

DISPUTE RESOLUTION BULLETIN

INFORMATION TECHNOLOGY LINKS AND LIABILITIES

February 2002 marked the start of one of the most eagerly awaited and potentially industry-devastating pieces of patent litigation in recent years. The litigation in question has been brought by BT in the U.S. against Prodigy, an Internet Service Provider ("ISP") based near New York City. In a nutshell, BT claims that every time someone who is surfing the Internet uses a hyperlink to jump between websites or pages within a site (you have probably just used one to access this article), it is entitled to royalties. The claim is founded on the exploitation of a patent which BT recently recovered from its archives. The patent relates to the concept and creation of hyperlinks, which was registered following research and development work undertaken by its employees done during the 1970s and 1980s.



Given that most websites these days use hyperlinks in some form or other either to make intra-site navigation more user-friendly and/or to enable users to link into related sites of interest, then clearly, should BT win its legal battle, the precedent could have very far-reaching repercussions for ISPs the world over. Many people within the Internet industry have voiced extreme concerns should BT's lawsuit be successful and some have even predicted the rapid demise in the usability of the web resultant from ISPs not being prepared to foot the bill for huge royalty payments every time someone clicks on a hyperlink. Indeed, BT has already suggested that, should it succeed in its U.S. claim, then it will pursue other ISPs. Watch this space for further developments.

UPDATE: New York judge making a first phase ruling in this case has struck a blow to BT's prospects of success.

HUMAN RIGHTS BE CAREFUL

Ground breaking litigation heard last year should serve as a warning for those who advertise any sort of service or issue photographs and include photographs. A London Borough Council advertised its strategies for combating HIV and youth crime by a brochure which included the photograph of a disabled girl. A case was brought against the Council under the Human Rights Act and the Data Protection Act for breach of confidence. The girl in question was shown in photographs taken whilst she attended the Council's day nursery previously, the pictures having been taken some five years earlier. They were used without parental consent.

The family argued, additionally that their distress was aggravated by the Council's failure to stop using the photograph immediately thereby compounding the original error. It was clear not only had the photographs been used without permission but also were clearly unconnected with the issues raised in the Council's Brochure.

Naturally all this caused distress to the child and her family. The case appears to have been the first of its

kind actually to reach Court concerning the Human Rights Act which amongst other things includes an individual's right to privacy. The Court's approval to the proposed settlement was sought and given. This was necessary in view of the child's age, but the Judge himself commented that this was ground breaking litigation. Therefore, be careful!



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BE CAREFUL



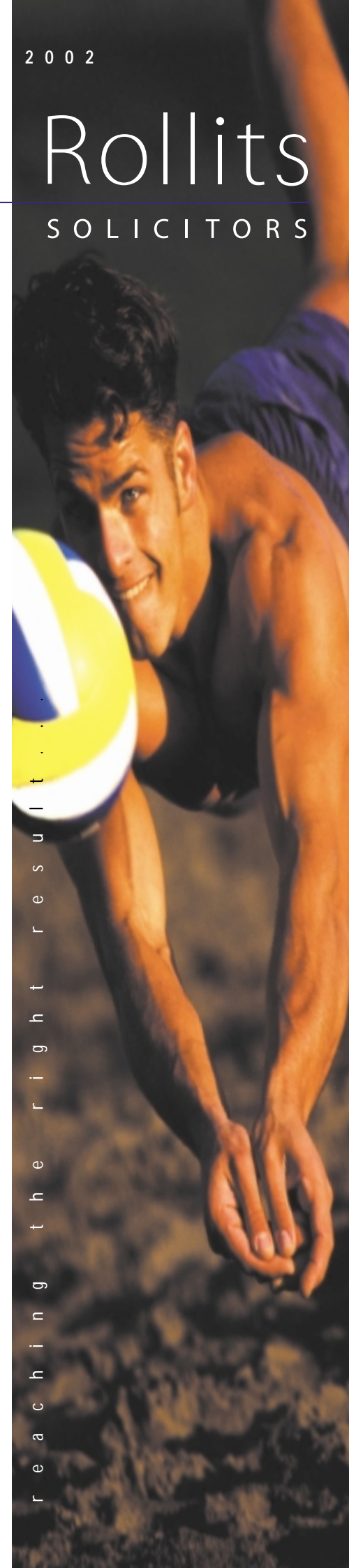
KEY ADVICE



LANDLORD AND TENANT MATTERS "WOOLFED"



