

Hypothetical Business Problem for Class 2.2 and Assignment

The following hypothetical will serve as the unifying assignment for the seminar. We will discuss this hypothetical in the class on September 24, 2003 (class 2.2) and then revisit the problem in the final class of the semester, December 3, 2003 (class 6.0).

HYPOTHETICAL

The business is a new, enhanced form of search engine that will compete with the major search engines in the market today. Like them it will search for, store and display websites, including images. It will cache and archive web sites for indeterminate periods. It may/may not respect the 'bot protocol in spidering sites. Also, it may/may not respect passwords or other access controls.

Use of the search tool may result in pop-up ads being blocked, as well as pop-unders. Whether the ad-blocking feature is turned on, by default, or will be set by users (and, if so, how), and whether it will also enable the blocking of embedded (e.g., banner, column and other applet) ads is to be determined.

The enhancement is a subscription service, offered worldwide. Users register and sign up for the service electronically; they agree to abide by terms and conditions of usage; they are charged a monthly subscription charge on their credit cards.

The service allows users to take advantage of a sophisticated "push" technology, in which articles on topics they specify, from a list of websites offered up to the users, are delivered at the user's request. Each day's articles are stored in a subscriber's own archive, accessible to him/her and others designated by him/her. Subscribers can also instruct that the articles be sent to others.

The service gathers registration, usage and other information from its users. The business wants to use that information, individually and in the aggregate, for itself and to offer it to the websites from which the articles are taken. The service would also like to have the flexibility to change its data gathering and usage practices.

In addition, the service collects, in a database, information on the websites (by product type) most frequently searched by different types of users. It wishes to commercialize that database in the United States and Europe.

ASSIGNMENT FOR CLASS 2.2

You are a lawyer with an international corporate practice who represents the client with the prospective business model described above. Please think through what Internet law issues (e.g., copyright, jurisdiction, etc.) might arise based on this fact pattern. Please think also about the types of questions you'd like to ask of your clients, who will be showing up in class on September 24, 2003. At the end of the term, we will make short presentations to the clients about the nature of the legal problem(s), the relevant doctrine and case-law, and our recommendations for how to handle the risk(s) involved.