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Copyright Part 2

Class 4 - September 26, 2008

SI 519/PubPol 688

Bryce Pilz

Fall 2008

Some Coming Events



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Flash of Genius – Opening October 3

Story of the invention of the intermittent windshield wiper.

Questions and Examples

- Karaoke
- MLK Jr. Speech
- Concept of Derivative Works
- Concept of Compilations
- Examples

Questions and Examples

- **Karaoke**
- MLK Jr. Speech
- Concept of Derivative Works
- Concept of Compilations
- Examples

Karaoke



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- In-home machines sold charged lower-royalties
 - Percentage of price of unit
- Unites used in bars/clubs handled differently
- Different parts of the copyright bundle of rights are implicated

Compulsory Licenses – Sec. 115

- Further distribution of musical phonorecords that have previously been distributed to public with owner's consent
- Third parties may obtain compulsory license for distribution without express permission
- Procedure – (1) notice; (2) royalty
- Royalty set by “royalty judges”

Compulsory Licenses Not Available

- Phonorecord defined as including “only sound”
 - So, must karaoke machines (include CD&G machine are not phonorecords)
- So, compulsory licensing not available
- “Synch” licensing is needed
 - Reproducing a work as part of an audiovisual work (ex. TV shows and movies)

Synch License

- “Synch” licensing is needed
 - Reproducing a work as part of an audiovisual work (ex. TV shows and movies)
- Not covered by statute
 - High fees
 - Owners can refuse (e.g., U2, ABBA, Bon Jovi)
- \$350-1000 per song; 7-10 years
- Permitted to make copies at statutory rates (9.1 cents / song under 5 minutes)

Lyric License

- Lyrics typically not covered by synch license (but can be under a broad license)
- 4-8 cents per sheet

Current Debate

- Synch royalties too high → many “bootleggers”
- Compulsory licensing scheme needed
 - Expand definition of phonorecord
 - Other than lyrics, karaoke disc no different than an album
 - Albums traditionally not charged to print lyrics on cover

Questions and Examples

- Karaoke
- **MLK Jr. Speech**
- Concept of Derivative Works
- Concept of Compilations
- Examples

MLK Jr. Speech

- Estate of Martin Luther King Jr. v. CBS
- Issue was whether “I Have a Dream” speech was copyrighted?
- 1909 Act governed – require “formalities”
- King had not registered copyright prior to giving speech; gave copies of speech to media
- CBS used 60% of speech in 1994 documentary; refused to pay royalties

MLK Jr. Speech

- 1909 Act – work in first term as of 1978, gets 28 year term + 67 year renewal term
 - Estate had executed renewal term in 1991
- 11th Cir – limited publication to media is not a publication that prevents copyrighting an unregistered mark
- “I have a dream speech” is copyrighted and owned by Estate of MLK Jr.

Questions and Examples

- Karaoke
- MLK Jr. Speech
- **Concept of Derivative Works**
- Concept of Compilations
- Examples

Derivative Works

- One of the bundle of rights given to the copyright owner in sec. 106
 - NOT something you are permitted to do (unless exception like fair use applies)
- “a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed or adapted.”

Derivative Works

- Ex) novel → motion picture
- Ex) second version of software
- Ex) translation
- Ex) remixing previously released track with new instrumentation
- Copyright in DW extends only contributed by author of DW and does not impact rights or term of original work

Questions and Examples

- Karaoke
- MLK Jr. Speech
- Concept of Derivative Works
- **Concept of Compilations**
- Examples

Compilations

- Similar to Derivative Works in that copyright extends to original authorship added
 - No impact on original works
- Except that 201(c) gives privileges to author of compilation if the original works were submitted (National Geographic Case)

Questions and Examples

- Karaoke
- MLK Jr. Speech
- Concept of Derivative Works
- Concept of Compilations
- **Examples**

Example – Healing Foods Pyramid

Healing Foods Pyramid

Source: <http://www.med.umich.edu/umim/clinical/pyramid/index.htm>

Healing Foods Pyramid (cont.)

- Re-drawn by publisher but with changes
 - Added garlic, onions, and corn to vegetables category
 - Added pretzels to grains category
- Problem?

