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Praying for Relief: The Impact of Secular Organizations on Internet and Trademark Law

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Praying for Relief: The Impact of Secular Organizations on Internet and Trademark Law

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I. INTRODUCTION

{1} "The creation and rapid growth of the Internet have been 'hailed' [as] one of the greatest technological advances in recent history,"^[1] remarked one scholar of Internet law and jurisdiction. The Ninth Circuit Court of Appeals characterizes the Internet as "a global network of interconnected computers allow[ing] individuals and organizations around the world to communicate with one another."^[2] It is, therefore, not surprising that the Internet impacts every aspect of our daily lives. The Web is the fastest growing part of the Internet, and thus, an important mechanism for commerce. ^[3] Authors Joseph Zammit and Lynette Herscha explain, "[t]he rapid growth in technology, and the advent of the World Wide Web allows both individuals and corporations to conduct business and interact in a much broader geographic arena than historically possible."^[4] With Internet users estimated at 200 million users in 1999,^[5] it is expected that one billion computers will be networked worldwide in less than ten years.^[6] Accordingly, religious organizations and churches are increasing their use of the Web. This means consequently that more religious organizations and congregations will soon become intellectual property clients and litigants.

{2} A recent survey of Internet use conducted by Lynne DeMichele indicates that the "explosion of Internet use has brought variety to new forms of religion."^[7] People search the Web looking for a church's social activism and relief efforts, but are less concerned with church-related services and programs.^[8] While the Internet is blamed for the devaluation of our society,^[9] there is no denying that spiritual opportunities exist on the Web for churches.

{3} The Web allows religious organizations more versatility than does paper media. For example, as a special interest group, churches are targeted for special Internet products and rates.^[10] National and international newsletters can be published online with ease and convenience.^[11] Some websites even contain elaborate search engines that survey information about a particular faith.^[12] Postings from evangelical leaders can be found ^[13] with merely the wiggle of a mouse. Congregations can reach other church members ^[14] or buy sacred documents over the Web.^[15] In fact, it should come as no surprise that "[e]ven the Vatican has a website."^[16] Internet simulcasts of the Holy Land Sights, such as the Golden Gate and Western Wall, can be found on the Web; likewise, plans for "Messiahcam" tours of the Mount of Olives are soon to come.^[17] Muslims, Jews, and Christians alike use the Internet for newsletters, bulletin boards, and more complex communications.^[18] One can find disclaimers on the Web granting permission to reproduce copyrightable material,^[19] as well as options, sponsored by churches, for finding less costly advertising banners.^[20] As could have been expected, the first "cyberchurch" already exists - the Harvest Christian Fellowship - formed in Southern California, and it claims that around one thousand people visit the site each week for music, prayer, and sermons.^[21]

{4} While there are many positive opportunities for churches on the Web, some negative aspects cannot be overlooked. Although we live "[i]n a world divided by barriers of language and culture, the Internet is the nexus that connects the most rural outposts of technology to the global business centers."^[22] Therefore, the Internet has quickly become a hotbed for claims of Lanham Act violations.^[23]

II. CYBERLAW AND THE CHURCH

{5} The Church of Scientology ^[24] is not a Web litigation neophyte,^[25] and it became a plaintiff in one of the most-cited and best-known Internet cases, *Religious Technology Center v. Netcom On-line Communication Services*^[26] ("*RTC*"). In *RTC*, the Church of Scientology filed for injunctive relief against a former minister, Dennis Erlich, alleging direct copyright infringement and trade secret violations.^[27]

{6} Netcom and Tom Klemesrud were both enjoined as defendants for indirect infringement,^[28] but the majority of the court's opinion focused on Erlich's misappropriation of secret church documents, and

subsequent posting of the documentation on the Web.^[29] The standard for a fair use defense was negated by Erlich's unauthorized posting of the church documents. Further, Erlich's First Amendment free speech claim was defeated because he copied large portions of the original text in the church documentation.^[30]

{7} *RTC* and its sister cases^[31] are generally cited for the proposition that an Internet access provider is not a common carrier with absolute immunity from liability under 17 U.S.C. Section 111(a)(3).^[32] However, these cases demonstrate the standard for a fair use defense on the Internet.^[33]

{8} The Internet is no longer the domain of "Netizens" and academics alone; now, it has become a truly public domain. While *RTC* was the only church case which dealt with copyright and trade secrets, a new wave of church cases centers on trademark infringement and cybersquatting.

III. NEW CASE LAW

A. Archdiocese of St. Louis v. Internet Entertainment Group ("IEG"), Inc.^[34]

[9] In anticipation of Pope John Paul II's scheduled visit to the United States in 1999, the Archdiocese of St. Louis registered various tradenames and marks, making the Archdiocese owners of the trademarks in July 1998.^[35] The common law trademarks and names were created and maintained by the Archdiocese as part of publicizing and promoting the visit of the Pope.

[10] Sometime after the Archdiocese registered these marks, IEG registered two domain names, "papalvisit.com" and "papalvisit1999.com."^[36] IEG's websites included limited information about the upcoming papal visit,^[37] as well as postings of sexually-explicit Internet sites.^[38] In addition, the IEG sites contained hyperlinks to sites which held an assortment of off-color stories and jokes regarding the Pope and the Roman Catholic Church.^[39]

{11} In late 1998, the Archdiocese became aware of two domain names operated by IEG and the information provided by the sites.^[40] Subsequently, the Archdiocese filed suit alleging trademark infringement, trademark dilution, false designation of origin, and unfair competition. The Archdiocese asked the Missouri court for a temporary restraining order ("TRO") and a preliminary injunction.^[41] The Archdiocese sought to enjoin IEG from using the domain names "papalvisit1999.com" and "papalvisit.com," or any other variations on the Papal Visit 1999 trademark and tradenames, which the Archdiocese registered.^[42] Applying the Missouri Long-Arm Statute Section 056.500.1(3)^[43] and the Federal Trademark Dilution Act ("FTDA") which amended Section 43(c) of the Lanham Act), along with the Lanham Act,^[44] the court allowed the injunctive relief.^[45]

{12} The court found an adequate basis for jurisdiction, claiming that hyperlinks within a website give a website active character and aggressively encourage Web users to explore other links.^[46] With jurisdiction established, the court dealt with the defendant's First Amendment argument.^[47] Defendant IEG claimed that its websites were protected by the Free Speech Clause of the First Amendment; however, the court said that free speech and website content were not at issue.^[48]

