

WRF Attorneys Featured in ABA Program on Copyright Protection

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WRF attorneys Scott E. Bain and Bruce G. Joseph were featured speakers in a copyright program entitled "Laws, Licenses, and Technical Locks: The Future of Digital and High Definition Entertainment Content" at the 2003 annual meeting of the American Bar Association Section of International Law and Practice in Brussels, Belgium.

Mr. Bain, Vice President of the section's Intellectual Property Rights Committee, chaired the program, which focused on recent legislative, licensing and judicial "copy protection" developments. Explaining the impetus for the program, Mr. Bain noted that "copyright owners increasingly are using technical protection measures such as encryption and watermarks to protect audio or audiovisual works above and beyond copyright laws," and that the U.S. Congress and the European Union both are examining the impact of certain copy protection licenses and proposed government mandates.

Mr. Joseph, leader of the WRF Copyright Practice Group, was one of three legal experts who discussed various copy protection issues. He has long been an active participant in numerous inter-industry copy protection initiatives and legislative debates and negotiations. He began by describing anti-circumvention laws as "paracopyright," noting that, unlike copyright law, technical protection measures can impose absolute restrictions on the use of a work, regulate more types of use and do not necessarily reflect the same balancing of interests as copyright law. Moreover, "since you can't put a judge on a chip," Mr. Joseph explained, "technical protection measures can prevent or limit fair use" and other lawful uses of copyrighted works. Mr. Joseph described the two "paradigms" for enforcing copy protection technology obligations: government mandates and private

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licenses. In the "mandate paradigm," Mr. Joseph explained, "the government sets the rules for [the] identified devices . . . such as (in the Audio Home Recording Act of 1992) obligating all 'digital audio recording devices' to include, read and respond to SCMS [an audio protection technology]." The licensing paradigm, in contrast, utilizes private, IP-based licenses to restrict access (e.g., through encryption) and regulate uses of content, "often including compliance rules, which in turn may create a self-referencing chain of obligations."

Mr. Joseph concluded by discussing the content industry's "broadcast flag" proposal. The broadcast flag would be a bit encoded in the terrestrial (over the air) television broadcast signal that would trigger encryption of the signal upon receipt in the home, thus (theoretically) preventing redistribution of unencrypted programs over the Internet. Mr. Joseph maintained that the proposal adopted by the FCC would likely not accomplish its goal since it depends upon keeping content away from non-compliant [*i.e.*, unregulated] devices. He expressed doubts that the effort would be successful, given the availability of unencrypted analog content that can be digitized and the ease of acquiring non-compliant demodulators and other equipment over the Internet. Moreover, due to "geometric propagation" on the Internet, he noted that it could take "as little as one copy [that escapes] to blow the protection" for a given work.

Other speakers were Ted Shapiro of the Motion Picture Association and James Burger of Dow, Lohnes & Albertson.

View more on "Laws, Licenses, and Technical Locks: The Future of Digital and High Definition Entertainment Content" including a full program description, streaming audio and video, Power Point presentations, and speaker biographies.

WRF's Copyright Practice Group attorneys litigate, negotiate, and counsel technology providers, copyright owners and alleged infringers in copyright and digital copy protection matters. The group has been particularly active in computer and Internet-related issues. The group also has been at the center of recent policy debates in diverse areas including content protection in consumer electronics and computer products, the appropriate scope of liability for Internet service providers, limitations on the use of special subpoenas to identify Internet users, and rights of higher education institutions.