



Venable LLP, an *AmLaw* 100 firm, is headquartered in Washington, DC and has offices across the country.

Our nearly 600 attorneys practice in all areas of corporate and business law, complex litigation, intellectual property, and regulatory and government affairs. To learn more about Venable's capabilities, please see our complete list of services.

Venable attorneys produce periodic alerts and newsletters covering a variety of topics and practice areas. For your convenience, we have assembled below a collection of the latest alerts and newsletters from August 2011. To view the full text of an article, please click on the title of the piece.

2011 Offshore Voluntary Disclosure Initiative – August Update!

On February 8, 2011, the IRS Commissioner announced a second offshore voluntary disclosure initiative (the "2011 OVDI") for U.S. taxpayers who still have unreported foreign accounts. The 2011 OVDI largely continues the practices of the 2009 OVDI, but it imposes higher penalties and taxes. The good news is that the penalty was only increased from 20% to 25% and that criminal prosecution will not be recommended for complying participants; the bad news is that taxes, tax penalties and interest have to be paid for an 8-year period rather than a 6-year period.

A Nonprofit's Guide to Properly Characterizing Workers as Employees, Interns and Volunteers

For many nonprofits, the savings that come from not paying wages, benefits and taxes provide a great incentive to classify workers as interns or volunteers. But for the nonprofits that inappropriately classify workers as interns or volunteers, those misclassifications can lead to lengthy governmental investigations or costly lawsuits, including class action litigation. The consequences are serious – oftentimes financially crippling – administrative penalties or damage awards, which typically include, among other things, payments for back wages, interest on those wages, liquidated damages (meant to punish employers for non-compliance), attorneys' fees, and unpaid taxes and unemployment insurance contributions, not to mention criminal charges for nonprofit executives and others making personnel decisions. With federal and state agencies, as well as plaintiffs' attorneys, paying close attention to these issues, now more than ever is the time for nonprofits to ensure that they have properly classified their workers as interns or volunteers.

Advertising Law News and Analysis - August 4, 2011

News:

- FDA Delivers Rude Awakening to "Lazy Larry" Brownies
- FTC Sees Massive Jump in Robocalling Complaints

Analysis:

- Fake Apple Stores Highlight Importance of Anti-Counterfeiting Strategies
- Brand Owners Must Decide How to React to .xxx Before October 28, 2011

Advertising Law News and Analysis - August 11, 2011

News:

- *Mavrix Photo* Ruling Says Significant Online Activity Sufficient to Justify California Suits Against Non-Resident Companies
- ICANN Rebuffs ANA's Call to Cancel Unlimited Top-Level Domains
- Consumer Union Says T-Mobiles "Direct Carrier Billing" Service Lacks Sufficient Consumer Protections

Analysis:

- *Dukes* a Hazard for Consumer Class Actions?
- Brand Owners Must Decide How to React to .xxx Before October 28, 2011

Advertising Law News and Analysis - August 18, 2011

News:

- FTC Seeks Public Comment on Consumer Product Warranty Rules
- W3 Innovations Cries Uncle After FTC Alleges COPPA Violations in First Suit to Target Mobile Apps
- FDA Releases Draft Guidance on Premarket and 510(k) Submission Study Design

Analysis:

- Google Allows Trademark Owners to Block Purchase of Their Marks as AdWords

Advertising Law News and Analysis - August 25, 2011

News:

- Judge Greenlights Groupon False Advertising Class Action
- Plaintiffs Give NASCAR the Black Flag in SMS Marketing Class Action
- FTC Decides Not to Investigate Ashton Kutcher Over Details Issue

Could Your Nonprofit's Chapters Be Considered "Franchises" under State Law?

A recent U.S. Court of Appeals for the Seventh Circuit decision held that the national Girl Scouts organization violated a Wisconsin franchise law when it attempted to take away territory from a local chapter as a part of the national organization's broader plan to reorganize local council boundaries. In this case, *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the United States of America, Inc.*, the Manitou council sought to enjoin the national organization from transferring all of its territory in Wisconsin, arguing that the local Manitou chapter (called a "council") was a "dealer" under Wisconsin law and that such action would be violating the Wisconsin Fair Dealership Law without good cause. While the transfer of all of the Manitou council's territory would not have served to dissolve the Manitou council as an entity, it would have prevented it from representing itself as a Girl Scouts organization and from otherwise using Girl Scouts trademarks, which the Court characterized as a "constructive termination."

European Financial Stability Measures: Recent Developments and U.S. Exposure

As recently as July 2011, a number of financial measures have been implemented by institutions and member states of the European Union (the "EU") to address the current sovereign debt crisis and ensure financial stability in the EU. These measures include the extension of loans to the countries known collectively as the "European periphery" — Portugal, Ireland, Italy, Greece, and Spain — and the establishment of inter-governmental facilities to repurchase government bonds in the debt markets.

Final Rule on Notice of Employee Rights Covers Many Non-Unionized Employers

In December 2010, the National Labor Relations Board ("NLRB" or "Board") announced its intent to implement a rule that would require most private-sector employers — union and non-union — to notify employees of their rights under the National Labor Relations Act ("NLRA"). Specifically, employers would be required to notify employees of their right to organize a union, to join or assist labor organizations, to bargain collectively, to engage in other concerted activities, to refrain from such activities, and the NLRB's role in protecting statutory rights.

The Board accepted comments on its proposed rule until March 2011. Although the Board received approximately 7,000 comments, most of which opposed its proposed rule, the Board has now issued a Final Rule with few changes. The Final Rule was published in the *Federal Register* on August 30, and will take effect on November 14, 2011, unless a court injunction is requested and granted before then.

