

**Potential Problems of IM**

IM is not a perfect communication vehicle. It does present a number of problems that must be considered before a firm or business implements it as a communication tool.

1. Bandwidth usage - If you have numerous employees engaging in chat, it can affect your network's performance. Like email and Internet surfing, IM communications are also subject to spamming (IM spam is called "spim"). Spim usually consists of pornographic images that pop up during IM use. Displays of inappropriate material in the workplace can result in allegations of sexual harassment and possibly lawsuits.
2. Loss of productivity - IM programs are designed for recreational "chatting" and more often than not, users may spend several hours involved in a chat. Because people type slower than they talk – normal conversations range from 100-250 words per minute – it takes more time to exchange information via chatting as opposed to over the telephone. Employees may abuse IM for personal use on the job because it looks like they're working while typing sending messages.
3. Security – Some IM programs use different protocols that can circumvent authentication systems or that are nonstandard. Some IM programs can also share files, which might risk viruses from files outside your network or unintended disclosure of files inside your network.
4. Electronic identity theft – Many users create anonymous user names that can't be tracked; if the name is not associated with a genuine email address, an imposter can send communications pretending to be someone he's not.
5. Compatibility and standards – A user of America OnLine IM can't chat with a user on MSN Messenger. However, Cerulean Studios has created a universal IM product called Trillian Basic that can connect to most major IM systems.

*Cont'd on page 5*

*Instant Messaging, cont'd from page 4*

### Reconciling the Good with the Bad

IM is a double-edged sword in that it has much to offer, but it also has the potential for concern. How can you take advantage of IM without the accompanying headaches? The following suggestions provide some guidance on how to properly use IM in the business world.

1. Establish an internal IM network – Firms can create an IM network on a private server that is inaccessible from the outside. This internal network functions the same as commercial networks, but only to those who have been given permission to access it. The server should also maintain an archive of chats.
2. Monitor conversations – You should collaborate with your IT department to check the content of conversations and to check the amount of time employees spend on IM.
3. Adopt a use policy – Such a policy will hopefully prevent IM from becoming a distraction. It should outline things like the types of information that can be transmitted (never confidential or personal) and limitations on personal messaging. This policy should be distributed to employees and mechanisms should be in place to enforce it. For example, you should also establish penalties for violations.
4. Technological enforcement – Businesses may restrict usage to certain users, certain days of the week, or specific hours of the day. They may also install content filters that either block inappropriate messages or alert IT administration to improprieties. Finally, you may want to limit the transmittal of certain types of files, which may contain viruses or malicious code.

### Conclusion

IM has the potential to be a powerful tool in the legal world. Imagine sending and receiving briefs, contracts, or other documents in almost real time to a client, colleague, or partner. True, the possibility for abuse is present, but with an effective use policy, it can open new doors and change the way you practice law.

### Sign On: Instant Messenger Options

Yahoo! Messenger: <http://messenger.yahoo.com/>  
 MSN Messenger: <http://www.imagine-msn.com/messenger/>  
 AOL Instant Messenger: <http://www.aol.com/aim/downloadaim.adp>  
 IRC (Internet Relay Chat) : <http://www.mirc.com/>  
 Trillian: <http://www.ceruleanstudios.com/downloads>

### Did You Know Our Members Receive:

- ❖ Free **Westlaw Access** in the Library
- ❖ Free **Internet Access** in the Library
- ❖ Free Access to CD-ROM law libraries and **forms**
- ❖ Free **Reference Assistance**, in person, by phone, or via e-mail
- ❖ Free **document delivery** by e-mail or fax
- ❖ Extensive Ohio and Federal primary law collection in print and electronic formats
- ❖ Practice materials, including:
  - handbooks
  - rules
  - treatises
  - jury verdicts
- ❖ Borrowing privileges for nearly all materials in the Library's collection, including CLE materials.



## Webcites: A Case Study

Chuck Kallendorf and David Whelan

Recently, a Library member came to the Reference desk for help finding a case, with an unusual citation in hand. It wasn't an obscure reference, misprint, or clerical error. It was simply an unreported case that had been pulled up in an electronic database search, an Ohio state court case cited only using the Ohio Supreme Court's Webcite citation format.

Defined by *Black's Law Dictionary*, a citation is "a reference to a legal precedent or authority, such as a case, statute, or treatise, that either substantiates or contradicts a given position." It is a shorthand notation, but if you cannot locate the "given position," it is not of much help.

Today, many lawyers perform their primary legal research electronically, which can create a problem when unusual citations, not found in any print reporter, appear with the research. Although Ohio appellate court opinions are still selectively published in print reporters, the Reporter is publishing all appellate opinions on the Supreme Court's Web site. In some cases, the citation itself can indicate that it is unpublished. For example, if the citation includes a year and the online service's name or initials – 2002 Ohio App. LEXIS 564 or 2003 WL 29756 – it is an unpublished case. Some unpublished cases will eventually have a citation to the official reporter. But some never move beyond this "unpublished" state, and will not appear in a print reporter.

The situation is further muddled because of a state's official reporter. For example, in May 2002, the Ohio Supreme Court revised its "rules for reporting opinions," along with the citation manual it had used since 1992. It created its own "unique Webcite," which is created by taking the year the opinion is issued and a consecutive number and placing those two pieces of information on either side of "Ohio": *2002-Ohio-*

*6507*. The Court also eliminated the designation of "unreported" in Court of Appeals opinions, because other rule revisions "abolished the distinction between controlling and persuasive precedent." All opinions issued since then are published to the Ohio Supreme Court's Web site, each one assigned a "Webcite", uniquely identifying the opinion. Almost 175 First District Court of Appeals and more than 700 Supreme Court opinions and other documents were published to the site in 2004.

