



# HWGSB News & Views

Hasselberg, Williams, Grebe,  
Snodgrass & Birdsall  
Attorneys and Counselors

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## CHARLES URBAN AND WILLIAM STREETER COMPLETE LEADERSHIP TRAINING SCHOOL



Charles J. Urban



William P. Streeter

Hasselberg, Williams, Grebe, Snodgrass, & Birdsall is proud to announce that Attorneys Charles J. Urban and William P. Streeter graduated from the Community Leadership School on April 15, 2011. The Community Leadership School is conducted annually by the Peoria Chamber of Commerce, and is designed to train people with leadership potential to be better able to serve the community.

Of particular focus is preparing people to be able to assume volunteer positions with area not-for-profit agencies, civic groups, and citizen organizations.

Hasselberg, Williams, Grebe, Snodgrass & Birdsall is a long time supporter of the School. Previous graduates at the Firm include Attorneys Boyd O. Roberts III and Alison E. McLaughlin. Participation in the School is one way that the Firm and its attorneys are active in, and seek to promote the general welfare of, our community.

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### Special Points of Interest:

- Legal consequences of Internet use
- Recent case law regarding communications and contract law



## PRIVACY IN THE AGE OF THE INTERNET

People have long generally understood that things that occur in public are, well, public. When a person does something on the street, in a bar, or even in their own home in the company of other people, it has been generally understood that these actions are not private and may be known to others. It has of course long been possible for pictures to record such events for later viewing by those not present at the time. Until recently, however, many people's concerns about pictures of such events that they may not have wanted to become known to the public at large were limited as their publication would have generally been limited to those people who would be shown a physical copy of the picture.

Technology has changed this, however. While it may have been rare to for a patron at a bar or a person walking down the street to have a camera a decade ago, with the advent of digital and cell phone cameras it is likely that the vast majority of people you encounter on a daily basis have the ability to take a picture at a moment's notice. The growth in the availability and use of cameras also increases the likelihood that you may be included in a photograph even if you are not the intended subject of the picture. Additionally, rather than any picture taken of you only being seen by those who are shown a physical copy of the picture, pictures are now routinely and instantly made available to uncountable numbers of people through social media websites such as Facebook and on the Internet in general.

For many, the publication of their pictures on such websites is welcomed. For some, such publication of their pictures result in embarrassment or a feeling of an invasion of their privacy. For an increasing number of people, the widespread publication of their pictures results in legal ramifications. Pictures obtained from the Internet have been routinely used as evidence in a variety of legal matters, including criminal, civil, divorce and child custody cases.

Some assume that the publication of their picture on the Internet without their permission

violates a legal right to privacy. They may assume they can require a website to take down any such pictures, or that they can limit the use of such pictures against them in any legal proceeding. Some have even sued, seeking damages alleging violations of their privacy. They may understand that the picture was taken in public where they did not have a right to privacy, but feel that that widespread publication of it on the Internet goes beyond what their right to privacy allows. However, multiple courts have disagreed with such claims. Courts have found that the publication of such pictures does not violate an individual's right to privacy, and thus a person cannot be awarded damages relating to such photos. Additionally, although many websites will remove photos if the person in the photo requests that they do so, courts have found that such individuals have no legally enforceable right to demand that they do so.

Issues relating to privacy and the Internet are relatively new, and there is not a well settled rule of law on the matter. However, there can be little doubt that the changes in technology should change the way people think about private and public activities. For most, the worst that may happen is that a slightly embarrassing event may become known to a few more people. For others, there may be great legal consequences. For all, the potential consequences should be kept in mind. If you have any questions regarding legal matters pertaining to privacy or technology, please contact Chuck Urban at (309) 637-1400.





## MODERN COMMUNICATIONS IMPACT TRADITIONAL CONTRACT LAW

The rapid advancement of technology the last couple of decades has changed almost all aspects of our lives, including communications, entertainment and information gathering. The law is no different. Technology has created issues that could not have been imagined twenty years ago. Additionally, areas of the law that have been around for centuries have been forced to adapt to technological changes.

One such area is contract law. Although contracts have in one form or another been around for all of recorded history, the law that has developed around them of course did not account for technology which did not exist until recently.