{13} The central issue of the case was the use of the marks by IEG on websites. The court found that the use of pornographic material by IEG under these domain names was not only infringement on the Archdiocese trademark rights, but also further diluted and tarnished the family of marks registered.^[49] The activities of IEG were obviously contrary to the spiritual and positive images the Archdiocese strove to achieve in association with the Pope's visit.^[50] The court went further and applied one of the rules first espoused in *Jews For Jesus v. Brodsky*,^[51] holding that proof of economic harm is not required to show irreparable injury due to dilution of a mark.^[52] The court ordered IEG to cease use of the "papalvisit" family of domain names.^[53]

B. Jews For Jesus v. Brodsky

{14} Jews For Jesus ("J4J"), an international nonprofit organization, founded in 1973,[54] promotes a ministry teaching that "Jesus is the Messiah of Israel and Savior of the World." [55] The organization claimed a common law service mark for the phrase "Jews For Jesus," as well as a trademark right for the phrase, stylized by substituting "the Star of David" for the "o" in their name. [56] The mark's history included prior ownership by Hineni Ministries, but the mark was subsequently assigned to J4J. [57] This particular mark is in use by the plaintiff all over the world on brochures, pamphlets, radio, national newspapers, and the Internet. [58] In fact, the name and mark proved to be in use by the plaintiff for more than twenty-five years. [59] Upon creating an Internet site, the plaintiff's domain name did not contain the characteristic "Star of David," but instead was listed as "jews-for-jesus.org." [60]

{15} Brodsky, a professional Internet site developer and attorney, established a website referring to "J4J," on which he openly criticized the organization. [61] Apparently aware of both, the federally-registered marks and the common law mark, [62] Brodsky first sought the mark Jews for Jesus for Judaism; [63] however, this particular domain name was already registered. [64] Instead, Brodsky registered the name "jewsforjesus.org" as his domain name. [65]

{16} By December 1997, J4J discovered Brodsky's website and notified him that they possessed the rights to the "mark." [66] The defendant's reply was that he did not see any infringement between the alleged trademark and the domain name. [67] Brodsky then registered a second domain name, "jews-for-jesus.com." [68] Under the second domain name, Brodsky added a disclaimer, but failed to update the disclaimer for the first domain name. [69] J4J then sent Brodsky another letter asking that his use of both domain names be ceased. [70] When Brodsky denied any wrongdoing, J4J filed for injunctive relief against him.

{17} The *J4J* court supported the religious organization's claim and denied Brodsky any defense under the concepts of free speech, fair use, [71] descriptive mark, [72] and genericness. [73] In its detailed opinion, the court outlined the standard for injunctive relief, and distinguished *J4J* from other Internet trademark cases. The court allowed the application of 15 U.S.C. Section 1125, the Trademark Dilution Act, in spite of the fact that the statutory requirement that activities of the infringer and plaintiff must be done "in connection with goods or services," [74] was not met. The court deemed Brodsky's criticisms to be commercial speech, in so far as the criticism harmed J4J commercially and inhibited Internet users efforts to locate the plaintiff. [75] In essence, the court ruled that trademark violations must be "in connection" with goods or services. [76]

IV. LESSONS FROM ARCHDIOCESE AND J4J

A. Jurisdiction

{18} One Internet scholar as identified that, "[t]he recurring problem with the current crop of Internet jurisdictional issues is not that lawyers and judges do not understand the nature of the technology, but that computer communication and the Internet are anything but 'traditional.'" [77] Law student author, Cheryl Conner, similarly reported that, "an enormous amount of attention has been paid recently to jurisdictional issues, arising from the maintenance of [w]ebsites." [78] Courts are under almost assiduous pressure to develop new jurisdictional rules to deal with legal conflicts that occur using this new technology as a result of this increased media and academic attention. [79] The fact that Internet business transactions are much easier to adjudicate functions as a key issue in most Internet personal jurisdiction cases. [80]

{19} In order for a court to have judicial authority over an action, it must have personal jurisdiction over the parties, in addition to subject matter jurisdiction. [81] The major goal of pleading the issue of jurisdiction is to ensure that defendants are not brought before an inconvenient forum. [82] Real-world principles of jurisdiction have evolved over the past one-hundred years, and they have simplified jurisdiction to a test of

action versus location. [83] Thus, the intangible nature of the Internet makes jurisdiction difficult to apply. Whereas the court's power over a person, known as personal jurisdiction, has often governed the jurisdiction of a court, the power over the class of claims, or subject-matter jurisdiction, has been applied more frequently. Where nonresident defendants are concerned, evidence of minimum contacts with the forum state is crucial in determining if the court's exercise of jurisdiction over the defendant is proper. [84] Absence these contacts, the forum is classed as *non conveniens*, since the defendant would not reasonably be bound to defend a suit in the forum state. [85]

{20} For the Internet, several principal cases serve as benchmarks for determining jurisdiction. In *CompuServe v. Patterson*, [86] the Sixth Circuit ruled that the defendant's posting material on its site, which could be downloaded and purchased, was sufficient contact to allow an Ohio court to have jurisdiction over Patterson, although he resided in Houston, Texas. [87] In the famous "Blue Note" case, *Bensusan Restaurant Corporation v. King*, [88] the Second Circuit dismissed the claims of Bensusan on the basis of lack of jurisdiction. The court distinguished *Bensusan* from the *Patterson* case on the grounds that the website was an advertisement, and that it did not involve King deriving income from any interstate transactions. With *Bensusan* and *Patterson* as the ends of the spectrum, cases, such as *Inset Systems v. Instruction Set* [89] and *Heroes Inc. v. Heroes Foundation*, [90] fill in the remaining gray areas in the middle of the continuum. In each of these cases, the courts determined that sites, which solicit funds, contribution, or sales and provide toll-free numbers, are actively availing themselves of the benefits of the forum state, and thus, invite courts of the forum state to have personal jurisdiction over them. More recently, in *Cybersell v. Cybersell*, [91] the Ninth Circuit confirmed the trial court's rationale that sites with local numbers and no exchange of information from the host computer do not allow a court to exercise jurisdiction over a Netizen. [92]

{21} However, the "purposeful availment" aspects of these prior cases are not the only means of arguing jurisdiction over a nonresident Netizen. Although IEG proffered a claim that the Second Circuit lacked personal jurisdiction, the court rationalized jurisdiction over IEG on the basis of the Missouri Court's findings in *Maritz v. Cybergold*. [93]

{22} In *Cybergold*, the defendant offered a mailing list, which would eventually transmit information to its registered users. [94] The *Cybergold* court ruled that jurisdiction had been established, based on the "conscious transmission" to Missouri Internet users. [95] The court failed to accept the argument that the site was merely a passive one. [96]