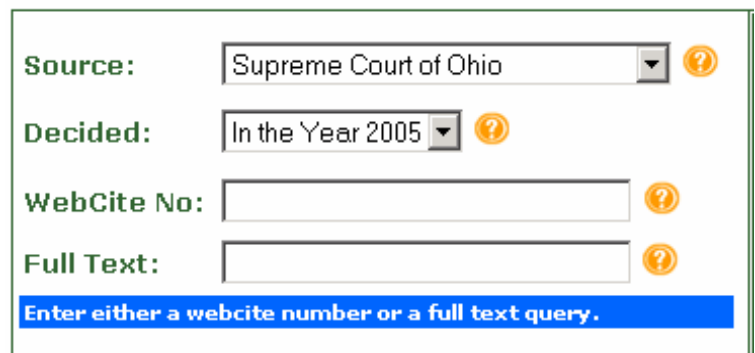
Suppose you have a citation like 2002-Ohio-6507, the Ohio Supreme Court's Webcite designation for the opinion in Hudson v. Summit County, decided December 2002. How would you find this case?

On the Ohio Supreme Court's opinions page, you can conduct a search of opinions by using the Webcite number *with hyphens*

2002-Ohio-6507

Supreme Court opinions are available back to 1992, but court of appeals opinions will vary in access on the site. For example, the First District's opinions are only available since 2001.

If you only have a print citation, you may enter it at the "Full Text" search bar in quotation marks: "104 Ohio St.3d 122." The Supreme Court's webpage does not recognize Westlaw or Lexis citations. You may also enter party names at the text search bar.



Supreme Court Opinions Search Form

Those cases that are "published" have both the Ohio State 3d number and the Supreme Court's Webcite number.

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### Webcite Web Sites

Ohio Supreme Court Manual of Citations: Examples of Webcites  
[http://www.sconet.state.oh.us/ROD/pdf/Rev\\_Manual\\_Cit\\_02.pdf](http://www.sconet.state.oh.us/ROD/pdf/Rev_Manual_Cit_02.pdf)

Ohio Supreme Court Reporter's Opinions & Announcements  
<http://www.sconet.state.oh.us/rod/newpdf/default.asp>

## Legislative History CLE at the Law Library

Are you an Ohio lawyer in need of CLE credit? The Cincinnati Law Library will offer a one-hour CLE led by **Thomas Enneking**, Assistant Law Librarian, at the Cincinnati Law Library Association, called **Legislative History: It's Easy**. [We are currently seeking CLE credit for this course from the Ohio Supreme Court].

Join us at the Law Library on Friday, February 25, 2005, from 3pm-4pm. Library Association **members: \$10**; Non-members: \$25. Law librarians and law clerks are also welcome!

Please call Madonna Gresser at (513) 946-5300 to reserve a place or register online at <http://www.hamiltonco.org/cinlawlib/cle/signup.html>.

## Phishing Follow-up

Tom Enneking

An article in the October 2004 law library newsletter discussed phishing scams, which trick consumers into revealing passwords and bank account numbers. Originally, scammers sent junk email containing links that looked like legitimate web sites. Now, these attacks increasingly incorporate worms or spyware to defraud consumers.

Consumers can protect themselves by using antivirus and antispyware software. Businesses need to take steps, as well, educating their staff about the risks of phishing and other e-mail based scams. Recent articles in technology publications indicate a growing concern that phishing will be focused against enterprises because of the greater potentials. (See the Infoworld Special Report on Phishing, January 2005:

<http://www.infoworld.com/reports/04SRphishing.html>)

In an effort to combat phishing, Microsoft has recently purchased an anti-spyware company and released an updated tool that will protect users from unwanted software being downloaded by its popular Web browser, Internet Explorer. This product is still not ready for broad release, but a "beta" product from Microsoft is a good sign of future developments in the anti-spyware battle.

*Webcites, cont'd from page 6*

How does the Court's Webcite translate into Westlaw, Lexis, or a print reporter? There is no conversion table to get you from a Webcite to some other database or reporter.

If you enter the Webcite either as a "natural language" or "terms & connector" search into Westlaw or Lexis, the case will appear. Here are examples using natural language:

	Natural Language
<b>Westlaw</b>	2002 Ohio 2507
<b>Lexisnexis</b>	2002 Ohio 2507

and terms and connectors. You can omit the "segment" or "field" delimiters to bring up other cases that include the citation in the text of the opinion.

	Terms & Connectors
<b>Westlaw</b>	Ca,pr (2002 /s ohio /s 2507)
<b>Lexisnexis</b>	Cites (2002 /s ohio /s 2507)

You will also find Webcites in Casemaker, the case law database offered by a consortium of state bars, including the Ohio State Bar Association, for its members.

The next time you see an odd citation, you may be looking at Ohio – or some other state's – new electronic citation format. As more courts directly "publish" their opinions to the Web, these citation formats are likely to become more popular.

### Spyware Tools

Lavasoft's Adaware Pro / Plus / Personal  
<http://www.lavasoft.com/>

Microsoft® Windows Anti-Spyware (Beta)  
[http://g.microsoft.com/mh\\_mshp/787](http://g.microsoft.com/mh_mshp/787)

Spybot Search & Destroy  
<http://www.safer-networking.org>



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