




Beware of Online Legal Advice

MULTIPLE VARIABLES MIGHT IMPACT APPLICATION OF DECISIONS

 I GET A REPORT EVERY DAY OF many of the important judicial decisions relating to Internet and ecommerce law. I have to review a court's decision in detail before I begin to understand the ruling, the facts and the law as applied.

Judges are oftentimes only as good as the briefs submitted by the lawyers. In other words, well briefed and well argued issues facilitate good decisions. Sometimes a court relies upon the wrong law, or fails to consider other interpretations, and that leads to a bad decision. Sometimes the facts before the court can cause a judge to decide a matter without due regard of the law. "Bad facts make bad law" is a principle every law student hears over and over again as professors try to explain judicial mistakes.

The third variable in trying to understand court decisions is human nature. Areas of the country look at matters differently, and the opinions and beliefs of the public often are mirrored by judges, particularly those elected by the public or appointed by a representative body. Certain states are pro-consumer, others are pro-business and judges often reflect those attitudes.

In today's world, the minute a legal decision is made public we are bombarded with news articles, online newsletters and bloggers commenting on the decision. Legal issues arise and are blogged about

BY JOHN DOZIER

by people who do not put the ruling in the proper context. Often we see reports about a case of "first impression," which means that the issue has not been decided before, and everyone assumes that the ruling is now the law of the land.


Many times I have clients who heard about a court decision and therefore concluded they had no relief available for a problem. Just as often I receive inquiries from prospective clients who erroneously cite a particular case or statute as support for taking legal action.

Here's the problem. On the state and federal trial level, judges make rulings all the time that you never hear about. These are unpublished (and sometimes unrecorded) decisions. A formal opinion by a trial judge has no binding effect on other trial judges. No one is bound to follow the decision, not even the judge who made it. These types of decisions carry little weight. Likewise, federal district courts often publish opinions made by the judges, but these opinions are not binding on other judges.

Appellate courts make decisions and lower courts within that circuit must follow them. But the decision of one circuit court is not binding on courts outside the circuit. So, as new issues arise, the courts often

end up with different opinions, and if the differing opinions are at the federal circuit court level, then the law would mean one thing in one area of the country and mean something else in another area of the country. One reason we have the Supreme Court is to resolve such conflicting legal decisions. Unfortunately, many of the issues we face in the online world will no longer be issues by the time a case reaches the Supreme Court.

So, the next time you read about a court deciding a case, go search the web for comments on the decision. Then, don't follow the advice offered or buy into the interpretation. Just don't rely upon what you are reading. There are way too many variables in play to know what impact any court decision will have on your business. ■

 John Dozier is president of Dozier Internet Law, PC, a law firm representing small and mid-sized online businesses. He can be reached at jwd@cybertriallawyer.com or online at Cybertriallawyer.com.