

Cleveland

Contact

Publication of the Cleveland Section of the Institute of Electrical and Electronics Engineers

Power Engineering Society Utility Deregulation

Sponsored by the Electric League of Ohio

The IEEE Power Engineering Society encourages interested members and guests to attend this panel session on Utility Deregulation sponsored by the Electric League of Ohio. You need to make your own reservations but may request to sit with other IEEE members. Contact Allen G. Morinec, P.E. at (216) 447-2505 for additional information.

The Electrical League is inviting members of the electrical industry to participate in a panel discussion on utility deregulation. You will have the opportunity to ask questions to representatives of FirstEnergy, the state of Ohio, and a local electric contractor. The program will be moderated by Lewis Tagliaferre, Principal of the C-E-C Group, a national industry specialist on utility deregulation.

Panelists include: Anthony J. Alexander, Executive Vice President & General Counsel at FirstEnergy Corp., Craig A. Glazer, Chairman of the Public Utilities Commission of Ohio, and Ralph L. Day, President of Day Electric Co.

Wednesday, March 3, 1999

Holiday Inn Rockside

6:30 Cash Bar

7:00 Dinner

\$38.50 per person.

*Reservations required***The Electric League of Ohio****(216) 221-8370**

CWRU Dept. of Electrical Engineering and Computer Science 1999 Spring Semester Seminar Schedule

All are welcome to attend these seminars, held from 11:30 a.m. to 12:30 p.m., Room 411, White Building, Case Western Reserve University. Refreshments will be served. For more information, contact Stephen Phillips, (216) 368-6248.

- March 9** Hassan Khalil, Dept. of Electrical Engineering, Michigan State University, "Nonlinear and Adaptive Control."
- March 23** Betty Salzberg, Computer Science Dept., Northeastern University, "Branched and Temporal Indexing."
- April 8** Christos Chassandras, Manufacturing Engineering Dept., Boston University, "Discrete Event Dynamic Systems."
- TBA** Kul Bhasin, NASA Lewis Research Center, "Satellite Computer Networks & Architectures."

Cleveland Engineering Society Meetings

March 3, 1999 - Tales from the Trenches: Estimating ROI for Investment Technology Projects, featuring Paul Hoogenboom of Cap Gemini. Presented by CES Information Technology Division. 7:30 a.m. to 9:30 a.m. at the Cleveland South Hilton Inn. \$15 members, \$20 Affiliates, \$25 Non-members

March 9, 1999 - Internet Technologies, by Ned Baker, Ensafe. Presented By CES Environmental Division. 7:30 a.m. to 9:30 a.m. at the Cleveland South Hilton Inn. \$20 members, \$25 Affiliates, \$30 Non-members

March 11, 1999 - Tour of Invacare. Part of CES Tour Series. Call CES for details. \$25 members, \$30 Affiliates, \$35 Non-members

March 16, 1999 - CES Luncheon with Dick Goddard. Dick shares stories about forecasting and memorable periods of Cleveland weather. 11:30a.m. to 1:30 p.m. Spaghetti Warehouse. \$12 members, \$13 Affiliates, \$15 Non-members

March 18, 1999 - CES Leadership Breakfast. Construction's Future Investment. Tom Zarges of Morrison Knudsen. 7:30 a.m. to 9:30 a.m. at the Cleveland South Hilton Inn. \$20 members, \$23 Affiliates, \$25 Non-members

March 24, 1999 - Get Real Series: Project Management. Dr. Robert Peterson from KSU defines keys to successful project management. Sponsored by the CES Education Committee. 7:30 a.m. to 1:00 p.m. at Construction Employers Association \$30 members, \$35 Affiliates, \$40 Non-members

March 25, 1999 - Updates on Ohio Basic Building Code. A full day program by the CES Design and Construction Division. 8:30 a.m. to 4:00 p.m. Call CES for pricing. ■



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U.S. TRUMPS OHIO

by Michael Garvey

Michael Perry, an Ohioan, operated a computer bulletin board for unauthorized exchanges of software. To operate the bulletin board, he used Clark Development Corp. software in an unauthorized manner. Perry was prosecuted for the Ohio crime of "unauthorized use of property". The court's decision addressed the potential conflict between federal law and state law.

The U.S. Constitution limits the areas in which the federal government can legislate. In those areas in which the federal laws apply however, they take precedence over state laws. This is known as "preemption". Where a federal law covers certain activities, it preempts state law, unless the state law has an "extra element". In criminal law, for example, a person cannot be convicted of the same crime under both federal and state law; there must be some difference between the acts required to violate the two laws.

Perry's activities clearly involved copyright infringement, which is a federal crime in some cases. Prosecutor's, however, chose to try him in state court for violation of the Ohio unauthorized use law.

The Ohio Supreme Court determined that Perry's use of Clark's software was merely a copyright infringement. There was no unauthorized use except what was prohibited by federal law. Therefore, any criminal prosecution must be an action in federal court for copyright infringement. Clark could also bring a federal civil action for copyright infringement.

Three of the seven justices deciding the case dissented, however, stating that "use" is different from "copying", so even the judges disagreed on whether the Ohio law was preempted by the federal law. The dissenting judges argued that virtually all software is sold with a license limiting its use. Copyright infringement does not require breach of license. Thus, Perry's breach of the license would provide the extra element that is not required for a copyright infringement. Perry's breach of the license was the "use" that violated the unauthorized use law, and thus provided the "extra element".

The majority of the judges pointed out however, that no license agreement was introduced as evidence. Therefore, it was improper to assume that Perry had violated

any license. This suggests that if a shrinkwrap license had been introduced, the result might have been different. Thus we are reminded of the importance of documenting a license agreement as well as the dangers of breaching agreements.

Nearly every computer user has infringed a copyright or breached a license agreement at some time. Such violations are unlikely to be prosecuted, but the use of criminal prosecution for copyright and other computer related violations of the law is becoming more common. Even though Perry eventually avoided conviction for unauthorized use, he undoubtedly discovered that when computer crimes are prosecuted, it is an unpleasant experience. ■

Michael Garvey is a patent attorney with Pearne, Gordon, McCroy and Granger in Cleveland.

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