Example – Grant Proposal

- Third party submits grant proposal to UM to receive internal funding
- Grant marked with © notice
- Grant does not win funding
- Third party asks UM to identify every individual who saw the proposal
 - accuses UM of violating confidentiality of grant because grant was marked as copyrighted
- Problem?

Lessig – Who Owns Culture Part 1



BY: Larry Lessig ([Official website](#))
<http://creativecommons.org/licenses/by/3.0/deed.en>



<http://www.youtube.com/watch?v=jJ3pa-t8LBo>

Eldred v. Ashcroft



BY: Padraic ([Wikipedia](#))

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CTEA Coverage

- Does not apply to works already in the public domain
- Does not apply to works created but not published or copyrighted by 1978 and still not published by 2002

CTEA Rationales - Congress

- Harmonization with EU
- Life of creator + one generation
- Allow owners to take advantage of technological developments that have extended © life
- More income to corp. owners to subsidize new works
- Incentive to preserve existing works in digital form

Progress Clause Decision

- Pp. 8-13
- 1) CTEA violates “limited Time” provision of Progress Clause
 - “a time span appropriately ‘limited’ as applied to future copyrights does not automatically cease to be ‘limited’ when applied to existing copyrights”
- No evidence of purpose to evade on part of Congress
- History: Congress has done this before

Source: Eldred v. Ashcroft, 537 U.S. 186 (2003)

Progress Clause Decision

- pp. 13-17
- 2) CTEA not a rationale exercise of congress's authority under the Progress Clause
 - Harmonize with Europe
 - Increase incentives
 - Won't second guess congress
 - “rational basis” is easy to satisfy

Eldred's Arguments

- P. 20
- 1) CTEA overlooks the requirement of “originality” (*Feist*)
 - Feist dealt with “creative spark,” not duration
 - So, apparently no originality requirement for extending term

Eldred's Arguments

- Pp. 20-22
- 2) CTEA does not promote the Progress of Science
 - Defers to Congress
 - “generally for Congress, not the courts, to decide how best to pursue the Copyright Clause’s objectives.”

Source: Eldred v. Ashcroft, 537 U.S. 186 (2003)

Eldred's Arguments

- Pp. 23-27
- CTEA violates copyright *quid pro quo* (only in exchange for a writing)
 - Given the history of extensions “author or work created in the last 170 years would reasonably comprehend, as the ‘this’ offered her, a copyright not only for the time in place when protection is gained, but also for any renewal or extension legislated during that time.”

Source: Eldred v. Ashcroft, 537 U.S. 186 (2003)

First Amendment Decision

- Pp. 28-31
- Copyright incorporates its own speech-protective purposes and safeguards
 - 1) idea/expression
 - 2) fair use
- CTEA supplements the safeguards
 - Certain rights for works in their last 20 years
- So, no strict scrutiny – in fact “no further scrutiny”

Thoughts

- “restoration and digitization” rationale only extends to some types of works
- Harms
 - Only 2% of copyrights between 55-75 years old retain commercial value (CTEA results in several billion dollars of royalties from public)
 - Tough to track down owners of old works
- Benefits not that great
 - Present value of last 20 years is roughly 7 cents
 - Uniformity is not perfect and is over-valued
 - Disappearance of monopoly is important to disseminate expression

Kahle v. Ashcroft

- Kahle is Chairman of Board of Internet Archive
- IA would like to include “orphan” works
- Kahle lost on same grounds as Eldred
- Supreme Court denied *cert.*

Lessig – Who Owns Culture Part 2



BY: Larry Lessig ([Official website](#))
<http://creativecommons.org/licenses/by/3.0/deed.en>



<http://www.youtube.com/watch?v=uqtwb0NHdxU>

Greenberg v. National Geographic (2001)

201(c)

- Contributions to Collective Works:

“Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole and vests initially in the author of the contribution...”

Source: U.S. Copyright Act of 1976

201(c)

- “...In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.”

201(c) Rationale

- 1909 Law – freelance authors risked losing copyright in individual contribution absent a printed copyright notice in author's name
- 1976 Act rejected idea of indivisibility; adopted bundle of rights theory
- 201(c) intended to limit what the author gives away

Issue:

- Is CNG a new collective work, and therefore an unauthorized use of the freelance author's copyright?
- Or, is CNG a "revision" and therefore covered by the privilege given to the publisher under 201(c).

