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Ambulance Chasers on the Internet: Regulation of Attorney Web Pages

by Mark Hankins [*]

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I. INTRODUCTION

{1} Since the U.S. Supreme Court in 1977 decided *Bates v. State Bar of Arizona*, [1] attorney advertising, once anathema to the profession, has become a tolerated, if not entirely welcome fixture of the landscape. Regulations of attorney advertising have passed the intermediate scrutiny of the Supreme Court on a number of occasions[2] with a recent Supreme Court victory of the Florida Bar over an advertising attorney defining the outer limits of permissible attorney conduct in targeted direct mail advertising. [3] Debate continues on the effect of advertising on the profession. Many argue persuasively that its added economic pressures are converting the practice of law into a business with detrimental effects on clients, and consequently undermining public confidence in the legal system. [4]

{2} With the advent of the Internet, the checkered history of advertising in the legal profession is poised to take a new turn. The World Wide Web dramatically alters the economics of attorney advertising while

expanding its reach. The profession will have to continue efforts to understand this technology in order to preserve high ethical standards and avoid furthering the negative stereotypes of lawyers in the public's estimation. However, to attempt a total disconnection from the Internet is to invite lawyers to render themselves the late 20th century's equivalent of the buggy whip. The bars of the several states are beginning to respond, [5] however, the issues are dauntingly complex, and changing technology is already threatening to swamp the best-intentioned guidelines.

II. THE INTERNET

{3} Many attorneys are already aware that the Internet is quite simply the earliest primitive incarnation of the fabled "Information Superhighway" that will allow anyone anywhere access to any piece of information that anyone has chosen to make public. Recent developments have underscored its importance. The A.C. Nielsen Company recently estimated that 37 million people have access to the Internet, [6] and the number of people using it is growing explosively. Access can be had for as little as \$15 per month for unlimited usage at reasonable speeds, and the computer hardware required for a good connection is projected to cost \$500 or less by the end of 1996. [7] New technologies promise to make Internet access anywhere from ten times faster to near-instantaneous. [8] One opinion poll has found that Internet users will spend 6 hours or more a week "surfing the Internet," [9] time that is taken mainly at the expense of television-watching. [10] The Internet was originally established for the dissemination of information oriented toward the advancement of defense technology and later generalized to serve all of scientific academia. Now the Internet is poised to become the most important technology [11] to the advancement of the human species since the advent of movable type in Europe. [12]

{4} Attorneys are already using the Internet, and specifically the colorful part of it known as the World Wide Web ("Web") as an advertising medium. In so doing, they join others as diverse as the Vatican [13] and Penthouse Magazine. [14] A few attorneys have even begun to offer rudimentary services over the Web. [15] This trend may be expected to accelerate to the point where it will be more important for an attorney to be on the Web than it is to have a Yellow Pages or Martindale-Hubbell listing. Attorneys will also discover, however, that the Internet is a community unto itself, and one that has both an obvious Wild West flavor and a less obvious big-brotherish self-policing aspect. As an example of the latter, an attorney doing a mass mailing on the Internet [16] would find instant trouble with his intended audience and would probably have his account revoked within hours.

III. THE PROFESSION'S RESPONSIBILITY

{5} Because of the Web's rapidly evolving nature and potential for furtive circumvention of ethical constraints, if the legal profession wishes to preserve its dignity and protect the public, it must begin to exercise the same self-restraint now with respect to advertising over the Internet that it exercises with respect to other advertising media. Because the Web is also a publishing medium for information not in the nature of advertising, the ethical constraints will also need to be exercised carefully to preserve free speech rights in an environment where the line between advertising and information is blurrier than it has ever been before. [17] Some states are already taking these steps. [18] But in order to regulate effectively, Internet technology must be truly understood because it blends many of the features of print and broadcast media, while including a few unique twists.

IV. THE TECHNOLOGY: HTML - THE LANGUAGE OF THE WORLD WIDE WEB

{6} This article describes only the current state of a major part of the Web community. Like the physical

world inhabited by humans, the Web has some areas where citizens lag behind technologically, while others are on the cutting edge. Technology in the development of the Web changes officially only through the action of a committee [19] charged with developing the HTML [20] language, a notoriously tortuous computer language devoted to describing how a document should be handled by the software that allows a user to view a page on the Web. [21] The language itself is surprisingly simple. The complexity comes from the fact that HTML defines attributes for text, such as "emphasis" rather than describing how the attribute should be achieved. This leads to problems for those crafting HTML pages because various "browsers," [22] which are end-user programs that read the pages, implement the features differently. This, creates potential for spectacular discrepancies in the appearance of the same page on different browsers. The utmost skill on the part of the programmer is required to craft a page that looks good on most of the popular browsers. Universality is attainable only by addressing the lowest common denominator, resulting in a dowdy look. However, Netscape, a company that went public less than a year ago and which has made its founder an instant billionaire, has recently driven the technology forward faster than the HTML committee. Netscape's domination of the market, for both browsers used by individuals, and software for the servers that provide the information, allows it to propel the industry. Many Web authors now write strictly for Netscape, and leave an on-screen note advising users of other browsers to expect disappointment. Predictably, Netscape has rivals, all trying to stake a claim to a part of the technology of the Web. [23]

{7} One example of how the changes in the technology affect the ethical issues with respect to lawyer advertising is the advent of "Server Push/Client Pull," a set of features that Netscape has implemented in its browser and server software that is akin to a slide show. The first page the user sees will be supplanted by the next one in a predefined sequence without the user's intervention. On a high-speed connection, this can happen so fast it mimics cartoon animation or even slow-scan video. Some drafters of attorney advertising regulations only see the first page of an attorney's site as advertising because that page is viewed as appearing without the request of the user. This new technology turns their logic on its head by allowing more information to be seen by the user without the presumed request, and the first "page" might go by so quickly as to be altogether negligible. Acceptable text and graphics could quickly be replaced with unacceptable content, and the motion of a figure shown might also convey some meaning that would be unacceptable. Arguably all pages in a Server Push/Client Pull sequence should thus be submitted to the regulators.