{23} Additionally, the court added that committing a tortious act in Missouri triggered its long-arm statute and that the nature of a trademark infringement claim is a tortious act. [97] Given that *Maritz* was decided by this same circuit, it is not surprising that the court applied the same standard to the *Archdiocese* case. The *Maritz* personal jurisdiction standard, which is not universally applied in the nation's courts today, [98] indicates that long-arm statutes and a site which promotes business, when coupled with trademark use, are enough to satisfy the requirements for personal jurisdiction. The *Maritz* court applied a five-part standard for determining personal jurisdiction. [99] These five factors include: "(1) the nature and quality of the contacts with the forum state; (2) the quantity of [those] ... contacts; (3) the relation to the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; [and] (5) the convenience of the parties." [100]

{24} Application of these five factors emphasizes the nature of the contact and any public policy within the forum state. Where a tort is involved, there may not be multiple contacts in the real-world sense. Thus, one generic contact may give rise to a forum having personal jurisdiction over a Netizen.

{25} In *Archdiocese* and *J4J*, jurisdiction was based on the tortious conduct, coupled with the forum state's policies designed to prevent such acts. [101] Although *Bensusan* is contrary to these two cases, any precedential value *Bensusan* had previously enjoyed was abrogated by proving an element of purposeful

availability based on the exchange of revenue. [102] *Archdiocese* and *J4J* indicate a compatible basis for jurisdiction not based on business transactions, but instead linked to nothing more than intent to do business. [103] Put more simply, the act of setting up a webpage for access by others satisfies the "in commerce" requirement of the Lanham Act. [104]

B. Trademark Infringement and Cyber Piracy

{26} Another aspect of personal jurisdiction relates specifically to domain names and the likelihood of confusion. In both, *Archdiocese* and *J4J*, jurisdiction was extended over the various defendants because the defendants were guilty of cybersquatting, which is also known as cyber-piracy. [105]

{27} Cybersquatting occurs when a party purchases a domain name using a known trademark. Once purchased, the party generally intends to influence the trademark owner by selling the domain name. [106] Similar domain name hijacking cases occur when parties register a competitor's domain name with the specific intention of injuring or taking advantage of the mistyped domain name of a trade or service mark owner, [107] preventing the owner from using its own name on the Internet. [108]

{28} Cybersquatting is a uniquely Internet-limited, per se cause of action. First, the plaintiff proves ownership of a trademark. Then, the plaintiff must prove that the "cyber pirate" had knowledge of the plaintiff's ownership, and regardless of that knowledge, still registered the domain name. *Panavision Int'l L.P. v. Toepfen* [109] is generally the accepted precedent for cybersquatting cases. Nonetheless, the cases, *Archdiocese* and *J4J* confirm that squatting, coupled with a forum state's long-arm statute, qualifies as a per se "significant contact" for jurisdiction, as well as a per se violation of trademark law.

C. Federal Trademark Dilution Act [110]

{29} Soon after its enactment, the FTDA became a litigation tool for trademark owner - plaintiffs. [111] Internet trademark scholars asserted that, "[u]nder the Federal Trademark Dilution Act, use of a similar mark on dissimilar goods may cause erosion of a famous mark's goodwill and lead to liability." [112] In establishing the FTDA, Congress expressly intended to "help stem the use of deceptive Internet addresses taken by those choosing marks associated with the products and reputations of others." [113]

{30} The FTDA, originally passed in 1995, [114] grants plaintiffs a civil remedy in commercial situations of false representation of origin, false descriptions, and dilution of registered marks. [115] The most recent amendments to the FTDA include civil remedies for trade dress infringement. [116] Although the remedies generally available under the FTDA are limited to injunction relief against continued use of the famous mark, a defendant who acts willfully or otherwise acts in bad faith, may also be liable for the trademark owner's actual losses, or in the alternative, the extent of the defendant's profits.

{31} The FTDA offers no specific guidance to determine the values of famous marks or the degree of dilution. [117] Some courts have provided statutory interpretation. For example, the court in *Hasbro, Inc. v. Internet Entertainment Group, Ltd* [118] found that the defendant's use of the domain name "CANDYLAND.COM" for a sexually-explicit Internet website diluted and tarnished the famous children's board game, CANDYLAND and its trademark. [119] The Federal District Court of the Western District of Washington ruled in favor of Hasbro, Inc., despite the fact that the parties' goods and services were unrelated. [120]

{32} *J4J* and *Archdiocese* serve as justification for the establishment of the FTDA. It is accepted that the FTDA provides injunctive, and in some cases, monetary relief to a company whose existing famous trademark is "tarnished" or "blurred" by a third party's use of the same or similar mark. However, the decisions in *Archdiocese* and *J4J* confirm that protection extends only to commercial enterprises and

noncommercial organizations with commercial potential.[\[121\]](#)

D. Standard for Granting Injunctive Relief

{33} A prevalent remedy in intellectual property cases is injunction, a concept based on property law.[\[122\]](#) Trademark owners have a right to injunctive relief as a matter of course,[\[123\]](#) and such rights are granted by the Lanham Act.[\[124\]](#)

{34} The *J4J* court considered four major requirements for granting injunctive relief. Key to the court's review were the following factors:

- 1) the likelihood that plaintiff would prevail on the merits at the hearing;
- 2) the extent that plaintiff would suffer irreparable harm by Defendant's conduct;
- 3) the extent that Defendant would be harmed by the injunction; and
- 4) the public interest.[\[125\]](#)

Courts previously focused on these factors, and if any one element was missing, the court would deny the claim.[\[126\]](#) Surveying other federal domain name cases, the *J4J* court concluded that it could offer a preliminary injunction where similar factors could be substituted for the ones mentioned.[\[127\]](#) In substituting factors, the courts considered the likelihood of confusion as an issue relating to whether the plaintiff would prevail on the merits of his claims.[\[128\]](#) Several cases, which were factually similar to *J4J*, indicated that unfair competition, dilution, and false designation were all to be considered by courts regarding the question of a meritorious claim.[\[129\]](#) Incorporating these factors, claims for trademark infringement would then be entertained.[\[130\]](#) Thus, the *J4J* case offers an alternative standard for granting injunctive relief in Internet cases.

