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### IN GOOGLE WE TRUST?

#### Critics Question How Much Judges, Lawyers Should Rely on Internet Search Results

BY MOLLY McDONOUGH

Ever wonder what your client did before embroiling himself in the multimillion-dollar litigation you have agreed to resolve? What about the reputation of a company you're about to sue?

The answer could be only a few keystrokes away. For more and more lawyers, Google has become an irresistible and indispensable ultimate answer-finder.

"I don't think I could practice law these days without Google," says Los Angeles appellate lawyer Denise Howell, who runs a blog at [bagandbaggage.com](#).

Indeed, the at-your-fingertips convenience of these Internet searches has lawyers and even judges a little Google-obsessed. And their fascination with the Internet and its capabilities isn't limited to mundane questions about the latest fashions or fall gardening. Google and other Internet search engines have fast become a legal research tool, to the concern of some critics.

Lawyers search the Internet to check out clients, find out how to locate witnesses, get the dirt on companies and examine the vitae of the opposition's experts. The information they find is sprouting up in their legal briefs. Not to be left behind, judges are using Internet searches to double-check facts and bolster decisions.

#### SEARCH ENGINES NOTED IN RULINGS

In November, U.S. Magistrate Judge Frank Maas of the Southern District of New York noted in *Rodriguez v. Schriver*, No. 99 Civ. 8660, that he used Google in addition to a transcript review when he decided that a prosecutor had improperly used peremptories to keep Hispanics off a jury. Maas had searched the Net to check the name of a juror who had been seated, leading him to question the prosecutor's contention that she was Hispanic.

And in 2002, the California Supreme Court used a Google search to learn about stun belts and their medical effects to beef up its ruling that a defendant should not have been compelled to wear such a belt while testifying. *People v. Mar*, 124 Cal. Rptr.2d 161.

But Google is most frequently cited when trademarks are in dispute.

In July, U.S. District Judge P. Kevin Castel searched Google and Yahoo! to check on a music composer's claim that hip-hop label Strange Music was infringing on the name of his company, Strange Music Inc. Castel found thousands of "strange music" references on the Web, but concluded that consumers wouldn't be confused. He denied the request for a preliminary injunction. *Strange Music Inc. v. Strange Music Inc.*, No. 04 Civ. 02915 (S.D.N.Y. 2004).

Two years earlier, another federal judge in the Southern District of New York used a Google search to show that a man named Alfredo Versace was hawking men's watches and T-shirts in violation of the trademark belonging to the late Italian designer Gianni Versace. *A.V. by Versace Inc. v. Gianni Versace*, S.p.A., No. 96 Civ. 9721PKLTHK and 98 Civ. 0123PKLTHK (Sept. 3, 2002).

Yet even those who are admittedly a little gaga over Google say that search engines ought to be used with caution, especially when it comes to relying on search results as evidence.

"I have a concern about solely relying on using Google for everything," says Tom Mighell, a Dallas lawyer who publishes an e-newsletter, Internet Legal Research Weekly, through his blog, Inter Alia.



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"Google has made us complacent in a certain way," he says. "Its results are so good, whatever I need, I just have to Google it." But, he warns, the reality is that Google and search engine returns are incomplete for research purposes. "It's not the be-all and end-all of research."

Mighell is careful to independently verify any information he uses from an Internet search because "anyone with 50 bucks and some software can start a Web site."

This is precisely the problem cited by U.S. District Judge Samuel B. Kent of the Southern District of Texas when he ruled against a motion by an injured seaman who wanted to use Web-found evidence to prove property ownership. Kent, referring to "voodoo information," wanted proof on paper.

"While some look to the Internet as an innovative vehicle for communication, the court continues to warily and wearily view it largely as one large catalyst for rumor, innuendo and misinformation," the judge opined. *St. Clair v. Johnny's Oyster & Shrimp Inc.*, 76 F. Supp. 2d 773 (S.D. Tex. 1999).

#### **NO ILLUSIONS**

Kent goes on to complain about trouble verifying and authenticating information on the Web. "No Web site is monitored for accuracy, and nothing contained therein is under oath or even subject to independent verification absent underlying documentation. Moreover, the court holds no illusions that hackers can adulterate the content on any Web site from any location at any time."

In a dissent in the *People v. Mar* stun belt case, California Supreme Court Justice Janice Rogers Brown showed similar disdain for Internet research when she lambasted her colleagues for relying on Google. "We could have waited for a case that raised these questions on an adequate record," Brown wrote. "Instead, the majority, rushing to judgment after conducting an embarrassing Google.com search for information outside the record, has tied the hands of the legislature, to the likely peril of judges, bailiffs and ordinary citizens called upon to do their civic duty."

That judges might use the Net to do their own fact-finding has many lawyers worried.

An ABA committee reviewing the Model Code of Judicial Conduct has proposed a revision that would extend independent fact-finding prohibitions to electronic media, a proposal dubbed by some lawyers and judges as the "don't Google the defendant" rule.

"It's one thing to do legal research. It's another thing to find factual information that's not part of the record," says Mark Harrison of Phoenix, who chairs the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct. "Whatever information base is going to be used by the judge to render a decision, [the commission wants to be sure] the parties are aware of it and have a chance to address it."

But when it comes to using the Net to police the courtroom, Howell welcomes the oversight. "If they can use the Internet to fact-check their litigants, and they are going to reliable sources to do that, then more power to them," she says. "It keeps everybody in the courtroom credible and honest."

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