{8} Another of the Web's features which has not yet been considered by regulators is the Common Gateway Interface ("CGI"). CGI enables a degree of interactivity between a user and a Web page. For example, whenever a user uses a search engine on the Web, he or she is accessing a CGI interface. The CGI script is called by the user's submission (clicking on a button after filling in a form box), and it proceeds to query a database. The output of the database is then instantly reformulated into HTML and returned to the user as a Web page. Thus, for example an attorney could use a CGI script to provide interactive answers to commonly asked questions about divorce [24] on his home page. Regulators, therefore, could only review the page by actually visiting the site using a browser.

{9} While the Netscape extensions and use of the Common Gateway Interface raise serious issues, the issues raised by HTML's rapid evolution under Netscape's tutelage will likely pale in comparison to Sun Microsystems' extension to HTML, Java. [25] Java is a machine-independent applications language that allows a Java-enabled browser to immediately run software downloaded to the browser from the Internet as a page is being loaded. [26] Currently, a Java-enabled browser can play sounds without the user downloading them. And animated graphic elements are also available. However, when Java is fully implemented, "applets" will be available to make the Internet truly interactive. For example, a user's choices from an attorney's menu of services could prompt an instant, ongoing calculated total. As with a CGI script, even a printed version of the attorney's Web page as it appears on the Internet [27] will not

convey sufficient information about a Java session to enable proper oversight. The key difference being that Java will allow even more interactive capability, meaning the evaluation will take longer because there will typically be more possible responses to user input on the part of the software.

{10} Another problem in regulating Web pages is that while most state bars' advertising regulations require copies of advertisements to be maintained, Web pages can be particularly ephemeral. Other authors have pointed out that attorneys could maintain copies of the HTML source files for their pages as a means of satisfying this requirement. [28] The technological difficulty is the aforementioned unpredictability of the appearance of the pages on different Web browsers. If, for example, point size and emphasis of certain mandatory text are crucial to determining whether a given page complies, a page could be compliant when viewed with one browser and improper when viewed with another. Since a plethora of net browsers exists, it would be impractical even for professional developers of Web sites to test a page against every browser. Because software empires rise and fall, one alternative would be to require the attorney's page to be compliant when viewed on the three most popular browsers at the time it is made accessible. A state's bar could then keep track of the relative popularity of browsers, [29] and announce changes to its official list on a regular basis.

V. ATTACK OF THE SPIDERS, CRAWLERS AND ROBOTS

{11} Even when newly minted Web technology is not involved, there can be oversight issues not easily foreseen by regulators. While the visible part of the attorney's Web page itself is an indispensable requisite *Sine qua non* element of any effective regulation, it is neither the starting point from which many websurfers will find their way to the attorney, nor the limit of what the user will see without conscious effort. A home page alone is like the cover of a book placed randomly in a gigantic library. No one will find it unless it is indexed or unless there is a pointer to it left somewhere. As can be expected, both mechanisms exist on the Web, often in combination with capabilities to search other Internet resources not part of the Web, such as Usenet newsgroups. [30]

{12} A hyperlink is a hidden code in a Web page that enables a user to leave that page and travel to another by merely clicking a mouse. For example, if the word Vatican [31] were a hyperlink, moving a computer mouse pointer to it and clicking on it would activate a hidden reference to take the user to another web page, perhaps hosted by a computer in Rome, containing information on the Vatican. [32] So, a practical joker could make the Vatican link take the user to the Web page of a truckstop in Kansas. The Vatican's page could itself have links to anywhere, making the Web live up to its name. Each page can potentially link to strands leading to any other page. Users of online legal research services such as LEXIS and Westlaw have already seen some of this capability. However, the Web is much more hypertext-intensive.

{13} The Web is rife with both Web "robot" indexers and with sites that collect hyperlinks to other sites. [33] Robots, [34] also known as spiders or crawlers, are programmed to visit every site on the Web through a combination of random exploration of Web pages and submission of Web pages to be indexed. Even though Robots do this with blinding speed, none can keep up with the growth of the Web, and it can take months for a site to be indexed.

{14} Unlike Robots, sites with hierarchical directory structures [35] usually operate by submission only, and attempt to categorize Web pages, creating a computer-enhanced combination Worldwide Yellow Pages and Worldwide city directory. Both Robots and hierarchical catalogs have ethical implications beyond what regulators will anticipate without a thorough understanding of their capabilities and idiosyncrasies.

