The Program for law & technology at California Institute of Technology & Loyola Law School

- Press Release -

The **Program for Law & Technology**, at the California Institute of Technology and Loyola Law School, proudly presents the **Sixth Annual Law & Technology Moot Court** on **April 21, 2006**. Students from Caltech and Loyola will present arguments in the case ***United States v. Baltimore*** before a "special panel" of the United States Supreme Court. The Honorable Alfred T. Goodwin (9th Circuit), Lourdes Baird (Central District California) and John Shepard Wiley, Jr. (Los Angeles Superior Court) will preside.

The mock case involves a criminal prosecution under the **Digital Millennium Copyright Act** (DMCA) of students, faculty and administration officials at Calculating Institute of Technology (CalTech) for circumventing (hacking) copy protection technologies embodied in the "**Broadcast Flag**." In November, 2003, the Federal Communications Commission ordered that all digital TV receivers sold after July 1, 2005, be capable of detecting and implementing certain **Digital Rights Management** (DRM) permissions in digital television signals (dubbed the Broadcast Flag). Consumers were relieved when the Court of Appeals enjoined (for real) the FCC's order. See *Am. Library Ass'n v. FCC*, 406 F.3d 689 (DC Cir. 2005). More information on the mock case, the technology involved, and the Program for Law & Technology can be found below, or on the Program's website **http://techlaw.lls.edu**. A documentary film about the case can be viewed online (without copy protection) at http://av.lls.edu/ramgen/programs/techlaw/caseclosed.rm

You are invited to hear oral argument on Friday afternoon, **April 21, 2006**, on the campus of Loyola Law School (Los Angeles), in the Robinson Courtroom. Admission is free; 1 hour of MCLE credit is available for $20. Register online or call Liz Luk at 213-736-1088.

3:00pm	Doors Open
3:30pm	Welcome and Introduction
4:00pm	Oral Argument
5:15pm	Ruling
5:30pm	Reception on the Patio
6:30pm	Adjournment

In the Supreme Court of the United States

United States v. Baltimore

On Appeal from U.S. District Court for the Western District of California

Questions Presented

1. What is the standard for determining whether a Digital Transmission Content Protection technology (DTCP) *effectively* controls access to protected works, and was that standard properly applied by the District Court in upholding criminal charges against defendants under the Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 1201, for allegedly circumventing the ATSC "broadcast flag"?

2. Should defendants' indictment be dismissed on the ground that the Federal Communications Commission was without statutory authority (cf. *Am. Library Ass'n v. FCC*, 406 F.3d 689 (DC Cir. 2005)) to regulate demodulating devices by requiring recognition of the broadcast flag?

Background

The Broadcast Flag is a controversial control mechanism that governs access to televised programs. It limits storage, copying, and distribution by restricting one's ability to view digital content, except as permitted by a copyright owner through a DRM permissions set. Proponents say the Flag is necessary in order to promote the creation and distribution of free over-the-air high definition programming. Opponents say it gives owners of digital content too much control (especially compared to more traditional media), stifles innovation and obstructs interconnection of devices (digital recorders, monitors, etc).

In the mock case, students at CalTech hacked the "5C Digital Transmission Content Protection" used by the Broadcast Flag, and posted the decryption keys on the class web site of a course in encryption. After the professor and administration refused to remove the web site, the Department of Justice filed criminal charges under the DMCA, which prohibits any person from "offering to the public or otherwise traffic in any technology, product or service… that: has only limited commercially significant purpose or use other than to circumvent protection afforded by technological measure that effectively protects a right of a copyright owner…" See 17 U.S.C. § 1201(b)(1).

Defendants moved to dismiss the case on two grounds: 1) the 5C technology was so easily circumvented that it did not "effectively protect" underlying content, and therefore its circumvention did not violate the DMCA; and 2) prosecution of an educational institution, its students, faculty and administration, violated the First Amendment. The Western District of California, Judge Ronald Lew presiding, granted the motion as to CalTech, but denied it in all other respects.

Procedural Posture of the Case

Jurisdiction in the Court of Appeals for the 12th Circuit was proper under 28 USC § 1292(b), after certification by the District Court that the Order appealed from involved a controlling question of law as to which there was substantial ground for difference of opinion. Prior to hearing by that court, the Supreme Court granted certiorari pursuant to 28 USC § 1254 because of the importance of the issues and because of an apparent conflict among the circuits.

While the appeal in this case was pending before the 12th Circuit, the Court of Appeals for the District of Columbia ruled that the Federal Communications Commission (FCC) lacked jurisdiction to require inclusion of "Broadcast Flag" devices in consumer receiving equipment. *See Am. Library Ass'n v. FCC*, 406 F.3d 689 (DC Cir. 2005). Accordingly, the Supreme Court has directed the parties in this proceeding to brief and argue the issues raised in *ALA v. FCC*; to wit, whether the FCC's *Report and Order and Further Notice of Proposed Rulemaking in the Matter of Digital Broadcast Copy Protection*, Nov. 4, 2003 (MB Docket 02-230) is *ultra vires*.

The Reporter's Transcript and decision below are reported at 25 Loy. E.L.R. 9 (2004) < http://techlaw.lls.edu/events/atc2004/opinion.pdf>. Other materials in the case can be found at < http://techlaw.lls.edu/events/atc2004/pleadings.html>.

For more information about the Program for Law & Technology, please contact Karl Manheim (Loyola) at 213-736-1106, or Ed McCaffery (Caltech) at 213-740-2567.