

PREFACE TO THE SECOND EDITION

This new edition is current through July 1, 2016.

There is nothing like developing a second edition of this book to make me think of the changes to the law protecting digital information, particularly computer software, that have happened since the first edition was published. Surprisingly, when you look at the fundamental principles the book discusses, they haven't changed that much in fourteen years.

There were a few new laws, some court decisions, but on the whole, things remained pretty much the same. Even the changes to patent law by the Leahy-Smith America Invents Act in 2013 primarily just changed the definition of prior art as the United States joined the rest of the world by going from "first to invent" to "first inventor to file," in the process simplifying the discussion.

While I had thought that there would be many changes related to the Digital Millennium Copyright Act, that didn't happen. The end of the Internet that some had predicted at its adoption didn't happen, and the unintended consequences seem to have been minor, so Congress has felt little need to revisit it. The notice-and-takedown procedures removed a great deal of uncertainty from Internet Service Providers, and while nobody anticipated how many notices are sent to ISPs (22 million URLs for Google alone in one week), the system seems to be working well. But rights management information went nowhere. Those of us who worked on developing the DMCA are generally pleased with what we accomplished.

So it looked like there was little need for a second edition of the book. But then the Supreme Court started looking at what should be patentable, tossing out years of Federal Circuit opinions that had converged on when software-based inventions were patentable. As noted in Chapter 7, we are just starting to understand where the new line may be, and it will be years until patent applications filed in light of the Court's *Alice* opinion will be litigated.

The primary changes to the book are in Chapter 7, dropping discussions of past Federal Circuit opinions that are no longer relevant and trying to understand where we are now and what might happen in the future. And because some software-based inventions may no longer be protectable by patents, a new Chapter 5 has been added to discuss trade secret protection, also more desirable because of the enactment of the Defend Trade Secrets Act of 2016 which provides a uniform federal trade secret law rather than a patchwork of state laws. Chapter 4, an overview of trademarks, was also added, both for completeness in addressing the common forms of intellectual property and to contrast trademarks with copyrights because people often confuse them.

As with the original edition, updates to this edition will be available at www.digital-law-online.info. Hopefully, there won't be too many.

This book wouldn't exist if it weren't for two special people at Bloomberg BNA: Jim Fattibene, who encouraged me to write the first edition, and his successor, Elizabeth Turqman, who suggested that it was time for a second edition and then did whatever she could to help me produce it, resulting in a better book than I could have written on my own. Thanks!

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