{15} The former Robots often index all keywords and phrases located in Web pages, whether visible or not, and whether or not the pages are the site's home page or "interior" pages. These search engines' thoroughness could lead to abuses by several means, many of them quite subtle. As an example of an opportunity for abuse, consider that creators of Web pages make use of hidden "Memo" or "Meta" fields within the documents, which are intended to act as notes within the text but remain unseen by the viewers of the pages. An unscrupulous attorney eager to capture the attention of a portion of the Web audience could easily include the phrase "The best personal injury attorney in Orlando" in a hidden field. The result would be that if the site were indexed by Digital Equipment Corporation's Alta Vista searcher, a user looking for "the best personal injury attorney in Orlando" would be led straight to the site. [36] This obviously raises issues of self-laudatory advertising, but would not be visible if the Web page, as seen by a browser, were to be submitted to a bar committee.

{16} Additionally, an attorney making use of a third-party submission service to have his site publicized to the various indexes and robots could find the descriptions used by the submitters not in keeping with the spirit of a bar's rules unless he maintained strict control over the copy submitted to the sites. [37]

{17} Creators of home pages also have been known to include unrelated search terms in a hidden field simply to increase the likelihood a site will appear as a search result, and this is also possible when submitting keywords to a Web catalog. For instance, *Penthouse Magazine* claims its site on the Web is the most popular in the world. Entering the words "Penthouse Magazine" in a hidden field a few dozen times would cause an attorney's page to be placed prominently before a large audience, assuming that hundreds of people a day access one of the search engines to find the *Penthouse* site. Is this ethical? It is questionable whether those seeking *Penthouse's* site would have at that time any interest in legal services, (and when they become aware of the trick, the attorney could be pelted with hate mail), however, the advertising industry places an extremely high value on repeated exposure alone.

{18} Without a doubt, multiple uses of a search term increase the likelihood that the site is seen by a user. For example, a search including the word "Florida" conducted on the Lycos search engine will return a site whose title field consists of the words "Florida Keys" repeated 159 times, and which has a comment field containing an additional 95 repetitions. While the regulators may stop at the "book cover," the search engines on the Web could lead a user to any of its pages, even undesirable ones, simply because a hidden field contained multiple incantations of a magic search word or phrase. One can easily conceive of a memo field containing two dozen repetitions of the words "Orlando personal injury". While it would not technically be laudatory, nor would it even ordinarily be visible to a websurfer, this would undoubtedly confer an advantage irrespective of merit, [38] and thus would be a proper subject of oversight.

{19} A less subtle behavior on the part of such an attorney would be required to achieve the same effect on a hierarchical searcher such as the currently-dominant "Yahoo" service. However, there would be nothing to stop him from submitting the name of his Web site for hyperlinking with a description line touting himself with a version of the phrase used above in the Memo or Meta field. The link could appear as follows: "Deena Kwalume - The best personal injury attorney in Orlando." This would not be picked up on by regulators because most have yet to address links. Although Yahoo's keepers would probably not tolerate such a description, similar services allow submitters to categorize and describe themselves. The webmasters [39] of these services are likely too busy to police all aspects of a particular entry. To resolve the former problem regulators could request the "source code" for any home page be submitted along with a view of the page as it will appear to the user. The latter issued could be handled by either requiring the attorney to describe the submission process to be followed, complete with descriptions and keywords to be used, or by closely monitoring the Web's most popular catalog sites for noncomplying

language.

{20} A related problem is the publisher of a Web page has absolutely no control over what unrelated third parties do to provide hyperlinks to the site. Links to a particular site are often ephemeral results of a keyword search submitted by a user to a search engine, and attorneys have no control over what comes up above them or below them in the list. Internet etiquette suggests that a person establishing a more or less permanent hyperlink to another site should at least inform the proprietor of the site linked to, but, this convention is often ignored. For example, one site maintained by an Internet critic weekly showcases links to and parts of another site, typically one placed by a major corporation, that is particularly bereft of talent and innovation. [40] It would spoil this critic's fun to inform the offender, because the site would be quickly pulled or fixed. An attorney could easily be unaware of an outside link with laudatory language about the attorney. Websurfers would have no way of knowing whether the laudatory language is the attorney's text or a third person's opinion, but may conclude the latter when in fact the former is true. The situation is thus unlike a face-to-face recommendation from a trusted party. Users who don't know the third party have no real way of establishing such party's identity and *bona fides*.

{21} A related problem could arise in the realm of celebrity endorsement. While it would be obviously inappropriate for an attorney to use a celebrity to endorse her services, a celebrity is not restricted from influencing friends and acquaintances to employ the attorney. Should the attorney be made responsible, however, if a celebrity takes it upon himself to give the attorney favorable mention and a hyperlink in the celebrity's home page? No one has been bothered by a popular band mentioning a lawyer on their record jacket, but a link is potentially much more influential than a mere mention. If there are circumstances when such a testimonial would be proper, what kind of relationship between the attorney and the celebrity would make it improper? What if the celebrity were actually a famous attorney licensed in a distant state who made money from referrals from Florida plaintiffs because he doesn't face the same restrictions on his advertising that the Florida lawyer does? In a medium that knows no boundaries, how can regulators regulate meaningfully and at the same time avoid overregulation which would put their state's lawyers at a disadvantage with respect to lawyers in other states?