E. Genericness, Scope of Trademark Registration, and Dilution

{35} In proving infringement, the validity and legal protectability of a mark, as well as the defendant's use of the mark, must be demonstrated.[\[131\]](#) *J4J*'s mark was considered incontestable because it was registered. The defendant did not disagree with this point.[\[132\]](#) Instead, he argued that the phrase he used in the domain name did not infringe upon the mark because *J4J* used the "Star of David."[\[133\]](#) The court, however, looked to the fact that it was not possible to use such a symbol in the domain name. *J4J* had three stylistic options available to them: utilizing hyphens, underlining, or no spaces. The organization chose hyphens as its stylistic option.[\[134\]](#) The court found Brodsky's rationale unsatisfactory, stating that infringement does not require exactness.[\[135\]](#) Actually, the fact that the domain was nearly identical to the mark was sufficient under the court's rationale.[\[136\]](#) Thus, any organization or business that has symbols in its tradename has possible causes of action for infringement, if it can prove an alleged infringer's phonetic substitution.

{36} Generic marks, those which note the basic nature of articles or services, cannot be protected by trademark.[\[137\]](#) In *J4J*, Brodsky argued that the term "jews for jesus" fell into this generic category, and therefore, he did not infringe upon the *J4J* trademark. Brodsky supported his argument with references to *Blinded Veterans Association v. Blinded American Veterans Foundation*.[\[138\]](#)

{37} The court distinguished *J4J* from *Blinded Veterans Association* by addressing whether the phrase "jews for jesus" was protectable on the issues of genericness, suggestiveness, and secondary meaning.[\[139\]](#) In *Blinded Veterans*, the issue was whether the unregistered mark of "blinded veterans" was generic.[\[140\]](#) The court decided the term was generic, because it was used to describe members of the organization, rather than the organization itself.[\[141\]](#) Comparing *J4J*, the court found that members of *J4J* referred to themselves as

Christian Jews, Messianic Jews, Jews For Christianity, Hebrew Christians, and so forth. Therefore, the term "jews for jesus" does not monopolize all of the concepts associated with members of the Jewish faith who embrace Christian beliefs. [\[142\]](#)

{38} This rationale is consistent with what copyright law refers to as the doctrine of mergers [\[143\]](#) Consistent with this doctrine, a phrase is accepted as a descriptive mark, while the secondary meaning must be proven. With no consistent set of elements for this test, the court considered advertizing, media, attempts to plagiarize the mark, and length of exclusivity, among other factors. [\[144\]](#) Heavy use contributed to the secondary meaning of the mark as referring to a sect of not merely Messianic Jews, but also to the organization itself. [\[145\]](#)

{39} Brodsky also attempted to argue that J4J's use of the mark should be limited by its registration, and since the Internet was not included, mark protection could not be extended to the Internet. [\[146\]](#) In support of his argument, the defendant offered the Third Circuit's ruling in *National Footwear*. [\[147\]](#) In this case, a claim for trademark infringement was not extended to cover clothing and accessories, where the registration indicated footwear, "namely shoes, slippers and boots." [\[148\]](#) The court determined that this argument was not well founded, since th plaintiff sought to protect products which were registered, namely religious pamphlets. [\[149\]](#) The Internet is not a different product classification, but rather a method of publication. [\[150\]](#)

{40} Plaintiff, J4J was also able to prove likelihood of confusion, [\[151\]](#) similarity, [\[152\]](#) and strength of its mark. [\[153\]](#) Claims of dilution, blurring, and tarnishment were all potential claims for the plaintiff, but the defendant claimed that his site contained non-commercial speech and was therefore exempt from any dilution claim. [\[154\]](#) The court, however, considered more than the commercial speech issue in its analysis. [\[155\]](#) Instead, the court looked to the intent of the defendant's site (to lure J4J searchers), and to the fact that Brodsky was selling merchandise, soliciting funds for political activities, and undermining J4J commercially. [\[156\]](#) Thus, the defendant's speech was determined not likely to be exempt. [\[157\]](#)

{41} The unfair competition and false designation claims prevailed for purposes of the injunction because of the statements made by Brodsky. [\[158\]](#) According to the court's findings, Brodsky intended to trick, deceive, and intercept J4J searchers. [\[159\]](#) As to the issue of competition, the court found it unnecessary for Brodsky to put goods into commerce, [\[160\]](#) but found that his mere frustration of J4J efforts of distribution and offering of services was sufficient. [\[161\]](#)

{42} Since the defendant could not prove irreparable harm secondary to an injunction, nor could he establish that the public's right not to be deceived was paramount, the court granted the injunction. [\[162\]](#) The court concluded that Brodsky was still free to make his statements, but could not do so on a "trademark infringing" site. [\[163\]](#)

V. CONCLUSION

{43} Traditional English common law, consisting of "our passion for justice, freedom and individual liberty" derives from the Bible itself. [\[164\]](#) Authors James Wood and Derek Davis surmise that, "[i]t was religion, at least in part, which gave birth to America." [\[165\]](#) For example, the Declaration of Independence is laden with references to a "Supreme Deity" and Christian values. [\[166\]](#) However, the well-known doctrine of separation of church and state, championed by Thomas Jefferson, complements the fact that America is a secular nation with a thriving religious society, [\[167\]](#) fostering a complex collection of laws relative to religious observation and rights. Technology, which has rapidly entered our businesses, has also rapidly entered our religious lives. Despite this rapid induction of technology, the changing face of cyber litigation is still influenced by religious

organizations.

{44} The Church has evolved into a powerful legal and financial entity.^[168] Beginning as the central glue which motivated the colonists, the Church established the nation's first public mass education schemes and social welfare programs.^[169] Today, churches influence both social policy and political power.^[170] It is not surprising that the Church, which has long played a role in public policy, now plays a role in shaping Internet policy.^[171]

{45} While churches, synagogues and temples stake their places in Cyberspace, courts recognize that churches are entitled to protection from unfair competition by barring trademark and tradename infringement.^[172] However, whether the trademark issue is commercial, as with *Archdiocese*, or non-commercial, as with *J4J*, courts consistently hold religious organizations to the same standard of proof as they do commercial enterprises.^[173]

{46} Churches, as guardians of the spiritual world, are now laying claim to another non-physical realm: the realm of Cyberspace. No longer merely passive congregations, churches are now considered formidable political and financial forces.^[174] Today, the Church's influence impacts much of modern society. Not surprisingly, litigation concerning the Church and the Internet, such as in the *J4J* and *Archdiocese* cases, is bound to increase and to continue to pioneer the metaphysical frontier of Cyberspace.