NYT v. Tasini

- Freelance authors' articles originally appeared in NYT, Newsday, and Sports Illustrated
- Reproduced articles in electronic databases (Nexis, NYTO, and GPO)
- Articles viewed in isolation of context of original print publication

NYT v. Tasini

- “revision” = “new version” and “version” for purposes of 201(c) is a “distinct form of something regarded by its creators or others as one work.”
Source: U.S. Copyright Act of 1976
- Critical fact: Databases presented articles to user “standing alone and not in context.”
 - Different from microfilm
Source: New York Times Co. v. Tasini, 533 U.S. 483 (2001)
- Databases are NOT “revisions” → copyright infringement

National Geographic

- Maintains context → okay under Tasini
- Does added material make CNG more than a “revision”?
 - Brief visual introduction (acting as a virtual cover for the collection of magazines)
 - Analogous to new cover on encyclopedia set

What does this mean?

- Tasini? – can't remove freelance articles from context when creating electronic databases
- National Geographic – if you maintain the context of the articles, you can add introductory material to re-package the collection
- Most important: contracts can change all of this!
 - Most publishers changed contracts in mid-90's to expressly include electronic rights

DMCA

- Take down procedures for service providers: very specific notice, under oath.
 - Notice to author as well.
 - Universities considered service providers
- Anti-circumvention provisions
 - Can't make or sell device to circumvent technical measures for purposes of accessing or copying
- No fair use exception

Orphan Works

- Problem?
- Ongoing debate – view of legislative process
- Why are photographers opposed?
- Problem: things like “good faith” and “reasonable compensation” can only be decided in litigation
- Thoughts?

Lessig – Them, Soon

Lessig Proposals

- More formalities
 - Registration?
 - Marking?
- Shorter terms
- Free use v. fair use
 - Derivatives – shorter term, scope
- Music – 4 types of copying
 - How big/small is type A
 - Quality is same

Copyright Summary

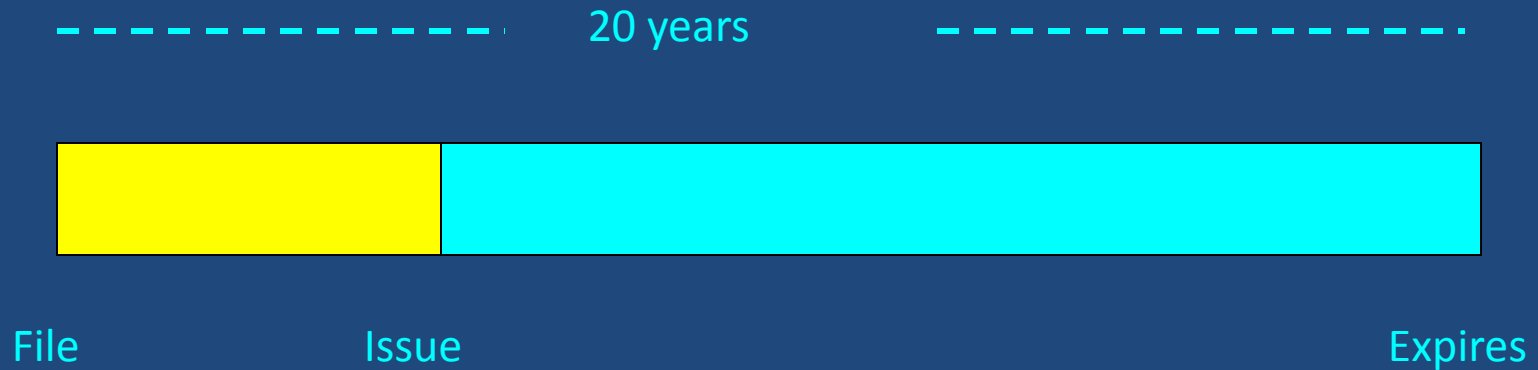
- Purpose: to promote learning
- Idea/ expression and fair use
- No formalities
- Only protects certain rights to exclude others (independent creation is okay)
- Bundle of rights – divisible
- Right to producing derivative works is part of those exclusive rights