{22} Another related problem is that the Internet is now host to features no one can argue are not true advertising. For instance, users of Lycos see clickable banner advertising ("banners") [41] at the top of each page the site sends to them. The selection of these banners is context-sensitive. A user's search word can trigger a certain banner to appear, presumably at the expense of a banner of more general interest that appears whenever a search is too esoteric to contain a trigger word. [42] Banner advertising is expensive, costing up to several thousand dollars per month. [43] Most probably, banner advertising will be available in the future for ever-more esoteric searches. Thus, the aforementioned "Orlando Personal Injury" search might return the banner of a sponsoring attorney at the top of the page, well separated from his nonpaying colleagues. In the future, these targeted banners, combined with other technologies available to Internet users, will make a nearly instantaneous videophone connection to an advertising law firm possible. [44] In this author's opinion, attorneys' Web sites themselves have an infinitesimal potential for abuse when compared to keyword-targeted banners. Such banners should be flatly prohibited to lawyers if targeted toward any vulnerable group of potential clients through trigger words.

{23} Perhaps regulators should at least require attorneys to permit links only to their home pages, [45] and discourage third parties from linking to their interior pages (except those having no advertising elements), lest websurfers overlook the approved home page. They might also require the attorney to place a disclaimer stating that the attorney's home page is the only one reviewed by the committee for advertising compliance, and to advise websurfers to at least include peruse the attorney's home page while visiting the site. A truly forward-thinking bar might require advertising attorneys to provide a link to the bar's own home page, where adequate information might be provided to protect the consumer of

legal services. Such a requirement would doubtless provoke a First Amendment challenge, especially if the bar's site provided information regarding competing attorneys, or even a catalog organized by specialties and experience levels.

{24} There is also the problem of unintentional consequences of seemingly innocuous actions on the part of attorneys advertising on the Internet. All users of computerized research have had the experience of searching for words and phrases within a certain proximity and finding superfluous items mixed in among the results. Using a Web robot can have similar repercussions. Again, taking a user's search for "the best personal injury attorney in Orlando," assuming a user decided to search for the words and not for a particular quoted phrase, the search would return the page of an Orlando attorney mentioning at his site a published paper entitled "The 10 Best Things a Personal Injury Attorney Can Do For a Client" near the top of the list with a very high "score". The search result would have nothing to do with the quality of the attorney and would have the effect of excluding or giving a low priority to a great number of sites with potentially qualified candidates. Thus, this would generate contacts for the attorney based solely on his ability to include keywords at his site. In time, one can easily see the proliferation of sub rosa schemes on the part of less scrupulous members of the Bar to find excuses to include key words and phrases, including manipulating the titles of publications. [46] However, even an attorney surnamed "Best" would have an "unfair" advantage because her page would be exposed to more potential clients. Obviously, judgments will be difficult and the results of any attempt to police the use of keywords would inevitably appear arbitrary on occasion.

{25} As stated above, it would, however, be technologically possible for most if not all providers of sites hosting Web pages to prohibit robot searchers from automatically visiting and cataloging anything other than an attorney's home page. [47] Keeping robots out of the pages would preclude this form of keyword abuse, and regulators may want to consider requiring attorneys to obtain such restrictions when they place themselves on the Web, and requiring attorneys not to submit, or allow anyone to submit on their behalf, interior pages to any search engine. [48] There are some situations, however, that no one can remedy.

VI. MAYBE THEY DON'T KNOW YOU'RE A DOG, BUT YOU MAY STILL NOT BE EQUAL

{26} An existing Internet maxim is that no one has to know you're a dog on the Internet. The maxim applies in all aspects of Internet use. Commercially it means a small business or solo practitioner can put up a site that eclipses those of much larger firms that make a lukewarm commitment to establishing themselves on the Internet. However, that is not to say some Internet "dogs" will not inevitably be more equal than others. In terms of websurfers finding a specific attorney or firm, a large part of discussion of the indexing issues centers on discrepancies inherent not just in the Web, but also in the Yellow Pages, which no one attempts to exercise control over outside of buying the largest display ad one can afford. [49] An attorney surnamed Aaron obviously has an advantage over Zwick in an alphabetical listing. However, some people read from the back of the listings. So Aaron and Zwick may both have an advantage over Lawrence, especially if the category has a large number of entries. Or, Lawrence may be lucky enough to have his listing at the top of a page. In cyberspace, some advantage remains. Depending upon how a given searcher formulates his lists (many catalogs are alphabetical within a given category). On the Web, for instance, a search for Hillsborough County probate attorneys might come back broken down primarily by municipality, giving an advantage to a Brandon attorney and harming one from Valrico. However, because there is a near-infinite number of ways for searches to be done, it is possible only to theorize whether a given Web strategy would most benefit a particular attorney.

{27} Most attorneys will want to experiment with Web pages because of their flexible nature. However, the home pages will likely be established and kept static because state bar submission policies will typically require resubmission and an additional fee whenever changes occur. Such a stance is likely to lead to submission of the most innocuous "tombstone"-style home pages, perhaps containing little more visible information than a business card and inviting the user to follow a hyperlink to interior pages for more information. In the absence of measures calculated to head off all the things advertising attorneys can do to defeat the guidelines like by using hidden fields in their interior pages, state bar oversight will be circumscribed that it is hard to see how it will be effective.

VII. URL-Y WARNING SIGNS

{28} A final issue is the Uniform Resource Locator ("URL"). This item can be analogized to a phone number. Each Web page has a unique URL, a large part of which is made up of a "domain name." [50] Just as it is more advantageous to have an 800 number that spells something like GET-PAID, it is also advantageous to spend about \$125 to apply for a unique domain name rather than using that of one's service provider. [51] Thus, unless the regulators choose to impose some standards on URLs, the profession can expect to see Internet addresses such as <http://california.whiplash.com/>.

