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Court has recognized this.

EFF, a digital rights advocacy group, filed the lawsuit against Barney's owner, Lyons Partnership, in U.S. District Court for the Southern District of New York on behalf of Stuart Frankel.

Frankel is a New Yorker who maintains a personal home page where he posts eclectic content such as how to build a clavichord, a collection of Javanese culinary recipes, and a page that "pokes fun" at the children's television show "Barney and Friends," according to the complaint.

The parody, the complaint states, "humorously suggests that Barney lives a secret 'double life,' with the character's friendly, public persona serving to conceal the dinosaur's



Associated Press

Barney is beloved by kids, but the Electronic Frontier Foundation argues the dinosaur is fair game for parody.

true evil nature." The page includes a reference to "What Barney Looks Like After the Show," which depicts the character with horns, sharp teeth, a pentagram and the number 666 emblazoned on his chest.

Starting in 2002, according to the complaint, Lyons has sent Frankel four cease-and-desist letters alleging the parody Web page violated Lyons' legal rights by using Lyons' copyrighted Barney materials.

The letter also stated "that Lyons might pursue legal remedies or

contact your Internet Service Provider and inform it of your unlawful use of copyrighted materials (which is presumably a violation of your ISP's terms of service.)"

According to McSherry, EFF responded in a series of letters of its own, but that attorneys for Lyons didn't respond, eventually prompting this week's lawsuit.

"Clearly, the peaceful letter writing routine is not working," McSherry said. "It became clear to us that the threats aren't going to stop

audience is children ages 2-5."

The importance of the issues addressed in this week's EFF complaint go beyond the scope of the particular case, McSherry said.

It's fairly common for companies to send cease-and-desist letters without thinking about whether the use of the trademark or copyright is actually fair use, she said.

Too often, people who don't have the resources to fight or knowledge of their legal rights will respond by simply taking down the material, McSherry said. "That chills speech. And that's not OK," she said.

Frankel's Web site is www.dustyfeet.com/evil/enemy.html.

E-mail: anna_oberthur@dailyjournal.com

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Even Burning Man Must Exist Within the Legal Matrix

By Laura Ernde
Daily Journal Staff Writer

SAN FRANCISCO — More than 35,000 people are headed to the Nevada desert in the coming week for the counterculture party and social experiment known as Burning Man.

Its participants will shun commercialism and other cultural norms in pursuit of art and a barter economy.

But there's one convention organizers of the annual event have found they can't live without, and that's the advice of counsel.

A handful of so-called "burners" who also happen to be attorneys look over contracts, negotiate with government agencies and give their two cents on the myriad legal issues that inevitably crop up at Black Rock City, the temporary encampment near Gerlach, Nev.

What began 20 years ago with a small group of friends on San Francisco's Ocean Beach has grown into a massive gathering that requires skilled legal hawks to navigate both the predictable — and occasionally offbeat — issues that arise.

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S. TODD ROGERS / Daily Journal

Burning Man attorney Terry Gross has loaded his Chevy truck and Airstream trailer for the trip to this year's festival in the Nevada desert.

Steptoe Welcomes Alschuler Litigator

By Robert Iafolla
Daily Journal Staff Writer

LOS ANGELES — Another Alschuler Grossman Stein & Kahan litigator is leaving to join Steptoe & Johnson's newly minted Century City office.

Litigator Michael R. Heimbald, who will arrive there Saturday, said he started looking to leave Alschuler Grossman when it began exploring merger opportunities.

The Santa Monica-based firm has been in discussions with at least three firms in the past four months, most recently with Cooley Godward, which this week announced a merger with New York litigation house Kronish Lieb Weiner & Hellman.

"My firm was exploring its options, so it was a good time for me to explore my options," Heimbald

said. "After I decided th career and Heimbold ing with th months. He said : ternational in Brussels D.C., and I selling poi has 400 law "We are a lawyer o dence," sait ing partner downtown l Riff said both eleme D.C.-based Los Angele ing its two l with qualit :

Freedom and Privacy Lead Burning Man's Legal Priorities

Continued from page 1

When things really get hairy, festival organizers call their general counsel, Terry Gross, a name partner in the San Francisco public interest law firm of Gross & Belsky.

Known in Burning Man circles as Lightning, Gross brings his expertise in constitutional law to the playa, the name for the dry lake bed where the festival is held. He also handles legal matters that come up throughout the year.

Gross attended his first Burning Man in 1997 at the invitation of some artist friends. After that he was hooked.

Last week, in between working and loading his silver, 30-foot Airstream trailer for the six-hour trek to the desert, Gross talked about what he considers one of his most rewarding, if not his most lucrative, clients. In the spirit of the festival, he does much of the work for free. He charges reduced fees for litigation.