-Ramona Leigh Taylor

ENDNOTES^[**]

^[*] Ramona Leigh Taylor received a B.A. in Political Science from Duke University in May 1985 and her J.D. from the University of Richmond School of Law in January 2000. Currently, Ms. Taylor is an associate for Thomas H. Roberts Law Corporation <<http://www.robertslaw.org/>>. Prior to entering law school, Ms. Taylor worked for more than seven years in the litigation, claims and arbitration departments of the Dalkon Shield Claimants Trust. She recently completed the 1999 interim term as law student observer for Advisory Committee Number Five of the Virginia General Assembly's Joint Commission on Law and Technology. Ms. Taylor was an Associate Technical Editor and senior staff member of the *Journal*. The author would like to thank her family, her four children, niece, and sister especially, for all of their support, love, and patience, as well as the *Journal* staff for all their help and dedicated work.

^[**]. **NOTE:** All endnote citations in this article follow the conventions appropriate to the edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION that was in effect at the time of publication. When citing to this article, please use the format required by the Seventeenth Edition of THE BLUEBOOK, provided below for your convenience.

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^[1]. John A.Q. Lowther, IV, *Personal Jurisdiction and the Internet Quagmire: Amputating Judicially Created Long Arms*, 35 SAN DIEGO L.REV. 619 (1998) [hereinafter Lowther, *Internet Quagmire*].

- [2]. Brookfield Comm., Inc. v. West Coast Ent. Corp., 174 F. 3d 1036, 1044 (9th Cir. 1999).
- [3]. *See id.*
- [4]. Joseph Zammit & Lynette Herscha, *Litigation Issues in a Cyber World*, 507 PLI/Pat 107, 109 (1997).
- [5]. *See* Reno v. ACLU, 521 U.S. 844, 850 (1997); *see also* Reno v. ACLU (visited Mar. 1, 2000) <<http://supct.law.cornell.edu/supct/html/96-511.ZS.html>>.
- [6]. *See* Ken Lubeck, *The Internet and the Church* (visited Mar. 1, 2000) <<http://www.cbn.org/living/christianwalk/columns/kenlubeck.asp>>.
- [7]. Lynne DeMichele, *Internet Users Like Religion-Related Content* (visited Mar. 1, 2000) <<http://www.umc.org/umns/98/feb/85.htm>>.
- [8]. *See id.*
- [9]. *See, e.g., Forum Ethics*, THE ATLANTA J. & ATLANTA CONST., May 1, 1999, at B5, 1999 WL 3767324.
- [10]. *See, e.g., ISFree to Launch ISP to Generate Money for Subscribers*, Computergram Int'l, Apr. 30, 1999, 1999 WL 8111499.
- [11]. *See, e.g., United Methodist Church, General Board of Global Ministries* (visited Mar. 1, 2000) <<http://gbgm-umc.org/>>.
- [12]. *See, e.g., The Church of Jesus Christ of Latter-Day Saints, Basic Beliefs* (visited Mar. 1, 2000) <http://www.lds.org/site_main_menu/frameset-global-bas_bel.html>.
- [13]. *See, e.g., The Episcopal Church, The Presiding Bishop's Message* (visited Mar. 1, 2000) <<http://www.dfms.org/>>.
- [14]. *See, e.g., Eric Convey, Religion Surfing for the Soul; Churches Use Web to Reach Members*, BOSTON HERALD, Apr. 30, 1999, at 3, 1999 WL 3397008 [hereinafter Convey, *Religion Surfing*].
- [15]. *See* Kim Sue Lia Perkes, *A Holy Drama Unfolds//Web Auction Brings Sacred Torah to Austin Congregation*, AUSTIN AM.-STATESMAN, Apr. 30, 1999, at A1, 1999 WL 7410857.
- [16]. *See* Convey, *Religion Surfing*, *supra* note 14, at 3.
- [17]. *See* Karin Laub, *Jerusalem Syndrome Is Catching Holy Land Visit Tugs at Emotions*, FLA. TIMES UNION, April 30, 1999, at A16, 1999 WL 9670681. Also, the National Prayer Day was simulcast on the Internet. *See also* *Area Churches Ready for National Day of Prayer*, NEWS & OBSERVER (Raleigh, N.C.), Apr. 30, 1999, at A2, 1999 WL 2749269.
- [18]. *See, e.g., Vatican, The Holy See* (visited Mar. 6, 2000) <<http://www.vatican.va/>>; Shamash, *The Jewish Internet Consortium* (visited Mar. 6, 2000) <<http://www.shamash.org>>.
- [19]. *See, e.g., Scientology Copyright Site* (visited Mar. 1, 2000) <<http://www.scientology.org/csi.htm>>.
- [20]. *See, e.g., Church of Christ Ad Exchange* (visited Mar. 1, 2000), <<http://www.theseeker.org/ads/>>.
- [21]. Convey, *Religion Surfing*, *supra* note 14, at 3.

[22]. W. David Falcon, *A Nice Place to Visit, But I Wouldn't Want to Litigate There: The Effects of Cybersell v. Cybersell on the Law of Personal Jurisdiction*, 5 RICH. J.L. & TECH. 2, ¶ 11 (Spring 1999) <<http://www.richmond.edu/jolt/v5i3/falcon.html>>.

[23]. The Lanham Act generally provides for protection from trademark and service mark violations, and defines the class of remedies available to aggrieved parties. *See* Lanham Act of 1946 § 43(a), 15 U.S.C. § 1125(a). The Act specifically provides:

1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term name, symbol,

or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation

of fact, which -- (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with

another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or (B) in

commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another

person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be

damaged by such act.

Id; *see also* Frank Pommersheim, "Our Federalism" in the Context of Federal Courts and Tribal Courts: An Open Letter to the Federal Courts' Teaching and Scholarly Community, 71 U. COLO. L. REV. 123, 181 (Winter 2000); Mark A. Lemley, *The Modern Lanham Act and the Death of Common Sense*, 108 YALE L.J. 1687, 1702, n.82 (1999).

[24]. The Church of Scientology is an applied religious philosophy which has as its central premise "man is inherently good" and most notably that the mind and spirit can heal the body. Scientologists come from all walks of life and number in the millions world wide. *See Introduction to Scientology Religion* (visited Feb. 26, 1999) <http://www.scientology.org/wis/wiseng/wis1-3/wis1_1.htm>.