VIII. THE SAVING GRACE OF COMPUTER LITERACY

{29} These problems are somewhat mitigated now by the sophistication and skepticism of the Web's users. The Web's demographics discourage hucksterism. As a whole, Internet users are more educated, youthful, wealthy, skeptical and sophisticated than television viewers. However, this can be expected to become less true as the Internet achieves mass acceptance. Nonetheless, the websurfer will probably always have an intellectual leg up on today's television viewer simply because he or she will be stimulated in ways that television cannot hope to approach. Overseas, these differences are probably magnified by the Web's newness in other developing countries and the lack of access to technology. The culture of the Web is also anti-lawyer, because lawyers are viewed as late-coming and avaricious representatives of an old-order establishment. [52] It is nevertheless unlikely any strata of any society will be denied access to the Web and its successors over the next few years.

IX. CONCLUSION: IT'S ONLY JUST BEGINNING

{30} The profession faces a Herculean challenge in its effort to self-police the promotional efforts of its members over a medium that has no boundaries, and in a community that views any censorship as damage which can simply be circumvented. These issues will no doubt occupy the men and women of the bar [53] for years to come. [54] They are worth considering, because the Web is unfortunately already home to undignified attorney advertising, including a DUI attorney who sponsors a "drunk browsing test" inviting users to perform the tongue-in-cheek computer equivalent of a roadside sobriety test. [55]

ENDNOTES

[*] The author received a B.A. from the University of Virginia in 1984, where he was an Echols Scholar, a J.D. from the University of Florida in 1987, and an LL.M. in Taxation from the University of Denver in 1993. He is a member of the Florida and Colorado Bars, and is admitted to the federal bars of the Middle and Southern Districts of Florida. Mr. Hankins can be reached at HankinsM@gnn.com.

[1] *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). The Supreme Court considered the case of an Arizona legal clinic that had advertised prices for routine legal services in violation of a disciplinary rule.

The Court held that the state's prohibition of truthful advertising by attorneys violated the First Amendment.

[2] *See, e.g., In re R.M.J.*, 455 U.S. 191 (1982).

[3] *Florida Bar v. Went for It, Inc.*, 115 S. Ct. 2371 (1995). In a 5-4 decision, the Supreme Court upheld Florida's 30-day ban on sending direct mail solicitations to accident victims against a First Amendment challenge, stating that the government's interest in preserving the public's confidence in lawyers was sufficiently strong and the restriction sufficiently narrowly tailored.

[4] *See, e.g., John DeVault, [Legal Ads] They Provide No Real Benefit to Consumers: Lawyers Are Not Like Commercial Products*, FLORIDA BAR NEWS, December 1, 1995, at 22. The President of the Florida Bar's 350 word opinion article that appeared on the editorial page of *USA Today* on November 1, 1995 is reprinted here, along with *USA Today's* editorial response and a background article by the *Florida Bar News* staff.

[5] The Florida Bar Standing Committee on Advertising has recently concluded that attorneys with "home pages" on the Internet are advertising and issued a preliminary opinion regarding advertising over the Internet. As its drafters recognized in calling for the Joint Presidential Advertising Task Force to assign a group to study the matter, the opinion is only a start toward handling the myriad issues that this rapidly-evolving technology will bring to the legal profession.

[6] Julian Dibbell, *Nielsen Rates the Net*, TIME, Nov. 13, 1995, at 121.

[7] *See, e.g., John C. Dvorak, Internet Insanity*, PC MAGAZINE, February 6, 1996, at 85. The \$500 Internet box will likely use the owner's television as a display, and will lack the traditional mass storage devices such as floppy, hard and CD-ROM drives.

[8] The telephone companies' current flagship service available to the home at a reasonable cost is ISDN, or Integrated Services Digital Network, which operates approximately four times faster than the fastest typical modem. Cable TV companies, however, may hold the trump card, as "cable modems" promise to deliver information at rates three times as fast as ISDN or better.

[9] Using the World Wide Web to visit various pages and sites is termed "surfing" in the slang of the Internet because traveling from site to site by following hyperlinks quickly becomes an experience metaphorically akin to surfing, in that one moves from place to place in a flow that absorbs one's attention completely.

[10] The actual survey figure is 6.6 hours. American Internet User Survey, *quoted in the MIAMI HERALD*, January 12, 1996 at 10A. Nearly a third of Internet users spent less time in front of the television, while a quarter also curtailed long distance telephone calls.

[11] The forerunner of the Internet, ARPAnet, was first put to practical use by the Defense Communications Agency of the U.S. Department of Defense in 1975. For six years prior to that, development of a packet-switching network had been proceeding, originally at UCLA, Stanford, U.C. Santa Barbara and the University of Utah. DANIEL P. DERN, *THE INTERNET GUIDE FOR NEW USERS* 9-10 (1994).

[12] This is not hype, but fact. The recent completion of the mapping of the human genome, a scientific watershed, proceeded smoothly in large part because the multitude of scientists involved had used

Internet-based collaborative software. See

http://www.ornl.gov/TechResources/Human_Genome/publicat/hgn/v7n3/01annive.html.

[13] <http://www.vatican.va/>.

[14] <http://www.penthousemag.com/>.

[15] The Cyberlawyer Office, <http://www.cyberlawyer.com/advice/>.