Copyright Summary

- Lots of rhetoric on both sides
 - Beware of false warnings from owners
 - On free culture side: note that very few defend actual copying of something you would otherwise purchase
 - Concern is about collateral damage

Patent Primer

- Significant monopoly
- 20 years from filing
- Takes 3-5 years to get your patent



Patent Primer

- Why such as shorter term?
 - Monopoly is so much broader
- Covers what you define in words to be your invention
 - Copyright: source code and screens
 - Patent: Method performed (steps a, b, c, and d)

Patent Primer

- Requirements
 - Statutory subject matter: process, machine, manufacture, or composition of matter (or any new and useful improvement thereof)
 - Useful (easy)
 - New
 - Nonobviousness
 - Written description

- [54] **METHOD AND SYSTEM FOR PLACING A PURCHASE ORDER VIA A COMMUNICATIONS NETWORK**
- [75] **Inventors:** Peri Hartman; Jeffrey P. Bezos; Shel Kaphan; Joel Spiegel, all of Seattle, Wash.
- [73] **Assignee:** Amazon.com, Inc., Seattle, Wash.
- [21] **Appl. No.:** 08/928,951
- [22] **Filed:** Sep. 12, 1997
- [51] **Int. Cl.⁶** G06F 17/60
- [52] **U.S. CL.** 705/26; 705/27; 345/962
- [58] **Field of Search** 705/26, 27; 380/24, 380/25; 235/2, 375, 378, 381; 395/188.01; 345/962

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(List continued on next page.)

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Attorney, Agent, or Firm—Perkins Coie LLP

[57] **ABSTRACT**

A method and system for placing an order to purchase an item via the Internet. The order is placed by a purchaser at a client system and received by a server system. The server system receives purchaser information including identification of the purchaser, payment information, and shipment information from the client system. The server system then assigns a client identifier to the client system and associates the assigned client identifier with the received purchaser information. The server system sends to the client system the assigned client identifier and an HTML document identifying the item and including an order button. The client system receives and stores the assigned client identifier and receives and displays the HTML document. In response to the selection of the order button, the client system sends to the server system a request to purchase the identified item. The server system receives the request and combines the purchaser information associated with the client identifier of the client system to generate an order to purchase the item in accordance with the billing and shipment information whereby the purchaser effects the ordering of the product by selection of the order button.

