



As Mobile Apps Grow, So Do Potential Problems

By Alan S. Wernick, Esq.

“Mobile apps” are becoming as ubiquitous as mobile phones. Today, mobile apps provide increasingly numerous functions for mobile phones to interact with you as well as with other devices. All of those interactions have significant business, technology and legal implications.

For instance, mobile app issues can include copyright, trademark, patent, trade secret, contract, tort, privacy, Children’s Online Privacy Protection Act, CAN-SPAM, Federal Communications Commission, Federal Trade Commission, licensing, open source and class-action legal issues, to name a few. These issues concern not only manufactures

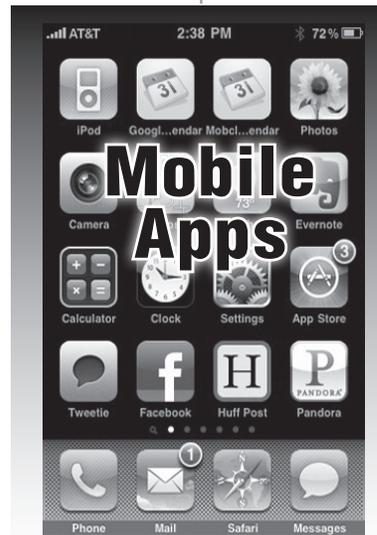
of mobile phone devices but app developers as well.

Patents

In a recent patent infringement case involving Apple and Samsung (*Apple Inc. v. Samsung Electronics Co.*, [USDC, ND, CA, Aug. 24, 2012]), a jury awarded Apple \$1.05 billion in damages after finding that Samsung infringed on several of Apple’s patents. The lesson for mobile app developers (and manu-

facturers) is to be aware of the patent pool in which your technology is designed to play, and protect your intellectual property rights promptly if you become aware of possible infringing activity.

Promissory fraud
In *Haught v. Motorola Mobility, Inc.* (8/23/2012), the U.S. District Court for the Northern District of Illinois denied a motion to dismiss a class-action lawsuit



in a case example of tort law interacting with mobile apps. The case involves the manufacturer of a mobile phone announcing a future upgrade of the operating system of its mobile device. A consumer purchased the mobile device allegedly in reliance on that representation only to find (after the return policy expired) that the manufacturer was not going to provide the upgrade. Although the outcome of this lawsuit has not yet been determined, the case provides one example of how promissory fraud (tort) issues may arise with mobile devices.

Ohio Workers’ Compensation System Addresses Needs of Injured Employees

By Robert A. Minor, Esq.

Q: How does workers’ compensation address injured employees’ income loss?

A: Instead of lump sum payments such as might be awarded in lawsuits, your injured workers receive indemnity benefits to address their particular losses. Generally, weekly indemnity benefits are paid as a percentage of the injured worker’s average earnings (usually two-thirds) subject to a maximum weekly rate. Various forms of compensation available in Ohio address the different losses that might result from an injury over the life of a claim.

For example, an injured worker who is temporarily unable to return to work receives temporary total disability compensation. An injured worker who

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Privacy

On May 25, 2012, the FCC announced an inquiry into privacy and security of information stored on mobile communication devices. The public notice solicited comments regarding the privacy and data-security practices of mobile wireless service providers with respect to customer information stored on their users' mobile devices and the application of existing privacy and security requirements to that information. The FCC's questions include:

■ How have those practices evolved since the FCC collected information on this issue in 2007?

■ Are consumers given meaningful notice and choice with respect to service providers' collection of usage-related information on their devices?

■ Do current practices serve the needs of service providers and consumers and in what ways?

■ Do current practices raise concerns with respect to privacy and data security?

The FTC and other regulators are also looking into privacy issues concerning mobile apps. As wireless service providers and mobile app developers become stewards of sensitive customer and business data, including personal identifying information, how will the law and regulations evolve? Will wireless service providers and mobile app developers be viewed differently or the same as Internet service providers?

Mobile app developers, the businesses hiring mobile app developers and their legal advisers must be mindful of the evolving legal issues.

What these developments mean for mobile app developers and the businesses hiring mobile app developers is that they, and their legal advisers, must be mindful of the evolving legal issues. When the subpoena is served with the complaint alleging violations of these and other legal rights, this is not the time to ask, "Is

Workers' Compensation, cont. from page 1

cannot return to his/her regular job, but returns to a lower paying job, can receive "wage loss compensation" that may be paid for more than four years at two-thirds of the difference between pre-injury and post-injury earnings.

Vocational rehabilitation costs may be paid under the workers' compensation system to an injured worker who must acquire new skills to return to the work force. The injured worker receives a weekly stipend while participating in rehabilitation. If, after completing rehabilitation, the employee must take a lower paying job, he or she may be eligible for another form of wage loss compensation. For most employers, the

costs for rehabilitation are paid by the workers' compensation system.

An injured worker who is permanently removed from the work force because of an injury may be entitled to permanent total disability compensation. This is a lifetime benefit paid when an injured worker can no longer perform any form of sustained, remunerative employment. When an injured worker dies as a result of the work-related event, the surviving spouse would receive compensation for life or until remarriage. Any children would receive benefits until they reach age of majority. Finally, a benefit that is unrelated to

there an app for that?" to wish away the pending legal liabilities.

By Alan S. Wernick, Esq., ITIP Institute. © Copyright 2012 Alan S. Wernick. www.wernick.com.

economic loss, called permanent, partial disability compensation, compensates the injured worker for impairment to, or loss of, a body part.

Q: Are medical costs paid for in a workers' compensation claim?

A: Yes. Subject to schedules, medical benefits are paid on behalf of the injured worker to healthcare providers. There is no co-pay and no balance billing is permitted.

Q: How long does workers' compensation protection last?

A: The Ohio system is designed to protect the injured worker for as long as reasonably necessary. A claim remains "open" for five years from the last payment of compensation or benefits.

Q: Can an injured worker settle a claim?

A: Yes. In Ohio, claims may be settled in whole or in part. The workers' compensation system is funded entirely by employer money, so an employer has a say as to whether a claim may be settled. Many employers choose not to agree to a settlement because they have already purchased years of valuable protection for their injured workers through premiums paid to the State Insurance Fund.

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