[16] In Internet mass-mailing is known as "Spamming", and is probably the least-tolerated practice on the Internet. One part of the Internet, Usenet, is devoted to "newsgroups" where people having like interests exchange information. A "spammer" whose business opportunity e-mail is directed to every newsgroup from art history to zoology would find himself immediately and universally reviled. The Internet community would respond with e-mail "flaming", the equivalent of quite public poison pen letters.

[17] We typically think of advertising as a relatively small amount of information that is directed at readers or viewers who did not request it in return for a substantial payment to a purveyor of information or entertainment. World Wide Web pages differ in that bulk of the advertiser's information on her home page is never seen unless requested in some manner, and in that, depending on the service provider used, it can be a free adjunct to the user's Internet account. The author believes that the organized Bar's traditional hostility to advertising stems at least in part from an entirely understandable reluctance by its more established members to compete in the marketplace for legal services by spending money on advertising. It was probably quite justifiably believed that if the profession's members turned to outshouting each other in the media in the quest for clients that both the profession and its consumers would lose out in the long run. The Internet has changed that equation by making the equivalent of Yellow Pages advertising virtually cost-free over the long term to any attorney. Why this can be so can best be visualized by comparing the two mediums' cost structures. The Yellow Pages has significant sales costs, paper costs, printing costs, and distribution costs. The Internet provider's costs consist of an Internet connection (say, \$20,000 per year) and the cost of maintaining enough computing power to push a few thousand bytes of data at a time across the connection in response to requests. Spread over many users, the absolute cost of providing Internet content is minimal, the marginal cost nearly infinitesimal. True "advertising" on the Internet is a much more costly proposition involving broadcasting to users who may or may not have an immediate interest in the site owner's subjects. See *infra* note. 41.

[18] The Texas bar has recently subjected attorneys' Internet advertising to prior review and approval. See Gary Taylor, *Eyes of Texas are Upon Internet 'Ads,'* NATIONAL LAW JOURNAL, Nov. 6, 1995, at A6.

The Florida Bar's Standing Committee on Advertising has taken the first step toward defining the attorney's professional responsibility vis-à-vis the Web. Essentially, the committee found that a home page is like any other advertisement, with the exception that the "hiring disclosure" language set forth in Florida Rules of Professional Conduct Rule 4-7.2(d) (i.e., "The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide ask us to send you free written information about our qualifications and experience.") would not be required because the medium is electronic. The committee also determined that the attorney must submit a copy of his home page, a statement of when and where it will appear and a \$50 filing fee to the committee.

There are numerous questions that linger in the wake of the committee's pronouncement. The statement of when and where the ad will appear would seem problematic. A home page does not "appear" at all unless accessed, which can occur at any moment and anywhere in the world there is an Internet

connection having the right capabilities (in the case of the World Wide Web, the capability necessary is the ability to read information that comes across the Internet in the Hypertext Transfer Protocol--roughly analogous to the ability to receive, say, a VHF television signal as opposed to AM Radio). Perhaps the relevance of "where" could be preserved by requiring the attorney to identify the Internet address and the provider hosting the home page so that the latter could, say, be served with an injunction in the event of attorney misconduct. "When" seems helpful only in the sense of a start date on which the provider makes the page available, since the Web page is potentially perpetual, and again, appears only when accessed. It is unclear whether the committee truly distinguished between web sites and home pages, and intended that an entire web site be submitted if it consists of more than just the home page, nor whether the pages comprising the web site would require separate filing fees. A web site could conceivably be made up of hundreds or thousands of pages, including information and articles available to the public through conventional means, and other material not in the nature of advertising. It could also be interactive, changing in response to a user's responses to questions (this is achieved by having a computer use the web as a gateway to its internal database or other programming). The content of such a site would be impossible to submit on paper, and could only be evaluated fairly by accessing it over the Internet. By contrast the "home page" is simply the site's "front door" that is typically given as an address in both print and electronic publicity, and which provides the user a convenient starting point for accessing the rest of the site. While the committee did address audio and video in a Web site (the latter now being quite limited due to the bandwidth limitations of today's customary connections ["bandwidth" is the capacity to carry data--television cable has a great deal, a phone cord has little, meaning that video can't become widespread as long as phone modems continue to be the connection method of choice]), both of which could be supplied to the committee on accompanying tape, what about computerized animations that never exist on videotape? Even if the Florida Bar were to take a clear position on these issues, items ordinarily invisible to the user and rapidly changing technology would require a deeper probing of Internet-based advertising. Like a symphony performance, the only way to get the full flavor is to be there.

[19] The World Wide Web Consortium at <http://www.w3.org/>.

[20] HTML stands for Hypertext Mark-Up Language. It is a subset of SGML, the Standard Generalized Markup Language, which has been proposed as a common language for document styles.

[21] For readers unfamiliar with "browsers", the most common of which is Netscape Navigator, they are simply highly capable interpreters of HTML that usually incorporate the ability to view graphics, play audio files, etc. A browser is the "eyes" and visual cortex of a computer on the Internet, without which the Internet's informational bounty must be accessed through much less convenient or gratifying methods. The best browsers incorporate conveniences like bookmarks (to enable users to return swiftly to sites they deem important), secure submission of forms (to prevent credit card numbers from being stolen when ordering products on-line) and page caching, which allows a user to return to a page without reloading it from the Internet. The discussion is largely moot for most people--Netscape currently owns approximately 80% of the market.