26 Claims, 11 Drawing Sheets



Source: U.S. Patent 5,960,411

Patents

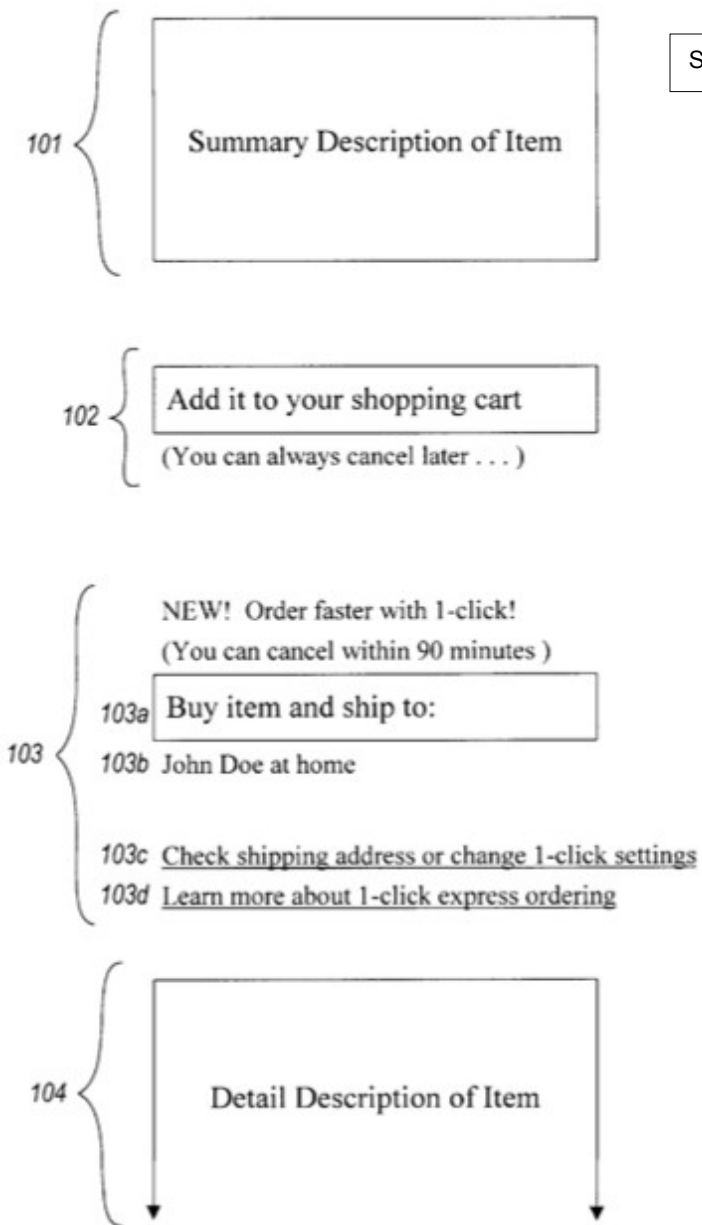


Fig. 1A

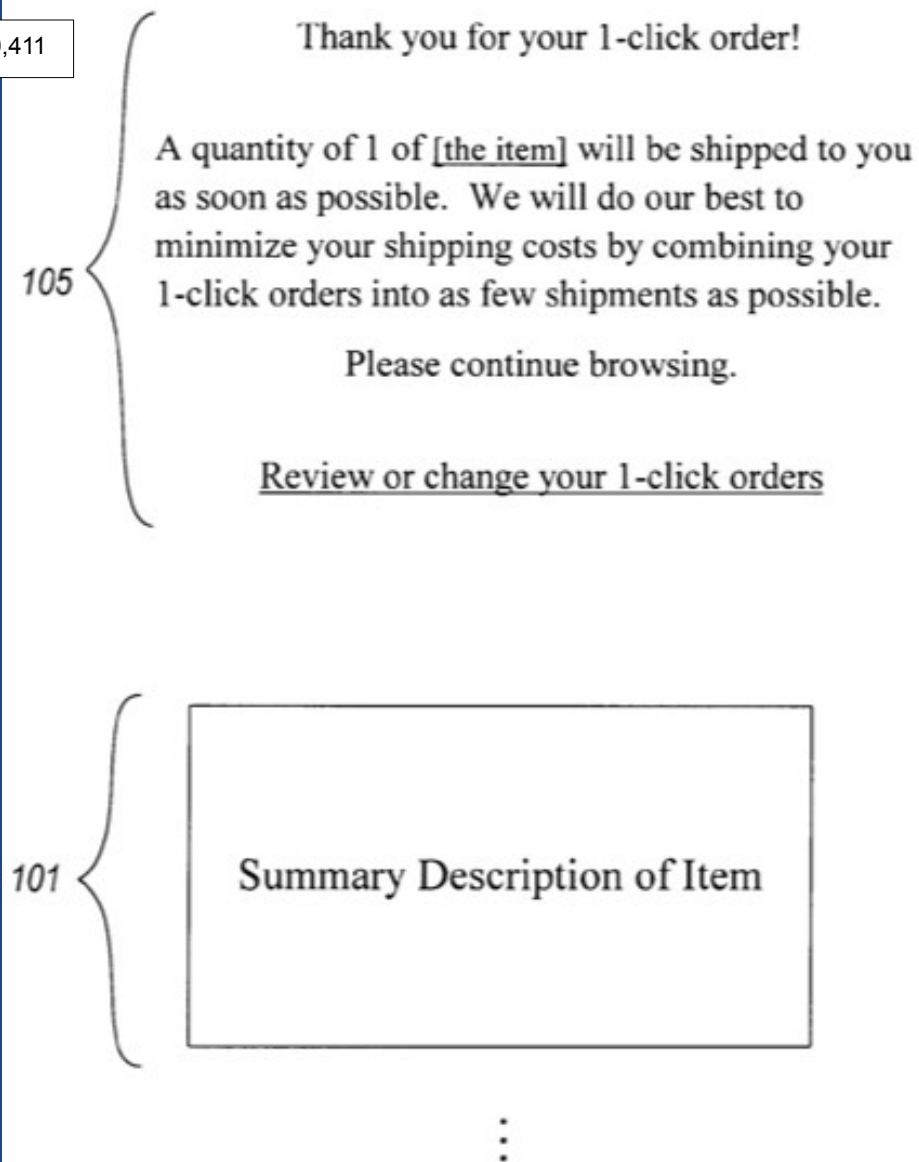


Fig. 1B

**METHOD AND SYSTEM FOR PLACING A
PURCHASE ORDER VIA A
COMMUNICATIONS NETWORK**

TECHNICAL FIELD

The present invention relates to a computer method and system for placing an order and, more particularly, to a method and system for ordering items over the Internet.

BACKGROUND OF THE INVENTION

The Internet comprises a vast number of computers and computer networks that are interconnected through communication links. The interconnected computers exchange information using various services, such as electronic mail, Gopher, and the World Wide Web ("WWW"). The WWW service allows a server computer system (i.e., Web server or Web site) to send graphical Web pages of information to a remote client computer system. The remote client computer system can then display the Web pages. Each resource (e.g., computer or Web page) of the WWW is uniquely identifiable by a Uniform Resource Locator ("URL"). To view a specific Web page, a client computer system specifies the URL for that Web page in a request (e.g., a Hypertext Transfer Protocol ("HTTP") request). The request is forwarded to the Web server that supports that Web page. When that Web server receives the request, it sends that Web page to the client computer system. When the client computer system receives that Web page, it typically displays the Web page using a browser. A browser is a special-purpose application program that effects the requesting of Web pages and the displaying of Web pages.

Currently, Web pages are typically defined using Hypertext Markup Language ("HTML"). HTML provides a standard set of tags that define how a Web page is to be displayed. When a user indicates to the browser to display a Web page, the browser sends a request to the server computer system to transfer to the client computer system an HTML document that defines the Web page. When the requested HTML document is received by the client computer system, the browser displays the Web page as defined by the HTML document. The HTML document contains various tags that control the displaying of text, graphics, controls, and other features. The HTML document may contain URLs of other Web pages available on that server computer system or other server computer systems.

