

Authentication Tests Established for Social Networks and Electronic Media

By John Maclean

The Court of Appeals of Maryland held that a printout of a social network website that listed the date of birth and featured a photograph of the alleged creator was not properly authenticated to be introduced into evidence.

In *Griffin v. State*, determined on April 28, 2011, the court held that the lower court erred when admitting it under those grounds because those characteristics were not distinctive by themselves. The court stated three ways by which the evidence could have been authenticated, including asking the alleged creator, searching the computer records and subpoenaing a custodian of the website.

When performing the analysis, the court also stated authentication tests for other electronic media, establishing standards for authenticating e-mails, instant messages and text messages.

Held in the Circuit Court for Cecil County, the state introduced printed pages of a MySpace profile of Jessica Barber, the defendant's girlfriend, into evidence. The pages contained the MySpace profile name, listed her name, gave her date of birth, featured a photo of the defendant and Barber embracing, and contained a threatening message. A police officer testified that he accessed the public access website and printed the pages. The evidence was admitted over the defendant's objections.

The Court of Special Appeals of Maryland affirmed the admission, holding that the trial judge did not abuse his discretion. The questions posed to the Court of Appeals of Maryland were what evidence was required to authenticate a printout from a social networking website and whether the court erred in admitting the printouts.

In the opinion by Judge Lynne A. Battaglia, the court first

stated that the issue was dictated by Maryland Rules 5-901 b1 and b4. The rules state that testimony of a witness with knowledge and circumstantial evidence, including distinctive experts, can be used to authenticate the evidence. In addition, the court stated that the standard for establishing authentication was higher in cases involving websites because they concerned electronically stored records that could be manipulated by someone other than the true user. Specifically, information on a social networking website could be generated by a third party.

For purposes of analysis, the court defined "website" as a collection of documents and related files that are owned or organized by a particular individual or organization. A "social networking website" was a website where members created profiles and interacted with other members. MySpace was determined to be a social network-

ing website because it was a public access website in which members messaged each other.

The court held that the picture of Barber, combined with her birth date and location, were not enough to establish distinctive characteristics. MySpace required only that someone with an e-mail address and over the age of 14 could create an account. Anyone with the account information could access the account. No witnesses testified for the state that no one else accessed the account and posted the message in question. The higher standard for authentication of an electronic document was not satisfied.

In so doing, the court stated means by which the printouts could have been authenticated. One, the alleged creator could have been asked if they created the profile and the message. Two, a search could have been conducted of the computer of the person who allegedly created the profile and the posting

to examine the Internet history and hard drive. The search could have determined if the computer was used to create the profile and post. And three, information could have been obtained from the social networking website administrator that linked the establishment of the profile to the person who allegedly created the profile and the post.

None of those actions were done by the state in the case.

In the analysis, the court discussed authentication tests for other electronic media, establishing tests for introducing e-mails, instant messages and text messages.

Citing *States v. Safavian*, a 2006 U.S. District Court for the District of Columbia case, the court stated that e-mails and instant messages could be authenticated by comparing the content and headings to already authenticated messages to

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The Top Five IT Investment Mistakes

By Heinan Landa

In today's world, the pace of technological change can be overwhelming. In this environment, it is even more important to do your homework before making an IT investment for your organization. Below are the top five costly mistakes made when advising and implementing technology to help further business goals.

■ *Cutting corners in the now.* When purchasing IT solutions for your company, it can be tempting to purchase the cheapest package/model, one that will meet your basic, daily needs. However, doing this may lead to more money – and more headaches – in the future. A perfect example of this is the Dell OptiPlex desktop computer model sold between 2003 and 2005. They were cheaper at the time – but not in the long run. According to a July 2010 CNNMoney.com article, Dell allegedly knowingly sold these inexpensive computers

with faulty capacitors that caused motherboard breakdowns and rendered the computers useless. A company based in North Carolina bought many of these units (no doubt thinking they were getting a deal) and leased them to clients. The company is suing Dell for \$40 million, citing the enormous costs of replacing the units and the extreme loss of client confidence. Cutting corners in the now left this company virtually bankrupt.

■ *Buying "because they (the media) said so."* We've all been there. When a child sees a commercial advertising the latest and greatest toy, he will urgently tell his parents that he needs it now. As we transition into adulthood, that toy becomes the most recent technological release. Just as when we were children, the media plays a large part in defining our "needs." Unfortunately, tech toys are often way more expensive than the coveted wagons of our youth. Before purchasing, ask yourself if the hype is real or if the

latest gadget really is necessary to further your organization's goals. A good litmus test? Ask someone in your industry who has used the technology. Also, be sure to run it by your IT department or service provider (and be especially careful if they roll their eyes).

■ *Buying "because they (the professionals) said so."* When looking to invest in a piece of technology, or a comprehensive technological solution, avoid asking just anyone in the IT business. After all, if your law firm needed technological advice, you wouldn't go to the vendor who specializes in technology solutions for online toy vendors, would you? Individuals and/or organizations who/that purchase technology based on the advice of "someone who is in IT" haven't done their homework. You need a technology expert that specializes in your line of work, in your industry. Only then do you receive strategic guid-

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The American Immigration Lawyers Association, DC Chapter, elected **Cynthia B. Rosenberg** as its Vice Chair. The Association represents immigration attorneys in Maryland, Virginia and DC. Rosenberg is an attorney at Rourke & Rosenberg, LLC.

Shale D. Stiller, a partner at DLA Piper, LLP, received the 2011 American Inns of Court Professionalism Award for the Fourth Circuit.

