

ANIMAL LAW UPDATE



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Legislation proposed to enhance "Dangerous Dog" ownership to a felony.

S.6059/A.8842 was finally introduced, being sponsored by Assemblyman Tedisco and Senator Farley. Currently pending in the Agriculture Committee, this bill would amend and supplement section 123 of the Agriculture and Markets Law (the "dangerous dog" statute) increasing the penalty under Sec. 123(6) to a one thousand dollar fine (up from four hundred) and enhancing sections 7 and 8 to include a "civil penalty" of a Class "E" Felony level charge. Also added would be a new section 15 which provides for a search and seizure of a person's property who is in violation of the statute.

Both the Albany County Bar's Committee on Animals and the Law and the New York State Bar Committee on Animals and the Law will be issuing comments discussing this proposed legislation.

The proposed amendment is set forth below:
(note: new material appears in CAPS)

6. The owner of a dog who, through any act or omission, negligently permits his or her dog to bite a person, service dog, guide dog or hearing dog causing physical injury shall be subject to a civil penalty not to exceed ~~four hundred~~ **ONE THOUSAND** dollars in addition to any other applicable penalties.

7. The owner of a dog who, through any act or omission, negligently permits his or her dog to bite a person causing serious physical injury shall be subject to a civil penalty **UP TO A CLASS E FELONY PUNISHABLE BY A FINE OF** not to exceed ~~one FIVE~~ thousand ~~five hundred~~ dollars in addition to any other applicable penalties. Any such penalty may be reduced by any amount which is paid as restitution by the owner of the dog to the person or persons suffering serious physical injury as compensation for unreimbursed medical expenses, lost earnings and other damages resulting from such injury.

8. The owner of a dog who, through any act or omission, negligently permits his or her dog, which had previously been determined to be dangerous pursuant to this article, to bite a person causing serious physical injury, shall be guilty of a ~~misdemeanor~~ **CLASS E FELONY** punishable by a fine of not more than ~~three FIVE~~ thousand dollars, or by a period of imprisonment not to exceed ~~ninety days~~ **TWO YEARS**, or by both such fine and imprisonment in addition to any other applicable penalties. Any such fine may be reduced by any amount which is paid as restitution by the owner of the dog to the person or persons suffering serious physical injury as compensation for unreimbursed medical expenses, lost earnings and other damages resulting from such injury.

15. ANY PERSON FOUND TO BE IN VIOLATION OF SUBDIVISION SIX, SEVEN OR EIGHT OF THIS SECTION AND WHO HAS EVER BEEN CONVICTED OF ANY FELONY OFFENSE UNDER TITLE H OF PART THREE OF THE PENAL LAW SHALL BE SUBJECT TO FURTHER INVESTIGATION, INCLUDING, BUT NOT LIMITED TO A SEARCH OF SUCH PERSON'S PERSONAL AND REAL PROPERTY AND THE SEIZURE OF ANY ILLEGAL MATERIALS.

GROWING LEGAL CONCERNS IN MOBILE APPLICATION ("APP") TECHNOLOGY

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This past year saw an increase in litigation surrounding mobile technology, in particular, smart phones and tablet devices. Modern-age household names like Apple, Google and Samsung, have thrown their respective hats into the ring.

Even further, patent holding companies (sometimes referred to as "patent trolls") like Lodsys have initiated lawsuits against a number of mobile application developers, which originally included several small software developers. The Lodsys suits accuse the developers of infringing two patents directed towards an "in-app" payment technology.

The increase in litigation surrounding mobile phone technology only helps reiterate the value of a sound intellectual property strategy when developing and commercializing mobile applications ("Mobile Apps") and related businesses. For example, in developing and commercializing Mobile Apps, developers should be cognizant of their rights and the rights of others to trademarks, copyrights, and patents. Application names or tag phrases associated with a Mobile App such as "Angry Birds" can be protected using trademark filings, while the underlying source code and related images for the app can be protected via copyright registration. Even further, where the mobile app implements a novel and non-obvious process, the developer could potentially obtain patent protection over that process.

Each of these areas of protection, however, can have associated pitfalls. For example, developing a name or tag phrase that is for some reason unprotectable as a trademark could open the door for copycats and misuse of marks by others.

While copyright registration for source code and images can be a cost-effective solution for establishing initial protection of a Mobile App, a developer should be careful about using "open-source" software code when developing their application. Open-source code is publicly available code that is developed and shared amongst software developers without ownership rights. Because this code is essentially free for public use, it cannot be registered as a copyright. Therefore, building a Mobile App on the foundation of open source code can result in the developer having limited copyright protection in the future.

Patent protection is another potential avenue which developers can pursue, however, there are associated costs and risks with such a strategy as well. The timeframe for obtaining a patent on a Mobile App or its related software capabilities often exceeds 2-3 years. With the fast-paced advancement in mobile phone technology and the ever evolving tastes of Mobile App consumers, the Mobile App in question could be out of style before a patent is ever obtained.

Despite all of these concerns, the advancement of mobile phone technology presents great opportunity for developers, investors and consumers. Developers who keep intellectual property legal issues in mind when developing and commercializing their Mobile Apps will hopefully create a more robust product, providing well deserved protection and returns on investment.

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