The World Wide Web is especially conducive to conducting electronic commerce. Many Web servers have been developed through which vendors can advertise and sell product. The products can include items (e.g., music) that are delivered electronically to the purchaser over the Internet and items (e.g., books) that are delivered through conventional distribution channels (e.g., a common carrier). A server computer system may provide an electronic version of a catalog that lists the items that are available. A user, who is a potential purchaser, may browse through the catalog using a browser and select various items that are to be purchased. When the user has completed selecting the items to be purchased, the server computer system then prompts the user for information to complete the ordering of the items. This purchaser-specific order information may include the purchaser's name, the purchaser's credit card number, and a shipping address for the order. The server computer system then typically confirms the order by sending a confirming Web page to the client computer system and schedules shipment of the items.

Since the purchaser-specific order information contains sensitive information (e.g., a credit card number), both

vendors and purchasers want to ensure the security of such information. Security is a concern because information transmitted over the Internet may pass through various intermediate computer systems on its way to its final destination. The information could be intercepted by an unscrupulous person at an intermediate system. To help ensure the security of the sensitive information, various encryption techniques are used when transmitting such information between a client computer system and a server computer system. Even though such encrypted information can be intercepted, because the information is encrypted, it is generally useless to the interceptor. Nevertheless, there is always a possibility that such sensitive information may be successfully decrypted by the interceptor. Therefore, it would be desirable to minimize the sensitive information transmitted when placing an order.