The recent Florida case of CX Digital Media v. Smoking Everywhere raises one area in which contract law is attempting to catch up with modern life. In that case the parties had a contract which could only be modified by written agreement. One clause of the contract was that certain daily referrals were to be limited to 200 per day. In a subsequent instant messaging conversation CX Digital suggested that the limit be increased to 2000 per day, to which Smoking Everywhere responded "NO LIMIT". CX Digital then responded "awesome".

After a breakdown in the parties' relationship, CX Digital filed suit seeking payment for referrals beyond the original 200 per day limit in the contract. They claimed that the instant messaging conversation modified the contract by removing this limit. The court found that the instant messaging exchange did in fact satisfy the requirements for modifying the contract. As a result of this determination a judgment was entered against Smoking Everywhere in an amount in excess of \$1.2 million.

Although the court's reasoning left open the interpretation that a regular verbal conversation may have also sufficed to modify the contract, the case does point out the potential perils in modern communications. Other cases across the country

have also raised the question of whether electronic communications, such as instant messaging, e-mails, or even text messaging, may constitute written agreements. The law in this area continues to evolve, and it is beyond the scope of this article to deeply analyze its progression. However, it is important to be aware that such concerns are being considered, and litigated. The often informal nature of electronic communications can cause people to put down things (in what may be determined to be) "writing" that they would be much more careful with in more traditional forms of written communication. As such, quickly typed phrases such as "no limit" and "awesome" could potentially be deemed to constitute written contracts when those typing the messages may not have been willing to enter into a written contract if they had known that was what they were doing.

If you have any questions regarding drafting contracts or litigation of contractual matters, please contact David Wentworth, Bill Streeter or John Dundas at (309) 637-1400.

## DO NOT LET YOUR SMART PHONE MAKE YOU A DUMB DRIVER

One area that the relationship between the law and technology affects everyday life is in traffic laws. In response to concerns regarding drivers being distracted by now common devices that were not available when the majority of existing traffic laws were created, the State of Illinois put two new laws into effect in 2010.

**Electronic Messaging:** Section 12-610.2 of the Illinois Vehicle Code makes it illegal to "... operate a motor vehicle on a roadway while using an electronic communication device to compose, send, or read an electronic message." Although this is most commonly thought of as a text messaging ban, the statute's definition of an "electronic communication" goes further. The statute also bans sending e-mails and instant messages, and accessing the Internet while driving.

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**Driving** (continued from Page 3)

The law does not ban the use of global positioning or navigational systems, or the use of devices physically or electronically integrated into the vehicle. The statute does contain exceptions to the ban on electronic messages. Certain exceptions are made relating to police officers and the operators of emergency and commercial vehicles. Additionally, reporting emergency situations and communicating with emergency personnel regarding such situations is allowed, as is using an electronic communication device in hands-free or voice activated mode. Using an electronic communication device while parked on the shoulder of a roadway is not prohibited by the statute. Similarly, such a device may be used when a vehicle is stopped due to normal traffic being obstructed and the vehicle is in park or neutral.

**Cell Phone Use:** Illinois law also prohibits drivers from speaking on cell phones in certain situations. Section 12-610.1 of the Illinois Vehicle Code makes it illegal for people under the age of 19 to talk on a cell phone while operating a vehicle on a roadway. This age restriction can be extended past a person's 19<sup>th</sup> birthday if they are convicted on certain traffic violations that occurred in the six months prior to their turning 19. The statute also prohibits drivers of all ages from using cell phones in construction or school zones. As with the ban on electronic messages, there are exceptions to the prohibitions against cell phone use. The ban on using cell phones in construction or school zones does not apply to people involved in roadway construction and maintenance, or law enforcement officers and operators of emergency vehicles in the operation of their duties. It also does not apply to those using cell phones in voice activated mode. Additionally, the cell phone prohibitions, including the age related prohibition, do not apply to those using cell phones in emergency situations.

It is important to note that Illinois allows municipalities to make rules that go beyond the statewide regulations on the use of cell phones. Chicago is one of the municipalities that has done so, and has prohibited non-hands-free cell phone use within its city limits. Additionally, restrictions on the use of electronic devices while driving vary from state to state. Therefore, what may be legal in Illinois may result in a violation if you are traveling outside of the state. If you have any questions regarding any traffic or criminal matters, please contact Boyd Roberts at (309) 637-1400.

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