

Minding the Web

Strategies for monitoring use of trademarks on the Internet.

BY GENIE TYBURSKI

Partner Auspicious, who at 6 feet 4 inches tall towers over many of his friends and colleagues, steps on to the elevator. He spots Lawyer X among the small group. As the elevator descends, the two chat about nothing in particular. Within seconds, the doors open, the group departs, and both lawyers walk toward the building's rear exit.

Holding open the door, Partner Auspicious says, "If you have a few minutes today, I'd like your help on a trademark matter."

"Research?" Lawyer X asks.

"More like monitoring," the partner explains. "We completed the research, the original due diligence on the mark, but our client wants to monitor possible infringements, particularly on the Internet."

"OK," Lawyer X responds, "I'll stop by your office after lunch."

Later, Lawyer X learns the client wants to register "The Virtual Chase" as an online educational service providing information in the fields of law and public records. Another lawyer completed the initial research of registered trademarks, registered domain names and common law uses of the name. Based upon her findings, a paralegal prepares the trademark application. The client now requests that Partner Auspicious continue to monitor use of the name, particularly on the Internet,

where The Virtual Chase, its new dot-com, will do business.

Lawyer X explains monitoring domain name registrations regularly is possible and relatively straightforward. Tracking use of the name on Web pages, however, will require creative

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research and, ultimately, may not uncover all uses.

A database containing the real-time content of the Web doesn't exist. Rather, search engines "crawl" or explore the Web, collecting content they recognize. This method of data collection fails to gather much that is available. Moreover, the dynamics of the Web impede the engines' ability to maintain current data.

Search engines create an index from gathered data. Typically, the index includes the title and first few words of text on a page, or frequently repeated text. Sometimes, it also encompasses metadata, or coded text invisible to

those reading the page, but presumably descriptive of the content. This, of course, in no way resembles the full-text search and retrieval power of traditional online systems.

Querying a single search engine reviews approximately 17 percent of the Web, according to a 1999 study published in the journal *Nature*.

Further, since "crawling" results in little overlapping data, experts agree that querying all the major search engines separately results in a search of about 42 percent of the Web.

Lawyer X quickly assures the partner that the limitations of search technology doesn't prevent them from performing a watch service. He cautions, however, that such research isn't completely foolproof.

Lawyer X sets up the watch first by connecting to all major search engines and to Yahoo!. At each, he performs a query for the phrase "virtual chase."

Major search engines include Raging Search (search only interface to AltaVista), Aol.com Search, Excite, Fast Search, Go.com (formerly Infoseek), Google, Hotbot, Lycos, MSN Search, Netscape Search, Northern Light and WebCrawler. Lawyer X also includes Yahoo!, a human-created Web index, because of its prominence as a valuable search service on the Net.

Lawyer X avoids metasearch sites such as Dogpile, InferenceFind (InFind) or Ixquick. These search services don't crawl the Web. Instead, they query indexes already created by the search engines. Because they must work quickly, searching multiple indexes, discarding duplicates and ranking results, they often limit retrieval (to the top 10 results at each engine) or interrupt a search (if an engine's response is too slow). While sometimes useful (e.g., finding a starting point or zeroing in on a fact), they undermine due diligence or other comprehensive research.

With the exception of Northern Light, Lawyer X bookmarks the results of his query at each engine. He places the bookmarks in a separate folder labeled "VirtualChase." Now he may run the searches again periodically by clicking on the bookmarks.

Next, at Raging Search, he modifies the query to include a time qualifier by checking the radio button that restricts searches to pages added to the index "in the last month." Hotbot and Northern Light offer similar features, but because of an attractive alternative, Lawyer X will skip this step at Northern Light.

Now, when he runs the queries at Raging Search and Hotbot by clicking on their respective bookmarks, the

engines return only Web pages added during the past 30 days. To display time qualifiers at Raging Search, he follows the customize link. Then, he clicks the Advanced Search tab. Next, he selects the radio button "show the date search box." Finally, Lawyer X saves his selection and exits.