"It's actually an honor to be able to help them," he said. "Part of being a lawyer is to be a gladiator, being a fighter for your client, to take on their troubles and needs and try to solve them."

First Things First

A soft-spoken 58-year-old who resembles British actor Tim Roth with his slicked-back blonde hair, Gross is all about protecting the festival from commercialism and safeguarding its participants' rights to free expression.

In that role, he navigates both sides of the First Amendment fence — defending the rights of Burning Man participants to let loose while fending off intrusions by the media and others seeking to chronicle the event on film.

But Gross said it's the burners' privacy that he holds paramount. That includes the right of some to get naked without photos winding up on the Internet.

In 2002, Gross sued to stop the sale of what Burning Man organizers considered unauthorized and surreptitiously recorded pornographic videos. Video Voyeurs agreed to settle the federal lawsuit for a confidential sum and to destroy their tapes, Gross said.

At the heart of his argument is the notion that Burning Man is a private event, albeit one held on public federal Bureau of Land Management property.

"Essentially Burning Man is a private party, with 30,000 of their closest friends invited," he said. "You can't just come and do whatever you want."

Gross is experienced in First Amendment law, most recently defending blogger-journalist Nicholas Ciarelli against a lawsuit from Apple accusing him of publishing trade secrets on his ThinkSecret blog.

Gross is defending the media's First Amendment rights in that high-profile case, while as Burning Man's lawyer he helped the festival put controls in place on both media

coverage and documentary filmmakers.

Reining in the Media

All filmmakers must agree to have their finished product reviewed by organizers to make sure it doesn't violate participants' privacy, he said. As a result, Burning Man has authorized some poor quality videos and spiked others containing gratuitous nudity, he said.

Members of the news media have to buy their \$280 tickets like everyone else and agree to the festival's terms and conditions. One year the festival rejected CNN because the network would not agree to embargo its footage after two weeks, Gross said.

CNN's former general counsel, David Kohler, now a professor at Southwestern Law School in Los Angeles, didn't remember that dispute, but he said no news organization likes to have restrictions placed on coverage because it sets a dangerous precedent.

"That could really spiral out of control," he said.

When it comes to private events held on public land, Kohler recalled a battle CNN had with NBC over preferential filming rights in Atlanta's Centennial Olympic Park, a public park built for the games in 1996.

The issue became moot when the park was bombed, turning it into the site of a major news event.

Burning Man's limits on freedom of the press seem to be on solid legal ground, said a Constitutional law professor at Hastings College of the Law.

Supreme Court Precedent

Any challenge would probably have to be directed not at event organizers, but at the federal government for agreeing to the restrictions, said Joseph Grodin, a former justice of the California Supreme Court who teaches at Hastings.

Private groups, even when they congregate on public property, have the right to restrict speech, he said, referencing a 1995 U.S. Supreme Court decision that allowed a gay group to be excluded from Boston's annual St. Patrick's Day Parade, *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557.

But when the free speech rights of burners are threatened, Gross stands up for them.

He played mediator after the local sheriff in Nevada objected to one camp's neon sign depicting two men in a suggestive pose. After some negotiation, the campers agreed to bring the sign inside their tent. They then conducted a demonstration on the playa against censorship.

"The organization isn't looking for a fight," Gross said, preferring to settle issues through skillful negotiation.

From a legal standpoint, Burn-

ing Man essentially operates a campground by providing the bare necessities such as toilets and ice, he said. Only this campground temporarily becomes the fourth-largest city in Nevada. The cost to manage the temporary outpost last year was \$8.3 million, not including the many contributions by participants whose goal is to leave no trace.

"It's pretty wonderful all these people are willing to donate so much of their time and energies," he said.

During the weeklong festival, which culminates in the burning of a 40-foot-tall wooden "man," many of the issues Gross is confronted with concern law enforcement.

Drug Enforcement

Although Burning Man organizers pride themselves on the small number of arrests that take place, Gross said he sometimes finds himself fending off an aggressive police force eager to crack down on recreational drug use.

For example, one year police officers began walking into tents and conducting searches without asking for permission, which to him was a clear violation of the Fourth Amendment.

"It's very clear under the law that your motor home is a residence," Gross said. "(Law enforcement) thought they could get away with it. They were sort of acting like they were at an arcade shooting gallery, let me see how many ducks I can take down."

Gross dealt with the conflict by bringing it up at the daily meeting organizers have with the various agencies that provide services. Several national media organizations were in attendance.

Police agreed to talk about the issue privately, and ultimately they backed off.