FinCEN Reaffirms Exclusion for Debt Management Plans

On Monday, July 18, 2011, the federal Financial Crimes Enforcement Network ("FinCEN") released a Final Rule, "Definitions and Other Regulations Relating to Money Services Businesses," which more clearly defines which businesses qualify as "Money Services Businesses" and are therefore subject to anti-money laundering rules under the federal Bank Secrecy Act.

Hot Topics - M&A Activity in the U.S.: What Chinese Investors Need to Know to Be Successful

Against the backdrop of the recent market volatility and a weak global economic outlook, it is interesting to note that outbound acquisitions by Chinese corporations reached a new record for the first half of 2011. Chinese acquisition activity in the U.S. will likely further intensify, as recent European monetary instability and increases in commodity prices and currency exchange rates in the Asia-Pacific region make U.S. targets comparatively more attractive to Chinese investors.

IP Buzz - Federal Circuit Finds DNA Molecules Patentable in Widely Publicized Myriad Gene Patent Dispute

In a July 29, 2011 opinion authored by Judge Lourie for the majority, the Court of Appeals for the Federal Circuit held in the Myriad gene patenting case that composition claims directed to "isolated" DNA molecules are patent-eligible subject matter under 35 U.S.C. § 101. The court's slip opinion, captioned *Association of Molecular Pathology v. U.S. Patent and Trademark Office*, appears at www.cafc.uscourts.gov/images/stories/opinions-orders/10-1406.pdf.

Nonprofits Beware: Your Employees' Blogs, Facebook Posts, and Twitter Tweets May Be Protected by the National Labor Relations Act

Savvy nonprofits have long understood that the employment-at-will doctrine — namely, that the employment relationship may be terminated by either party for any reason — while still very powerful, has many fissures that work to limit the grounds for which employees may be disciplined or discharged: federal and state fair employment statutes (e.g., Title VII, ADA, ADEA), employment torts (e.g., wrongful discharge), and implied contracts (e.g., some employee handbooks or policies). Because nonprofits are typically not unionized, nonprofits have also typically overlooked the National Labor Relations Act as a possible limitation on their right to discipline or terminate at will. But recently, nonprofits seeking to enforce work rules or to restrain employee criticism of them or their policies in social media such as Facebook and Twitter have received important reminders of the need to consider the provisions of the NLRA — even if the nonprofit is not unionized.

Protecting your Brand in the .xxx Domain

In the latest domain-name headache for brandowners, .xxx has been approved by ICANN as a new generic top-level domain, on the same plane as .com, .net, .org, .mobi, .info, and etc., but this one is for adult content.

The adult entertainment industry, trademark holders, and even some countries objected to the creation of the domain. Although no adult content is currently available in the domain, several countries have already announced their intention to block the .xxx domain.

We would also like to highlight upcoming Venable events that you may be interested in attending. Please click on the event title for additional information.

Telecommuting Employees: How Nonprofits Can Avoid the Legal Pitfalls

Wednesday, September 14, 2011

12:00 p.m. - 2:00 p.m. EDT

More and more nonprofit employers are allowing their employees to telecommute, but many of them do not consider the legal issues raised by telecommuting before allowing employees to work from home. Federal and state laws still apply to employees working from home and telecommuting raises a number of unique issues under those laws, including wage and hour (such as overtime and what hours are compensable), safety and health, reasonable accommodation, privacy, discrimination, trade secret protection, and tax concerns, among others.

Please join us for an in-depth discussion of these and other key legal issues nonprofit employers should consider before permitting employees to telecommute.

Speakers:

Jeffrey Tenenbaum, Esq., Partner, Venable LLP

David Warner, Esq., Partner, Venable LLP

Kristine Sovia, Esq., Associate, Venable LLP

Nicholas Reiter, Esq., Associate, Venable LLP

Venable Breakfast Briefing: "Cloud Computing: When Is Your Data Not Really Your Data?"

Thursday, September 15, 2011

8:00 a.m. - 10:00 a.m. EDT

In litigation matters, you are responsible for any relevant data that is in your "care, custody or control." But what happens when that data is stored in "The Cloud"? Traditional notions of ownership and control no longer apply in the same manner as they have for physical goods, such as paper documents. What happens to your data - and your obligation to a court or regulator - when that provider will no longer access "your" data because they have terminated your account for non-payment or alleged mis-use? What if your provider needs 3 weeks to collect your data, but you have to respond within 3 days?

Featured Speakers:

Edwin M. Larkin, Esq. Partner at Venable LLP

James E. Nelson, Esq. Partner at Venable LLP

James D. Shook, Esq. Director of the eDiscovery and Compliance Team at EMC Corporation

Preparing Your Middle-Market Company for a Sale

Tuesday, September 27, 2011 - The Tower Club, Tysons Corner, VA

Wednesday, October 12, 2011 - The Bethesda Marriott, Bethesda, MD

Years are spent building a successful business. That success has been driven by long days and late nights working, but none of it has come easy. Is now the right time to think about selling? What can be done today to prepare for the right time? Is this the dawn of an era of opportunity for middle-market businesses? These are the questions that face every business owner and that will be addressed by leading middle-market M&A professionals. With insights from people who spend their professional lives advising business owners about how to prepare for and execute smoothly a sale of their most precious asset, this is an event not to miss.

7:30 - 8:00 a.m. EDT

Registration, Breakfast and Meet & Greet

8:00 - 10:30 a.m. EDT

Opening Remarks

Module 1: Market Overview

Featuring a panel of investment bankers

Module 2: Pre-Sale Planning

Featuring a panel of estate planning and wealth advisors

Module 3: Incentivizing Employees Before the Sale Cycle

Featuring a panel of business owners who have recently gone through the sale process.

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