Lawyer X returns to Northern Light. This engine offers an e-mail Search Alert, which notifies him about new Web pages or Special Collection (news and journal articles) documents added to the Northern Light index. He creates two Alerts — one for current news items and one for Web pages.

Next, Lawyer X connects to NameProtect.com, where he registers for NameGuard, the free domain name monitoring service. NameGuard will send him a monthly report on "The Virtual Chase," suggesting additional domain names and revealing potentially conflicting pending trademarks, as well as potentially conflicting new domain name registrations.

To discover Usenet postings mentioning potentially conflicting new products, services or Web sites, Lawyer X connects to Deja.com. He follows the Usenet link for power search, selects the "complete" archive, and enters the query — "virtual chase" — with quotations. After reviewing the search results, he clicks the My icon for "save this search."

Like Northern Light's Search Alert, Deja.com trackers will notify recipients of new postings that match their query. Lawyer X names the tracker, sets the e-mail delivery option, and clicks the Add button. Later, he can edit, delete or create new trackers by connecting to his personal page (My Deja).

To watch the Net for mention of "The Virtual Chase" in breaking news and company press releases, Lawyer X creates a Yahoo! News Alert. He gives the

Alert a name, selects all appropriate sources, enters the query — "virtual chase" — with quotations in the "must contain" search box, enters his e-mail address and selects his preferred time(s) of delivery.

Next, Lawyer X creates profiles using two additional tracking services — The Informant and TracerLock. The Informant monitors new and updated Web pages indexed by AltaVista, Excite, Lycos and Go.com. It reports the top matches only by e-mail.

Because of this limitation, Lawyer X will continue to monitor these engines separately, using his saved search bookmarks. The Informant allows three free watches per account.

TracerLock monitors AltaVista for new Web pages and Usenet postings. Researchers may enter up to 10 queries (five for AltaVista and five for Usenet), using the connectors "or," "and" or "not." TracerLock interprets consecutive words as phrases. This tracking service also sends reports by e-mail.

If the lawyers' makeshift watch service uncovers a potentially conflicting use of the client's mark and their subsequent cease and desist letter procures a promise to remove the language, they can monitor changes on the infringer's Web site with The Informant, Mind-it or EoMonitor. Each track changes in specified Web pages. Mind-it even watches for changes affecting specific keywords. The Informant limits monitoring to five Web pages, while EoMonitor tracks up to 20 pages for free. Lawyer X didn't encounter a limit with Mind-it.

Lawyer X walks down the hall to Partner Auspicious' office. He tells the partner that the subject of their cease and desist letter removed the use of "The Virtual Chase" from its Web site.

"I just hung up with the guy!" the partner exclaims. "How'd you know?"

Grinning, and with his tongue firmly in cheek, Lawyer X jests, "I could tell you. But if I did, then I'd have to kill you." ■■■

ABOUT THE AUTHOR



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CASE NOTES

Trademark Due Diligence on the Web

- ◆ Raging Search — <http://ragingsearch.altavista.com>
- ◆ Aol.com Search — <http://search.aol.com>
- ◆ Excite — www.excite.com
- ◆ FAST Search — www.uscc.alltheweb.com
- ◆ Go.com — www.go.com
- ◆ Google — www.google.com
- ◆ Hotbot — <http://hotbot.lycos.com>
- ◆ Lycos — www.lycos.com
- ◆ MSN Search — <http://search.msn.com>
- ◆ Netscape Search — <http://search.netscape.com>
- ◆ Northern Light — www.northernlight.com
- ◆ WebCrawler — www.webcrawler.com
- ◆ Yahoo! — www.yahoo.com
- ◆ Northern Light Search Alerts — www.northernlight.com/docs/alerts_help_about.html
- ◆ NameProtect.com — www.nameprotect.com
- ◆ Deja.com — www.deja.com/usenet
- ◆ My Deja.com — www.deja.com/mydn_tracker.xp
- ◆ Yahoo! Alerts — <http://alerts.yahoo.com>
- ◆ The Informant — <http://informant.dartmouth.edu>
- ◆ TracerLock — <http://peacefire.org/tracerlock>
- ◆ Mind-it — <http://mindit.netmind.com>
- ◆ EoMonitor — www.javelink.com