[25]. There are a number of Scientology versus Internet cases, which include Religious Tech. Ctr. v. F.A.C.T. Net, Inc., 901 F. Supp. 1519 (D. Colo. 1995); Religious Tech. Ctr. v. Netcom Online Comm. Serv., 923 F. Supp 1231 (1995); *see also* Religious Tech. Ctr. v. Netcom Online Communications (visited Jan. 20, 2000) <<http://www.netlawlibraries.com/>>; Religious Tech. Ctr. v. F.A.C.T. Net, Inc. (visited Jan. 20, 2000) <http://www.loundy.com/CASES/RTC_v_FACTnet.html>; *see also* Eugene A. Burcher & Anna M. Hughes, *Religious Tech. Ctr. v. Netcom Online Comm. Serv.: Internet Service Providers: The Knowledge Standard for Contributory Copyright Infringement and the Fair Use Defense*, 3 RICH. J.L. TECH. 5 (1997) <<http://www.richmond.edu/~jolt/v3i1/burhugh.html>>.

[26]. *See* Religious Tech. Ctr. v. Netcom Online Comm., 923 F. Supp. 1231 (1995).

[27]. *See id.* at 1239-40.

[28]. Tom Klemerud operated a bulletin board service which Netcom On-Line Communications provided

with access to the Internet. *See id.* at 1238, n.6.

[29]. *See id.* at 1244.

[30]. *See id.* at 1257-58.

[31]. Other Scientology litigation includes *Religious Tech. Ctr. v. Ward*, 1999 U.S. App. LEXIS 19937 (N.D. Ca. 1999); *Religious Tech. Ctr. v. F.A.C.T. Net, Inc.*, 901 F. Supp. 1519 (D. Colo. 1995); *Religious Tech. Ctr. v. Lerma*, 908 F. Supp. 1362 (E.D. Va. 1995).

[32]. *See* Jonathan I. Edelstein, *Anonymity And International Law Enforcement in Cyberspace*, 7 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 231, 278 (1996).

[33]. *See* David N. Weiskopf, *The Risks of Copyright Infringement on the Internet: A Practitioner's Guide*, 33 U.S.F. L. REV. 1, 40 (1998).

[34]. 34 F.Supp. 2d 1145 (E.D. Miss.1999) [hereinafter *Archdiocese*].

[35]. *See id.* at 1146.

[36]. *See id.* at 1145.

[37]. *Archdiocese of St. Louis v. IEG, Inc.* (visited Jan. 16, 1999) <<http://www.crblaw.com/text/stlouis.htm>> [hereinafter *Memorandum Opinion*]. Please note that this case was removed from Lexis by request of the court.

[38]. *Archdiocese*, 34 F. Supp. 2d at 1146.

[39]. *See id.*

[40]. *See Memorandum Opinion, supra* note 37, at ¶3.

[41]. *See id.*

[42]. *Archdiocese*, 34 F. Supp. 2d at 1145.

[43]. *See Memorandum Opinion, supra* note 37 at ¶ 7.

[44]. *See id.* at ¶ 11.

[45]. *See id.* at ¶ 16.

[46]. *See id.* at ¶ 8.

[47]. *See id.*

[48]. *See id.* at ¶ 21.

[49]. *Archdiocese*, 34 F. Supp. 2d at 1146.

[50]. *See id.*

[51]. 993 F.Supp. 282 (D. N.J. 1998) [hereinafter *J4J*].

[52]. *See Memorandum Opinion, supra* note 37, at ¶ 18.

[53]. *See Archdiocese*, 34 F. Supp. 2d, at 1146.

[54]. *See id.* at 288.

[55]. *Id.*

[56]. *See id.*

[57]. *See id.* at 289 n.9.

[58]. *See id.* at 289.

[59]. *See id.*

[60]. *See id.* at 290.

[61]. *See id.* at 290-91.

[62]. *See id.* at 291.

[63]. *See id.*

[64]. *See id.*

[65]. *See id.*

[66]. *See id.*

[67]. *See id.* at 291-92.

[68]. *See id.* at 292.

[69]. *See id.*

[70]. *See id.*

[71]. Fair use is defined, under the Federal Lanham Act, as "a use, otherwise than as a mark, of ... a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of [a] party." 15 U.S.C. § 1115 (b)(4)(1994).

[72]. Functionality of trade and service marks fall into four categories, arbitrary, descriptive, suggestive and generic. The level of functionality determines the level of protection for a mark. *See MCCARTHY ON TRADEMARKS*, §§ 11:11-25 (4th ed. 1998) (discussing the categories and functionality levels). Only three of these categories are protectable under the Lanham Act for trademark infringement: descriptive marks, suggestive marks, fanciful (or arbitrary) marks. *See 22 AM. JUR.3d 691, PROOF OF FACTS § 2 (1993).*

A term is generally considered descriptive where the term "conveys an immediate idea of ingredients, qualities or characteristics of the goods [or services]." *See J4J*, 993 F.Supp. at 297. Such marks are protectable if they have acquired a secondary meaning. *See Dranoff-Perlstein Assoc. v. Skalr*, 967 F. 2d 852, 858.

[73]. "A term is 'generic' if that terms [sic] has 'so few alternatives (perhaps none) for describing the good [or service] that to allow someone to monopolize the world would debilitate competitors." *See J4J*, 993 F.Supp. at 297. Key elements of genericness are the distinctiveness of the service or trademark and whether there exists a secondary meaning to the term or terms. Generic marks are not protected from use by others. This fourth category of marks, generic marks, are those that merely tell what the product is and are not protected under Section 43(a) of the Lanham Act. However, generic marks may sustain a claim for unfair competition. *See* 22 AM. JUR.3d 623, PROOF OF FACTS § 13 (1993).

[74]. *J4J*, 993 F. Supp. at 308.

[75]. *See id.* at 309.

[76]. *See id.*

[77]. Lowther, *Internet Quagmire*, *supra* note 1, at 622.

[78]. Cheryl L. Conner, *Compuserve v. Patterson: Creating Jurisdiction Through Internet Contacts*, 4 RICH. J.L. & TECH. 9, ¶ 3 (Spring 1998) <<http://www.richmond.edu/~jolt/v4i3/conner.html>> [hereinafter Conner, *Creating Jurisdiction*].

[79]. *See id.* at ¶ 2.

[80]. *See* Lowther, *Internet Quagmire*, *supra* note 1, at 631.

[81]. *See* RICHARD MARCUS, MARTIN REDISH & EDWARD SHERMAN, CIVIL PROCEDURE: A MODERN APPROACH, 25 (2nd ed. 1995).

[82]. *See* Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).

[83]. *See generally* Pennoyer v. Neff, 95 U.S. 714 (1877) (granting Oregon jurisdiction over non- resident based on land situs); Hanson v. Denkla, 357 U.S. 235 (1958) (granting jurisdiction to Delaware over trust); Hess v. Pawloski, 274 U.S. 352 (1927) (granting jurisdiction based on accident situs); *see also* Connor, *Creating Jurisdiction*, *supra* note 78, at ¶ 3.