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[23] Netscape's main rival is Microsoft Corporation, which aims to match or better Netscape's capabilities in everything Netscape does. Microsoft's pockets are extraordinarily deep, and its competitive edge uncommonly keen. Microsoft's Windows95 operating system/graphical user interface already incorporates an Internet browser into its operating system, a move designed to nudge aside Netscape Navigator. So far, however, Netscape seems little-affected by its opponent's competitive thrusts.

[24] Readers should be aware that a question and answer format for information is already well entrenched in the Web culture. A great many sites and Usenet newsgroups will have available to the netsurfer a document consisting of "FAQs" or "Frequently Asked Questions." The use of FAQs evolved because individuals who have expertise found it efficient to post lists of FAQs and their answers rather than deal with myriad "newbies" (new users) one at a time.

[25] More details on Java are available at Sun's home page, <http://java.sun.com>.

[26] In short, Java lets person A's program run on person B's computer as a consequence of person B accessing person A's a Web page. While an HTML document is, in fact, a program in that it defines some text and graphics to access and display, Java moves to another level entirely by giving the program's author more control over the display and audio elements of the user's computer. Java's capabilities are comparatively restricted in its access to the user's PC, however, and with good reason. Java's authors were cognizant of the inevitability of hackers creating malicious programs if Java were to be able to, for example, reformat a user's hard disk.

[27] As opposed to the HTML source code.

[28] Christman, Porterfield and Unterreiner, *Ethical Considerations of Legal Netvertising*, at <http://www.gsu.edu/~lawppw/lawand.papers/netethic.html>, §VI, ¶ E. Read, T.K., *Pushing the Advertising Envelope: Building Bill Boards in the Sky Along The Information Superhighway*, <http://www.kuesterlaw.com/netethics/brandy.htm>, § 5.

[29] The details of this tracking are less difficult than one might think. At present, it can be done by visiting BrowserWatch at <http://www.ski.mskcc.org/browserwatch/>.

[30] The World Wide Web is not the beginning and end of the Internet, there are other services available over the Internet that have a significant impact: e-mail, where conversations intended to be private take place (Internet security is considered quite questionable, however); Internet Relay Chat ("IRC"), in which users broadcast to each other much as CB radio users do; and Usenet Newsgroups. The latter two services are organized by subject matter, with users being requested more or less forcefully to stick to the topic, such as a hobby, political philosophy, etc. IRC can raise issues of personal solicitation, as can participation in a Usenet Newsgroup. This issue is outside the scope of this article, however, it is addressed in both of the articles cited in note 28, supra.

[31] Shown here with the emphasis hyperlinks typically have.

[32] While it is unlikely that such a requirement would be implemented by the HTML committee, it would be relatively simple as a technical matter to render link references whose text matched the title of the referenced Web page by using a specific signal (say a different color or emphasis). In time, users might come to rely more on such links than on links where the author has chosen to take license with her description of the subject matter.

[33] Examples of such indexes even include lists of links maintained by roving critics of Web sites. See Suck at <http://www.suck.com>; Mirsky's Worst of the Web at <http://mirsky.turnpike.net/wow/worst.html>, or Mediocre Site of the Day at <http://patheon.cis.yale.edu/~jharris/mediocre.html>. Suck typically ridicules a major corporation that appears to have spent a lot of money on a site that has fallen short in terms of its presentation and use of technology, while Messrs. Harris and Mirsky focus more on run of the mill pages with either gross misspellings or uninspired content.

[34] See, e.g., Webcrawler at <http://webcrawler.com>; Lycos at <http://www.lycos.com>; Alta Vista at <http://altavista.digital.com/>; and Inktomi at <http://inktomi.berkeley.edu/>.

[35] See, e.g., Yahoo at <http://www.yahoo.com>. Hierarchical searchers are more suitable for many common searching tasks because once a given area of interest is located, all similar resources are shown nearby (like a page in the Yellow Pages devoted to plumbers), in contrast to a robot or spider, which focuses only on a keyword (like a page in the White Pages devoted to people named Smith--although robots and spiders are somewhat less limited because Smith's Plumbing would be found by a search for a Plumber, whereas looking in the white pages under Plumbing would not disclose Smith's Plumbing). InfoSeek at <http://www.infoseek.com/>, a quite useful hybrid, gives a link to "similar pages" with each entry produced and separate links to topics the searcher determines may be related to the topics touched on by the user's search, features that allow it to bridge the gap between the two types of searchers.

[36] In realizing that these capabilities existed, the author was reminded of the controversy that still flares occasionally regarding the use of subliminal advertising. This type of advertising, described by Vance Packard in his 1957 exposé book *The Hidden Persuaders*, involved inserting imagery into print advertising or video entertainment that would unconsciously affect the audience. For example, a print ad for cigarettes might depict young, vibrant individuals cavorting, however, on close examination, the models' faces had been airbrushed to emphasize features that made them appear to be skulls, death being considered a powerful symbol conducive to cigarette purchases. As another example, the flashing of a photo of a bucket of popcorn and a soft drink on a single frame of a film would not be consciously seen; but was believed to influence the audience to visit the theater's snack bar. Fortunately, invisible text tends to become visible under the influence of a searcher such as Alta Vista or Lycos, making the ploy more obvious.

[37] Some sites requiring submissions request keywords to be used in searching the sites' databases, rather than using robots to visit the page(s) to be indexed. Because these keywords thereafter appear only in the database index of the site's search engine, effective oversight by regulators is virtually impossible.

[38] Similarly to a AAA Yellow pages listing.