DOMAIN NAME DISPUTE RESOLUTION



reaching the right result

INSURANCE KEY ADVICE

Imagine the situation. For whatever reason, you have left your car even for only a second but unfortunately with its keys in. You are in the wrong place at the wrong time because nearby is a car thief waiting for the main chance and before you know it your car is being driven away. Unpleasant enough in itself, particularly as you have just got attached to that shiny new vehicle and finally mastered the CD controls. The only consolation is that you are insured and at least you will be able to purchase another vehicle. Or will you? Unfortunately one policy holder got a shock when his insurers refused to pay out after his £74,000 Porsche was stolen from a garage forecourt. The insurers argued that they should not meet the claim because the keys had been left in the ignition. The Court of Appeal upheld the insurers refusal. A salutary warning for us all perhaps. However, if you find yourself in this unfortunate position there may be hope in some instances to be gleaned from what the Financial Ombudsman Services Insurance Division has said. They have given an explicit warning to insurers that if they fail to word the exclusion clearly and highlight it to policy holders then if the claim was brought to them it would be upheld. The exclusion of payment if keys are in the ignition is likely to be in most policies for car insurance but the Ombudsman has stated that insurers are expected to word exclusion clauses clearly in their policies and also to highlight them for the policy holder. In the absence of such action the Ombudsman has stated that it is unlikely that they will agree with the insurers that the insurer is entitled to reject the claim.

All may not be lost and the message may be that rather more joy in such circumstances can be obtained from the Financial Ombudsman than through a Court of Law. Better still think twice about leaving your keys in your car even for a second.

LANDLORD & TENANT

LANDLORD & TENANT MATTERS "WOOLFED"

The Civil Procedure Rules (CPR) which came into force in April 1999 were intended to represent a comprehensive new code governing all types of civil proceedings. However a number of areas relating to landlord and tenant, including residential re-possession and renewal proceedings for commercial leases, were substantially left out of the new regime. This has changed as from 15 October 2001 and all such matters are now caught by the CPR. The immediate ramifications include:

1. A batch of new forms and procedures to catch out the unwary.
2. The hope of simpler, cheaper and quicker procedures in relation to residential landlord and tenant matters (but watch this space!).
3. For commercial lease renewals, an acceptance that most of such applications will be settled through surveyors. As a result a statutory stay of proceedings of 3 months is now built into the procedure but it is anticipated that the courts will be reluctant to agree further delays and the onus will be on surveyors to use that 3 month period productively to reach an agreement as to the new rent, etc, if expensive court proceedings are to be avoided.

If any further information as to the new procedures is required, please speak to Ralph Gilbert who is a Partner in the Litigation Department dealing with such matters.

INFORMATION TECHNOLOGY

DOMAIN NAME DISPUTE RESOLUTION

Nominet UK, the authority responsible for supervising the operation of ".uk" domain names has recently recorded the first use of its new dispute resolution procedure, with some notable results.

The dispute in question concerned the registration of the domain name "xigris.co.uk" by a former employee of a pharmaceutical firm which owned trademark rights to the "Xigris" brand.

The pharmaceutical firm in question invoked the revamped Nominet dispute resolution procedure in question, which is now far more complainant-friendly, and was given possession of the domain name. The new procedure introduces a new, more flexible approach of a two stage process, the first stage being mediation. The second (in the event that mediation proves to be unsuccessful) is that the complainant can refer its complaint to an independent expert, whose decision is binding on the parties concerned and on Nominet.

Under the new Nominet policy the complainant must show that the domain name which is the subject of the complaint has been registered or acquired or is being used in a way that takes unfair advantage of or is unfairly detrimental to its rights. In the present case, the independent expert held that, as the respondent had worked for the pharmaceutical company and was aware of the company's commercial plans for the "Xigris" brand, then this was tantamount to an "abusive registration" and the domain name should therefore be delivered up to the complainant company.

This brings us onto the final part of the new Nominet procedure. Under its new system, Nominet can now order domains to be transferred from the current registrant to the complainant. This is a move away from Nominet's old system whereby it could only order cancellation or suspension of a registered domain name.

Clearly, the flexibility of the new procedure, introducing the two-stage process of mediation and then independent expert determination, together with the ability of Nominet to order the transfer of a domain name will be welcomed as a change for the better.

INFORMATION

**If you have any queries on any commercial disputes please contact:
George Coyle at Hull on (01482) 323239
David Watson at York on (01904) 625790**

This Bulletin is for the use of clients and will be supplied to others on request.

It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

**The law is stated as at 22 March 2002
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