Chesapeake-Potomac Spina Bifida, Inc., elected Hodes, Pessin & Katz, P.A., attorney **Ryan M. McConnell** to its Board of Directors. Attorneys **Timothy F. Ma-**



Doreen M. Edelman

loney, Cary J. Hansel, Steven B. Vinick, Veronica B. Nannis (all of Joseph, Greenwald & Lake, P.A.) and **Thomas J. Mooney** (of Mooney & Associates) received the Maryland Association of Justice 2011 Trial Lawyer of the Year Award.

Jonathan R. Carroll joined Jezic, Krum & Moyse, LLC, as an associate in civil litigation.

Deborah A. Cohn, a member with Paley Rothman, was elected a Fellow of the American College of Trust and Estate Counsel. And **Daniel S. Koch**, chair of Paley Rothman's Government Contracts practice, contributed a chapter to *Inside the Minds: The Impact of Recent Changes in Governmental Contracts*.

Sharon Sirota Rubin joined the Maryland Department of Health and Mental Hygiene as Special

Counsel for the Division of Recoveries and Financial Services.

Venable LLP, added **Kenneth Thompson** to its Baltimore office, where Thompson is now a litigation partner.

Erik P. Arena joined Dragga, Hannon, Hessler & Willis, LLP, as an associate.

Dawinder S. Sidhu, 2010-2011 MSBA Leadership Academy Fellow, accepted a tenure-track faculty appointment at the University of New Mexico School of Law.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, elected **Doreen M. Edelman** as a shareholder in its Washington D.C. office.

Adam Swaim was added as a new associate to Pasternack & Fidis, P.C. Swaim works in the Estate Planning & Administration Group.

DLA Piper, LLP, promoted **Christina Pappas** to of counsel in the firm's Real Estate practice.

Kramer & Connolly relocated to The Offices at Ebaugh House, 465 Main Street, Reisterstown, MD 21136; (410) 581-0070.

Passman & Kaplan, P.C. moved to 1828 L Street NW, Suite 600, Washington, DC 20036; (202) 789-0100.

Send your latest news to Patrick Tandy, c/o MSBA, 520 West Fayette Street, Baltimore, Maryland 21201, or ptandy@msba.org.

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mands and details.

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Lisa Caplan, LCSW-C, CAC, is Program Counselor for the MSBA Lawyer Assistance Program.

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ance that can help your business move forward.

■ *Not buying...when they should.* Overestimating the lifespan of technological equipment is the most common IT investment mistake. Most people don't know when it's time to replace servers, workstations, laptops, etc. For example, most organizations keep their servers for seven years or more – when the average lifespan of a server is approximately three to four years. Not knowing when your server will fail – and failing to budget for its replacement – can severely and adversely affect the capital expenses of an organization. Make sure to educate yourself about the lifespan of your technology and budget accordingly. Plan to spend, but spend with a plan.

■ *Investing in technology, ignoring support.* When investing in a piece of technology, be sure to note the entire cost of the investment – this includes support and training. What will it take to support and train users on this equipment? Will the learning curve be steep? Is your internal IT staff equipped to deal with the demand? Many organizations budget for the cost of purchasing a comprehensive technological solution, but fail to budget for implementation, support and user training. Don't be one of these organizations!

Last Word

As technologies advance and your IT needs continue to grow, let these investment mistakes serve as cautionary tales. Proper planning with informed consultants can ensure budget items aren't missed and equipment lifecycles are accurate. Short-term cost savings can end up being really expensive. So, remem-

ber that the more proactive your IT investment strategy, the better off you will be operationally – and financially – in the future.

Heinan Landa is CEO of Optimal Networks, a comprehensive IT management company providing technology solutions to support business goals.

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I know people complain about having to pay an extra \$20-\$25 for a second bag, but when you consider how much you may have to spend to purchase something you left behind, it may not seem like such a large amount. Having said that be realistic about what to take. The best advice I heard was "When preparing to travel, lay out all your clothes and all your money. Then take half the clothes and twice the money."

■ Finally, unless you are trying to catch a train or plane, do not hurry. That is the advantage of being on vacation. You do not have to hurry. It has taken me years to come to this conclusion since I am always rushing somewhere, but slow can be better on vacation.

Do not try to cram too many

activities into a trip. I have found that part of the joy of travel is just walking around getting a feel for a location. Accept the fact that you cannot see everything.

Enjoy your trip!

MSBA

extends its sympathy to the family and friends of the following members who have passed away:

**Michael W. Lower
John T. Coady
James P. McAleer
Philip Clark Baxa**

Maryland Legal Services Seeks Nominations for Annual Awards

THE MARYLAND LEGAL SERVICES CORPORATION (MLSC) was established as a nonprofit organization by the Maryland General Assembly to receive and distribute funds to grantees that provide civil legal services to the poor. In recognition of outstanding contributions by Maryland individuals and organizations that provide or support justice to the poor, MLSC has created four awards to be given annually, as follows:

- THE ARTHUR W. MACHEN, JR., AWARD
- THE BENJAMIN L. CARDIN DISTINGUISHED SERVICE
- THE WILLIAM L. MARBURY OUTSTANDING ADVOCATE AWARD
- THE HERBERT S. GARTEN PUBLIC CITIZEN AWARD

Nominations for the 2011 awards must be submitted not later than **June 15, 2011**, to MLSC. Formal awards will be presented at an Awards Ceremony in the fall. For nomination forms, nomination descriptions and instructions as well as a list of past award recipients, visit www.mlsc.org/awards/nominating-process. For additional information, contact Harriet Robinson at hrobinson@mlsc.org.

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