



Your Client, Earth Wind and Snow (EWS), operates a website *www.windandsnow.com*, that provides weather information to web surfers who visit the site. To compile the weather information, EWS has developed web crawlers that continuously access a variety of sites that contain up-to-date weather information such as temperature, barometric pressure, and forecasts. Examples of the sites EWS uses to “harvest” information include the national weather service website, weather services websites of many foreign countries, and a variety of commercial websites such as The Weather Channel™ (TWC), Anytime Weather Enterprises™ (AWE), and YahooWeather!™ (YW). The EWS crawlers access weather information on those sites and transmit the information back to EWS’s central server. The server then formats and updates the EWS website available at *www.windandsnow.com*.

EWS provides its weather information free of charge to any web user. EWS then sells advertising on its website to both brick-and-mortar and e-businesses. According to Motor Trends magazine, *windandsnow.com* is currently the third most viewed weather website after *theweatherchannel.com* and *anytimeweather.com*. Like *windandsnow.com* those websites are public, allowing any user with a connection to the internet to access information.

EWS came to you after being sued by Anytime Weather Enterprises. AWE claims that EWS is misappropriating weather information in violation of the AWE License Agreement available at *www.anytimeweather.com/legal.htm* which AWE says requires express written consent to use information available on its website.

In its Complaint, AWE stated that visitors to its website access the license agreement by clicking a link labeled: “Legal,” which is at the bottom of the AWE’s main page in blue, 8-point Arial font. The “Legal” link is third in a horizontal list of links that also includes links labeled: “Privacy Information,” “Contact Us,” “Subscribe to Anytime Weather,” “Careers,” and “Add this page to Favorites.”

The EWS website and AWE website operate similarly, in that the main page contains ads, maps, links to weather information for a variety of large US and foreign cities, as well as a field asking users to input their zip code. Once a zip code is entered a customized page is loaded containing weather information and weather maps relevant to the area indicated.

It has not been determined whether anyone at EWS knew of the “Legal” link at the bottom of AWE’s main page, or the contents of the license agreement. AWE asserts that one year prior to filing its law suit, it mailed EWS a copy of its website license agreement via certified mail.

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Your task is to draft a memorandum addressed to the CEO of Earth, Wind and Snow discussing the following issues: (1) possible contract creation and enforcement of the AWE license agreement; (2) if no contract is found, AWE’s likelihood of success with (a) trespass and (b) copyright claims. Use the cases and materials available on the IPSA website (*www.asu.edu/clubs/ipsa/writingcontest.html*) and the services available on LexisNexis (*www.lexisnexis.com/lawschool*) to analyze the issues.

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WRITING CONTEST RULES:

The deadline for submission is **5:00 p.m., Monday, January 24, 2005**. Submit entries via email to *ipsa@asu.edu*. Confirmation emails will be sent to confirm receipt. First Prize receives \$200 and Second Prize receives \$100 sponsored by LexisNexis. Email questions to *ipsa@asu.edu* and Good Luck!

Format Requirements:

- 1" Page Margins
- 12 Point Times New Roman
- Double Spaced
- 7 page MAXIMUM Length

Citation Rules:

- Problem/Hypo: *Problem at #*
- AWE License Agreement: *License at #*
- Copyright Statute: *17 U.S.C. § 106; § 107*
- Register.com, Inc. v. Verio, Inc.: *Register.com at #*
- eBay Inc. v. Bidder's Edge Inc.: *eBay at #*
- Ticketmaster Corp. v. Tickets.Com Inc.: *Ticketmaster at #*
- Specht v. Netscape Communications Corp.: *Netscape at #*