[39] The webmaster is the individual in charge of a particular site.

[40] Suck, *supra* note 33.

[41] A banner appears as a box approximately one inch high and running the width of the user's screen. The banner contains graphic content not unlike a billboard, and invites the user to click her mouse on it in order to access the home page it advertises. A typical banner might display a beach scene complete with palm trees, and a tag line such as "Click here for a chance to win a great Florida Vacation!"

[42] For an example of this feature in action, see Lycos, *supra* note 34. Enter a search using the word "Florida". At the time of the writing of this paper, a banner leading to a site promoting Okaloosa County

tourism will appear.

[43] See, e.g., Global Network Navigator's (GNN's) On-line Media Kit at <http://gnn.com/gnn/ads/index.html>. A banner at GNN's site costs \$25,000 per four week rotation. Listing in "WIC Select" (the Whole Internet Catalog) costs \$25 per 1,000 "Impressions" (presentations to a user), with a stated average of 250,000 impressions per month.

[44] The Internet is currently being used by some as a nearly-free substitute for a long-distance telephone call. Through the use of special software and minimal additional hardware, a two-way voice connection can be made between two users. Although this connection does not match the connection achieved over standard long distance phone lines (it is half-duplex, meaning that only one party can speak at a time), there is the promise that its limitations will disappear and video will be added. Adding video to a multimedia-capable PC can cost as little as \$200. Major telephone carriers are predictably becoming incensed over what they view as "bypassing" of their systems and are clamoring for legal relief. However, in this author's estimation the camel's nose is in the tent, and carriers will simply have to live with the situation. From a legal ethics point of view, an injured person seeing a keyword-targeted banner and then clicking on a link to a site that affords an immediate connection to a site having a videophone link to an attorney is just one eyelash shy of in-person solicitation in a hospital room when an attorney has heard of an accident. Any regulatory scheme that does not address such practices will do a serious disservice to the legal consumer.

[45] "Interior" pages (those linked in a hierarchical structure with the home page at the top) can be placed in a separate directory off limits to robots. See, *infra* note 47. In addition, an attorney could be required to certify that the contents of such directory have not been submitted to any Internet indexing resource in order to avoid having to submit such material for bar approval. Of course, the material would still be subject to all requirements that it not be misleading, etc. It would, however, be exempt from prior restraint.

[46] Of course, one already titles a publication with the intent of luring the most readers who would be interested in its subject matter.

[47] Exclusion is achieved through use of a file labeled ROBOTS.TXT and placed on the Web server where visiting robots will find it. Robots that are programmed according to an accepted standard will examine this file for areas of the host computer that have been designated "off limits" and will consequently avoid them. For more information about excluding robots, see <http://info.webcrawler.com/mak/projects/robots/norobots.html>.

[48] Web aficionados would view such restrictions as quite heavy-handed, and any such measures would doubtless prove controversial in the Web community.

[49] If that is how one has chosen to try to get business.

[50] For example, if the URL is <http://www.cynosure.com/index.htm>, the domain name element of the URL would be "www.cynosure.com", as that part of the URL would reference a given site. The "http://" simply indicates to the computers involved in getting the page to the user's computer that the hypertext transfer protocol is to be used, while the "index.htm" is a file name (in this case, one that would be loaded by default--index.htm is the true "home" page at any site where it exists, and an Internet address that ends with a "/" or a word without the extension ".htm" or ".html" is in fact calling a file at that address called "index.htm" by default).

[51] Domain names are assigned by the InterNIC, overseen by the National Science Foundation. For more information about domain names, see <http://www.internic.net/>.

[52] For a smattering of the hostility to attorneys evident on the Internet, the reader is invited to visit the following sites: The Legal Ethics and Reform Home Page at http://webusers.anet.st.l.com/~hvmlr/hm_pg.html; The Legal Justice Reform Network at <http://www.swcp.com/~uclr/default.html>; the Project Gideon home page at <http://isbe.state.il.us/~kcheesma/kgchrome.html>; and Time to Kill (lawyers, that is) at <http://www.btf.com/crank3/crnk3-16.htm>. The latter site does not actually advocate physical violence; however it does detail how to hinder a bar applicant by submitting a subtly defamatory character reference.

[53] The American Bar Association appears to be taking cognizance of the importance of the Internet. See William E. Hornsby, Jr., *The Ethical Boundaries of Selling Legal Services in Cyberspace*, <http://www.kuesterlaw.com/netethics/abawill.htm>.

[54] The author would propose that state bars resolve to address Internet advertising with the following principles in mind:

- The Internet is not a fad and will not go away anytime soon.
- The Internet is a medium that is dedicated to the free flow of information, and to violate its guiding spirit would inevitably marginalize the profession.
- The Internet is a medium inherently capable of curbing excesses. Although it is the world's biggest meeting place, it also is a very small town in which transgressors are quickly brought up short.
- The Internet rewards innovation and dismisses stagnation more swiftly than any other community.
- The World Wide Web's economics and relatively shallow learning curve dispel any notion that one segment of the profession can use it to overshadow another segment that will be somehow unfairly "locked out" of participating.
- The attorney's home page is just the beginning of the inquiry into whether there is an abuse because robots, indexes, and banner advertising are inevitably involved as well.

[55] <http://mirsky.turnpike.net/drunk/>. The test's sponsor, Myles L. Berman, bills himself as a "Top Gun DUI Defense Attorney."

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