



# The Franchise Valuations Reporter

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Welcome to our newsletter focusing on issues unique to our practice that we don't think are addressed anywhere else with respect to franchising: valuation and damages, cyber crime, expert testimony and tax nexus –the issues we know best, that matter to our clients - franchise executives and the consultants, attorneys and other professionals who advise them. We hope you find information that warns, informs and benefits you.

We are pleased to announce that Bruce Schaeffer has again been named as a “Legal Eagle” by *Franchise Times* magazine.

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## CyberCrime

### Cyber Ninjas Out of the Closet

The lid is off once-secret programs to deflect cyber attacks on government computers. Organizations as diverse as the Pentagon, the White House and public utilities are all scrambling to protect their infrastructures from attacks by criminal gangs and foreign governments. Defense contractor hiring managers are trolling websites, conferences and university computer engineering departments where the best and brightest computer security experts, a.k.a. hackers, congregate. According to press reports, security is no longer a matter of defense alone; the U.S. has to play offense as well. Government agencies, including the Dept. of Homeland Security, now sponsor war games using a mock-up of the Internet.

### U.S. Steps Up Effort on Digital Defenses

<http://www.nytimes.com/2009/04/28/us/28cyber.html?hp=&adxnnl=1&adxnnlx=1240923696-%20SuYjuCMuVCdi87Hn3Lg3Q&pagewanted=print>

### Obama Creating Cyber Czar Post

<http://www.washingtonpost.com/wp-dyn/content/article/2009/05/29/AR2009052900350.html?sid=ST2009052902430>

### White House Cyberspace Policy Review

[http://www.whitehouse.gov/assets/documents/Cyberspace\\_Policy\\_Review\\_final.pdf](http://www.whitehouse.gov/assets/documents/Cyberspace_Policy_Review_final.pdf)

### Simple Physical Security

**Lawyers Be Careful:** A Manhattan law firm got rid of their old files by leaving six

dumpsters stuffed with confidential case files out on the street. The private documents, mostly from the 1990s, included addresses, medical records and Social Security numbers, according to the *New York Daily News*. “This information would be considered a treasure trove by any identity thief,” said security consultant Rob Douglas. The files belonged to the Frenkel Lambert Weiss Weisman & Gordon law firm.

Several passersby were digging through the mountain of paper. “I am totally freaked out. How could my information be dumped on a street?” said a 44-year-old Bronx woman whose Social Security number and medical records were among the tossed documents.

[http://www.nydailynews.com/ny\\_local/2009/05/08/2009-05-08\\_law\\_firm\\_clients\\_files\\_filled\\_with\\_personal\\_data\\_left\\_in\\_six\\_dumpsters\\_on\\_street.html](http://www.nydailynews.com/ny_local/2009/05/08/2009-05-08_law_firm_clients_files_filled_with_personal_data_left_in_six_dumpsters_on_street.html)

## **CYBER CRIME WHITE PAPER**

We recently produced a white paper on cyber security for Wolters Kluwer’s CCH, the publishers of the *Business Franchise Guide* and our treatise *Franchise Regulation and Damages*. To download our PDF, go to: [http://www.FranchiseValuations.com/press/cybercrime\\_whitepaper.pdf](http://www.FranchiseValuations.com/press/cybercrime_whitepaper.pdf)

## **Nexus Notes**

Cash-starved states like Massachusetts are going after businesses that profit from their residents but are headquartered outside their borders.

## **MORE REASONS TO BE FRIGHTENED!**

### **Links to Recent Articles on Cyber-Crime**

Sensitive Clinton Administration Data Lost  
<http://news.aol.com/article/clinton-administration-data-missing/490874?icid=main|htmlws-sb|dl5|link5|http%3A%2F%2Fnews.aol.com%2Farticle%2Fclinton-administration-data-missing%2F490874>

Contractors Vie for Plum Work, Hacking for the United States

<http://www.nytimes.com/2009/05/31/us/31cyber.html?em>

BlackBerry Maker Warns on Security Vulnerability

<http://www.nytimes.com/reuters/2009/06/03/us/politics/politics-us-blackberry-security.html>

Franchise Technology Risk Management, a unit of Franchise Valuations, provides cyber security analysis, penetration testing and consulting services for the franchise, distributorship and dealership community. If your company is interested in discussing how we can improve your security profile, please contact: [Henfree@FTRM.biz](mailto:Henfree@FTRM.biz)

According to *BusinessWeek* of May 21, 2009:

Companies have long flocked to low-tax locales like Delaware and South Dakota. But those tax advantages may soon be in jeopardy. States, which collectively could face a \$50 billion budget shortfall over the next two years, are scrambling for

cash and may start hitting up companies for more money—even companies outside their borders. “The states are turning over every rock for money,” says Richard D. Pomp, a professor at the University of Connecticut School of Law. “If they haven’t been looking at the issue, they will.”

Massachusetts officials just got the green light from the state’s highest court to collect taxes from a multitude of companies headquartered elsewhere. Last year the state moved to collect more than \$2 million in taxes from credit-card giant Capital One Financial. The state claimed that Cap One made a sizable chunk of money from cardholders who reside there, and so the company had to fork over taxes on the income.

Cap One is petitioning the U.S. Supreme Court to hear the case. If the nation’s top court takes up the matter—and rules in the company’s favor—it could halt the momentum nationwide to tax out-of-state companies. But the U.S. Supreme Court may not be sympathetic to Cap One. The justices refused to review a similar case in 2007 involving MBNA, now owned by Bank of America. Indiana courts decided the credit-card issuer owed taxes on fees and interest paid by local cardholders. Like Cap One, MBNA didn’t have an office in the state. The differences between the two cases aren’t meaningful, explains Washington

(D.C.) attorney Donald M. Griswold, who represented MBNA in the matter. That’s why, he says, “there’s a snowball’s chance in hell” the Supreme Court will hear Cap One’s case.

### New York Law Change Requiring Information Returns from Franchisors

As we alerted most on our mailing list, somehow New York passed a budget bill with little or no legislative history which mandates that all franchisors file information returns giving the names and addresses of all their franchisees in the State. The legislation provides that such returns will also ask for information with respect to all payments from the franchisees to the franchisors and records of all sales from the franchisors to their franchisees. For all intents and purposes, it mandates a sales tax audit of the franchisees and an income tax audit of the franchisors. Furthermore, I know of no statute like the new New York legislation in the country demanding information returns of all franchise systems showing revenues in a form that’s easily collated.

## **Daubert and Valuations**

### Georgia --Property Tax: Factors Considered in Determining Fair Market Value Changed

The factors that a local Georgia property tax assessor must consider when determining fair market value of real property have been

changed to include criteria pertaining to foreclosure sales, bank sales, other financial institution-owned sales, or distressed sales of comparable property. The tax assessor must also consider the decreased value of the property based on limitations and

restrictions resulting from the property being in a conservation easement.

Protecting Minority Shareholder in Close Corporation Valuation Proceedings

A comprehensive article covering this issue of “fair value” or “appraisal rights” can be found in the May 2009 issue of the *New York State Bar Association Journal* and written by Daniel B. Moar.

The information provided in this newsletter is for informational purposes only and should not be construed as legal or expert advice which can only be obtained from appropriate professionals. Franchise Valuations, Ltd. and Franchise Technology Risk Management provide such expert advice on the topics addressed herein and can be reached at 404 Park Avenue South, New York, NY 10016. 212.689-0400 or [www.franchisevaluations.com](http://www.franchisevaluations.com) and [www.ftm.biz](http://www.ftm.biz)