But it wasn't long before police discovered a new way to try to get around the Fourth Amendment, Gross said.

An officer would witness something that triggered probable cause to search a participant. But the officer would wait until the suspect returned to his camp to conduct a search.

"People were feeling very threatened by this," he said.

Lightning's whimsical partner on the playa is Thunder, also known as San Francisco lawyer David Cutler.

Cutler declined a request for an interview this week and referred questions to Marian Goodell, also known as the Mistress of Communication, who could not be reached for comment in the busy days leading up to the event.

According to its Web site, Burning Man's legal team is comprised of more than 25 qualified volunteers from several states. Their specialties cover general practice, litigation, real estate, intellectual property, criminal, employment and constitutional law.

"With all of these professionals at hand, the Burning Man Project has"

the luxury of second (or even third) opinions about complicated legal issues," writes Ray Allen, executive project manager.

Goodell and five others make up Black Rock City LLC, the entity that owns and manages the festival.

With the help, once again, of lawyers, the group formed a limited liability corporation that is unique in that directors can't transfer their interest in the company to someone else. The directors make decisions by consensus.

Over the years, the organization has grown up organically. Communal rules only develop as specific needs arise. The lawyers then review the fine print.

One example is the Department of Mutant Vehicles, which sprang up in response to the growth of motorcycles, hot rods and even Mad Max type vehicles on the playa. The DMV now licenses all the "art cars" at the festival.

One of the DMV's requirements is subjective — the vehicle has to be an expression of art and not just a motorcycle with streamers.

The other requirement is safety. La Contessa, a 40-foot Spanish galleon ship built on top of a school bus, was required to have two spotters with walkie-talkies and a speed limit of 5 mph because the driver's vision is obstructed.

Gross looked over the DMV's checklist and regulations, but found the group was doing an excellent job on its own.

Trademark Protection

The need for lawyers doesn't stop when the festival ends.

A good part of their time is spent protecting the Burning Man trademark.

Burning Man refuses to license its name to anyone, even though it could be quite profitable, Gross said.

But the group works hard to make sure no one else is making money off them either — from eBay auctions to meta tags, invisible language on a Web site that can influence search engine results.

On the back of every event ticket participants are warned that any commercial use of the festival is prohibited. (Apparently that didn't apply in the year 2000 when the San Francisco law firm Thelen Reid & Priest rented a 34-foot RV for attorneys attending the event as a business retreat and as client development.)

Lawyers for the group deal with land use issues as well. Recently, the Bureau of Land Management issued Burning Man a five-year permit for the event, contingent upon an annual review of terms and conditions of the permit.

No one knows how many lawyers attend the festival each year.

Many of the lawyers who attend go to the festival with their non-lawyer friends, said Gross; who will be camping with the organizers this year.

refuse, as well."

Tori Osborne, the mayor's special adviser on homeless issues, attended the press conference and subsequent community meeting.

"A clearance strategy is not LAPD's strategy," she said. "And certainly not the mayor's strategy. But Pete White, co-director

Mortgage Con Prosecution O

By Marcy Gordon
Associated Press

WASHINGTON — Mortgage finance giant Fannie Mae avoids criminal prosecution over its alleged multibillion-dollar accounting fraud, the latest twist in a saga of intrigue involving a politically potent company.

The decision, first announced Thursday by the government-sponsored company, marks a more break in the succession high-profile financial prosecutions in recent years.

Federal prosecutors in Washington confirmed they had shut down their investigation of Fannie Mae's faulty accounting after two years. But the Securities and Exchange Commission still could bring civil actions against individual executives, including people no longer with Fannie Mae, with the burden of proof less stringent than in criminal prosecutions.

Regulators said the scheme included manipulations to reach quarterly earnings targets so Fannie Mae executives could pocket hundreds of millions in bonus from 1998 to 2004. Also, the d

Court Suspended Won Big Fen-

By Roger Alford
Associated Press

FRANKFORT, Ky. — The state's highest court suspended three attorneys Thursday over questions about how they divided a \$200 million settlement over the fen-phen diet drug.

The ruling by the Kentucky Supreme Court came after a lower court judge found that the Lexington attorneys breached their duty about 440 clients they represent against drugmaker Wyeth.

The plaintiffs were among tens of thousands who sued Wyeth which pulled the fenfluramine habit off the market in 1993 amid reports that some users had heart valve damage and a few had a deadly lung condition. Fen-phen was never an FDA-approved combination.

The clients of William Gallion Shirley Cunningham Jr. and Melbourne Mills received about \$4 million in a 2001 settlement with Wyeth. The rest was split among attorneys and consultants, according to Linda Gosnell, chief counsel for