[84]. *See generally* International Shoe Co. v. Washington, 326 U.S. 310 (1945)

(granting jurisdiction to a Washington court over a corporation with minimum contacts); Miliken v. Meyer, 311 U.S. 457 (1940) (finding no basis for jurisdiction); Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408 (1984) (finding company had availed itself to Texas jurisdiction).

[85]. *See id.*

[86]. CompuServe v. Patterson, 89 F. 3d 1257 (6th Cir. 1996); *see also* CompuServe v. Patterson (visited Feb. 27, 2000) <<http://www.securitymanagement.com/library/000258.html>>.

[87]. *See id.* at 1260-61; *see also* Lowther, *Internet Quagmire*, *supra* note 1, at 631.

[88]. 937 F. Supp 295 (S.D.N.Y. 1996), *aff'd*, 126 F.3d 25 (2nd Cir. 1997); *see also* Bensusan Restaurant Corp. v. King (visited Feb. 27, 2000) <<http://www.jmls.edu/cyber/cases/bensusan.html>>.

[89]. 937 F. Supp. 161 (D. Conn. 1996); *see also* Inset Sys. v. Instruction Set (visited Feb. 27, 2000) <<http://www.jmls.edu/cyber/cases/inset.html>>.

[90]. 958 F. Supp. 1 (D.C. Cir. 1996); *see also* Heroes Inc. v. Heroes Found. (visited Jan. 20, 2000) <<http://www.bna.com/e-law/cases/heroes.html>>.

[91]. 130 F. 3d 414 (9th Cir. 1997).

[92]. Netizen is an Internet term which refers to surfers and other users of the Internet. *See* Mike Godwin, *Internet Theology*, 2 GREEN BAG.2d 227 (1998).

[93]. 947 F. Supp. 1328 (E.D. Mo. 1996); *see also* Maritz v. Cybergold, Inc. (visited Feb. 27, 2000) <<http://www.jmls.edu/cyber/cases/maritz.html>>.

[94]. *See id.*

[95]. *See id.* at 1333.

[96]. *See id.*

[97]. *See id.* at 1331.

[98]. *See* cases which are distinguished from *Cybergold-Hearst Corp. v. Goldberger*, 1997 WL 97097 (S.D.N.Y. Feb. 26, 1997); *Hasbro Inc. v. Clue Computing Inc.*, 994 F.Supp. 34, 45 U.S.P.Q.2d 1170 (D.Mass. Sept. 30, 1997); *Millennium Enterprises, Inc. v. Millennium Music, LP*, 33 F.Supp.2d 907, 49 U.S.P.Q.2d 1878 (D.Or. Jan. 4, 1999) and those cases which declined to follow the Missouri court's rationale. *See* *Weber v. Jolly Hotels*, 977 F.Supp. 327 (D.N.J. Sept. 12, 1997); *SF Hotel Co., L.P. v. Energy Investments, Inc.*, 985 F.Supp. 1032, 45 U.S.P.Q.2d 1308 (D.Kan. Nov. 19, 1997); *Ragonese v. Rosenfeld*, 318 N.J.Super. 63, 722 A.2d 991 (N.J.Super.L. Jul. 20, 1998).

[99]. *Maritz*, 947 F. Supp. at 1332.

[100]. *Id.*

[101]. *See supra* Part III.

[102]. *See e.g.*, *American Network, Inc. v. Access America/Connect Atlanta, Inc.*, 975 F. Supp. 494 (S.D.N.Y. 1997)(highlighting that case was distinguished by stating that revenues received by the defendant constituted purposeful availment.); *see also* *American Network, Inc. v. Access America/Connect Atlanta, Inc.* (visited Mar.1, 2000) <<http://www.bna.com/e-law/cases/amnet.html>>.

[103]. *See* Lowther, *Internet Quagmire*, *supra* note 1, at 651.

[104]. *See also* Frank Pommersheim, "Our Federalism" in the Context of Federal Courts and Tribal Courts: an Open Letter to the Federal Courts' Teaching and Scholarly Community, 71 U. COLO. L. REV. 123, 181 (Winter 2000); Mark A. Lemley, *The Modern Lanham Act and the Death of Common Sense*, 108 YALE L.J. 1687, 1714, n.82 (1999).

[105]. *See* *The Domain Name System: a Case Study of the Significance of Norms to Internet Governance*, 112 HARV. L. REV. 1657, 1664 n.89 (1999) [hereinafter *Domain Name*]; *see also* Rebecca Cole, *Playing the Name Game: A Glimpse at the Future of the Internet Domain Name System*, 51 FED. COMM. L.J. 403, 410 (1999) [hereinafter *Cole, Name Game*]; Barbara Spillman Schweiger, *The Path of E-law: Liberty, Property, and Democracy from the Colonies to the Republic of Cyberia*, 24 RUTGERS COMPUTER & TECH. L.J. 223, 277-78 (1998).

- [106]. See *Domain Name*, *supra* note 105, at 1657, 1664; see also Cole, *Name Game*, *supra* note 105, at 410-11.
- [107]. See also Cole, *Name Game*, *supra* note 105, at 410.
- [108]. See *Intellectual Property Court Watch*, 5 No. 7 INTELL. PROP. STRATEGIST 10 (April 1999).
- [109]. 945 F. Supp. 1296 (C.D. Cal. 1996), *aff'd*, 141 F.3d 1316 (9th Cir. 1998).
- [110]. 15 U.S.C. §1125 (1997) [hereinafter "the Act"].
- [111]. See Bruce P. Keller, Jeffrey P. Cunard, & David H. Bernstein, *Trademark and Unfair Competition Issues*, 568 PLI/Pat 257, 315 (1999) [hereinafter Keller, Cunard & Bernstein, *Unfair Competition*].
- [112]. Robert S. Schlossberg, Armand J. Zottola, & Elisa A. D'Andrea, *Avoiding Intellectual Property Liability*, 568 PLI/Pat 139, 159 (1999).
- [113]. *Teletech Customer Care Mgmt., Inc. v. Tele-Tech Co., Inc.*, 977 F. Supp. 1407 (C.D. Cal. 1997) (citing remarks of Senator Leahy in the U.S. Senate, Dec. 29, 1995); see also Keller, Cunard & Bernstein, *Unfair Competition*, *supra* note 111, at 328.
- [114]. See The Act, *supra* note 110; see also Donna Lampert, Fernando Laguarda & Amy Bushyeager, *Overview of Internet Legal and Regulatory Issues*, 544 PLI/Pat 139 (1998) [hereinafter Lampert, Laguarda, & Bushyeager, *Overview*].
- [115]. 15 U.S.C. § 1125 (1997).
- [116]. See Trademark Amendments Act, Pub. L. No.106-43, 113 Stat. 218 (Aug. 5, 1999).
- [117]. See Lambert, Laguarda & Bushyeager, *Overview*, *supra* note 114, at 214.
- [118]. 1996 WL 84853 (W.D. Wash.).
- [119]. See *id.* at 2.
- [120]. See *id.* But see *Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. B.E. Windows, Corp.*, 969 F. Supp. 901, 905 (S.D.N.Y. 1997) (holding that the defendant's use of the mark THE GREATEST BAR ON EARTH to identify a bar would not dilute the famous mark because, among other reasons, circuses and bars are not similar). This ruling appears to contradict the tenet that relatedness between goods and services is not required for a finding of dilution. It may be, however, that courts currently are more willing to find dilution of a famous mark where the use complained of tarnishes the image of the famous mark, rather than simply "blurring" for which there is little precedent to apply." *Id.* at 2.
- [121]. See *Archdiocese*, 34 F.Supp.2d at 1145 (ruling that the Plaintiffs demonstrated a likelihood of success on the merits of their claims that defendant's conduct violates the federal trademark anti-dilution statute, 15 U.S.C. § 1125(c)(1997)). But see *J4J*, 993 F.Supp. at 308. (stating:

Defendant has appropriated plaintiff's mark in order to reach an audience of Internet users who want to reach plaintiff's services and viewpoint, intercepting them and misleading them in an attempt to offer his own political message. Second, defendant's appropriation not only provides Internet users with competing and directly opposing information, but also prevents those users from reaching plaintiff and its services and message. In that way, defendant's use is classically

competitive: he has taken plaintiff's mark as his own in order to purvey his Internet services--his website--to an audience intending to access plaintiff's services.)(citation omitted).

[122]. See ROBERT P. MERGES et.al., INTELLECTUAL PROPERTY IN THE NEW TECHNOLOGICAL AGE 722 (1997) [hereinafter MERGES, INTELLECTUAL PROPERTY].

[123]. See *id.*

[124]. See *id.* (citing 15 U.S.C. § 1125(a) (1997)).

[125]. See *J4J*, 993 F.Supp. at 292.

[126]. See *id.*

[127]. See *id.* at 293 (citing Teletech Customer Care Management (Ca.) v. Tele-Tech Co., 977 F.Supp. 1407 (1997)); Card Service Int'l v. McGee, 950 F. Supp. 737 (E.D.Va.) *aff'd*, 129 F. 3d. 1258 (4th Cir. 1997)).

[128]. See *id.* at 293.

[129]. See *id.*

[130]. See *id.* at 294.

[131]. See *id.* at 294-95.

[132]. See *id.* at 295.

[133]. See *id.*

[134]. See *id.* at 296.

[135]. See *id.*

[136]. *Id.*

[137]. See MERGES, INTELLECTUAL PROPERTY, *supra* note 122, at 566; see also *Soweco, Inc. v. Shell Oil Co.*, 617 F.2d 1178 (5th Cir. 1980).

[138]. 872 F.2d 1035 (D.C. Cir. 1989).

[139]. See *id.* at 1040-41.

[140]. See *id.* at 1041; see also *J4J*, 993 F. Supp. at 297.

[141]. *J4J*, 993 F. Supp. at 297.

[142]. See *id.*

[143]. See MERGES, INTELLECTUAL PROPERTY, *supra* note 122, at 358 (citing *Morrissey v. Procter and Gamble*, 379 F.2d. 675 (1st Cir. 1967)). The rationale behind the doctrine of mergers is that expression and idea somehow merge leaving very little possible variation in the potential forms of expression.

[144]. *J4J*, 993 F. Supp. at 298.

[145]. *See id.* at 298-99.

[146]. *See id.* at 299.

[147]. 760 F.2d 1383, 1397-98 (3d Cir. 1985).

[148]. *Id.* at 1396-97; *see also J4J*, 993 F. Supp. at 299.

[149]. *See id.* at 300.

[150]. *See id.*

[151]. *See id.* at 301.

[152]. *See id.* at 301-02.

[153]. *See id.* at 302-03.

[154]. *See id.* at 307-08.

[155]. *See id.* at 308.

[156]. *See id.*

[157]. *See id.*

[158]. *See id.* at 309.

[159]. *See id.*

[160]. *See id.*

[161]. *See id.*

[162]. *See id.* at 313.

[163]. *Id.*

[164]. Burton Caine, *The Liberal Agenda: Biblical Values and the First Amendment*, 14 *TOURO L.REV.* 129, 132 (1997) [hereinafter Caine, *Liberal Agenda*].

[165]. *THE ROLE OF RELIGION IN THE MAKING OF PUBLIC POLICY 2* (James E. Wood & Derek Davis eds., 1991) [hereinafter WOOD AND DAVIS, *ROLE OF RELIGION*].

[166]. *See* Caine, *Liberal Agenda*, *supra* note 164, at 134-35.

[167]. *See* WOOD AND DAVIS, *ROLE OF RELIGION*, *supra* note 165, at 4.

[168]. *See* William P. Marshall & Douglas C. Blomgren, *Regulating Religious Organizations Under the Establishment Clause*, 47 *OHIO ST. L.J.* 293, 317 (1986) [hereinafter Marshall & Blomgren, *Regulating Religious Organizations*].

[169]. *See* George Dargo, *Religious Toleration and Its Limits in Early America*, 16 *N. ILL. U. L. REV.* 341,

[170]. See Marshall & Blomgren, *Regulating Religious Organizations*, *supra* note 168, at 318; Shannon L. Race, Note, *The Christian Coalition as a Tax-Exempt Organization: Federal Income Tax Recommendations for the Politically Active TEO*, 43 WAYNE L. REV. 1931, 1955-58 (1997).

[171]. Cf. Sen. Dan Coates, *Act Ruling, To Be Joined by Supporters of the CDA*, Cong. Press Release, June 27, 1997 (announcing support by various religious organizations); *How 'Netheads' Could Cope With Censors; Christian Conservatives Backing Revised 'Decency Act'*, FULTON COUNTY DAILY REP., Aug. 20, 1998.

[172]. See *J4J*, 993 F. Supp. at 308.

[173]. See MERGES, INTELLECTUAL PROPERTY, *supra* note 122.

[174]. See generally Marshall & Blomgren, *Regulating Religious Organizations*, *supra* note 168 (describing the political and financial power of churches).

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