The selection of the various items from the electronic catalogs is generally based on the "shopping cart" model. When the purchaser selects an item from the electronic catalog, the server computer system metaphorically adds that item to a shopping cart. When the purchaser is done selecting items, then all the items in the shopping cart are "checked out" (i.e., ordered) when the purchaser provides billing and shipment information. In some models, when a purchaser selects any one item, then that item is "checked out" by automatically prompting the user for the billing and shipment information. Although the shopping cart model is very flexible and intuitive, it has a downside in that it requires many interactions by the purchaser. For example, the purchaser selects the various items from the electronic catalog, and then indicates that the selection is complete. The purchaser is then presented with an order Web page that prompts the purchaser for the purchaser-specific order information to complete the order. That Web page may be prefilled with information that was provided by the purchaser when placing another order. The information is then validated by the server computer system, and the order is completed. Such an ordering model can be problematic for a couple of reasons. If a purchaser is ordering only one item, then the overhead of confirming the various steps of the ordering process and waiting for, viewing, and updating the purchaser-specific order information can be much more than the overhead of selecting the item itself. This overhead makes the purchase of a single item cumbersome. Also, with such an ordering model, each time an order is placed sensitive information is transmitted over the Internet. Each time the sensitive information is transmitted over the Internet, it is susceptible to being intercepted and decrypted.

SUMMARY OF THE INVENTION

An embodiment of the present invention provides a method and system for ordering an item from a client system. The client system is provided with an identifier that identifies a customer. The client system displays information that identifies the item and displays an indication of an action (e.g., a single action such as clicking a mouse button) that a purchaser is to perform to order the identified item. In response to the indicated action being performed, the client system sends to a server system the provided identifier and a request to order the identified item. The server system uses the identifier to identify additional information needed to generate an order for the item and then generates the order.

The server system receives and stores the additional information for customers using various computer systems so that the server system can generate such orders. The server system stores the received additional information in association with an identifier of the customer and provides

11

12

a single-action ordering component including:
 a data storage medium storing information for a plurality of users;
 a receiving component for receiving requests to order an item, a request including an indication of one of the plurality of users, the request being sent in response to only a single action being performed; and
 an order placement component that retrieves from the data storage medium information for the indicated user and that uses the retrieved information to place an order for the indicated user for the item; and
 an order fulfillment component that completes a purchase of the item in accordance with the order placed by the single-action ordering component.

10. The server system of claim 9 wherein the request is sent by a client system in response to a single action being performed.

11. A method for ordering an item using a client system, the method comprising:
 displaying information identifying the item and displaying an indication of a single action that is to be performed to order the identified item; and
 in response to only the indicated single action being performed, sending to a server system a request to order the identified item
 whereby the item is ordered independently of a shopping cart model and the order is fulfilled to complete a purchase of the item.

12. The method of claim 11 wherein the server system uses an identifier sent along with the request to identify additional information needed to generate an order for the item.

13. The method of claim 12 wherein the identifier identifies the client system and the server system provides the identifier to the client system.

14. The method of claim 11 wherein the client system and server system communicate via the Internet.

15. The method of claim 11 wherein the displaying includes displaying an HTML document provided by the server system.

16. The method of claim 11 including sending from the server system to the client system a confirmation that the order was generated.

17. The method of claim 11 wherein the single action is clicking a mouse button when a cursor is positioned in a predefined area of the displayed information.

18. The method of claim 11 wherein the single action is a sound generated by a user.

19. The method of claim 11 wherein the single action is a selection using a pointing device.

20. The method of claim 11 wherein the single action is depressing of a key on a key pad.

21. The method of claim 11 wherein the single action is selecting using a pointing device.

22. The method of claim 11 wherein the single action is selection of a displayed indication.

23. The method of claim 11 wherein the displaying includes displaying partial information supplied by the server system as to the identity of a user of the client system.

24. The method of claim 11 wherein the displaying includes displaying partial shipping information supplied by the server system.

25. The method of claim 11 wherein the displaying includes displaying partial payment information supplied by the server system.

26. The method of claim 11 wherein the displaying includes displaying a moniker identifying a shipping address for the customer.

* * * * *

What is claimed is:

1. A method of placing an order for an item comprising:

Under control of a client system,
 Displaying information identifying the item; and

In response to only a single action being performed, sending a request to order the item along with an identifier of a purchaser of the item to a server system;
 Under control of a single-action ordering component of the server system,

.....
 Whereby the item is ordered without using a shopping cart model.

Right to exclude others from making, using, selling, or offering to sell anything that meets the elements of this claim.