

Protect Your Web Site

FROM LEGAL LAND MINES

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Note: This article applies to technical communicators living in the U.S. If you have an idea for an article about legal issues faced by technical communicators in other countries, please send them to intercom@stc.org.

Conducting business on the Internet is a lot like opening a traditional brick-and-mortar business. You encounter the same legal issues and the same potential for liability and litigation. However, many companies that set up shop on the World Wide Web don't take time to have their Web sites reviewed for legal land mines. Instead,

they wait until they are sued and then either fight or settle. Neither option is cost-effective, especially as legal problems can largely be avoided. Spending a bit of time and money up front to conduct a legal audit of your Web site will help you identify and minimize legal exposure. Every e-commerce Web site should be reviewed for such vital issues as copyright ownership, trademark and domain name issues, legal notices, disclaimers and terms of use, and privacy policies.

Ownership and Copyright

One of the most important aspects of your company's Web site is content ownership, which includes three separate issues. First, who created the Web site? If the site was created by an employee, it

likely belongs to the company. If, on the other hand, it was developed by an independent contractor or Web site development company, it is likely owned by that contractor or vendor, unless your company has legally obtained ownership.

The issue of site ownership is especially important when your site needs to be updated or revised. The owner of a creative work (including Web sites) has control over who may revise that work. Uncooperative contractors or vendors can prevent you from making changes to your site or insist that they alone do the work.

The second ownership issue focuses on who created the content that your employee, contractor, or vendor incorporated into the site. If the developer "borrowed" content, including articles,

graphics, and sound files, from other Web sites, it's possible—even probable—that your site *and your company* are infringing on someone's copyright of that content.

Copyright infringement is serious business, with penalties that range from \$750 to \$150,000 per violation. Know the source of your Web site content and whether you have permission to post the material. If your site contains borrowed material, obtain the rights to use it.

The third ownership issue relates to whether you should register your Web site, or portions of the site, with the United States Copyright Office. While copyright registration is not required to ensure ownership, it is absolutely necessary if you want to sue another party for infringement.

A related issue has to do with federal legislation enacted several years ago. The Digital Millennium Copyright Act provides a host of benefits and protections to online service providers (OSPs), including safe harbors that protect OSPs from civil liability for the misdeeds of their subscribers. However, these benefits are available only if the OSP has fully complied with the requirements of the statute. These requirements include registering with the federal government and establishing procedures to remove content promptly if it is alleged to be infringing and to restore the content promptly if it is determined that no infringement has occurred.

Domain Names

Another important aspect of your company's Web site is that of domain names. If you're just starting your business, one of the most important things you can do is to choose and register your domain name (your "Web address") as soon as possible—ideally, before you even register your business name. This will prevent someone else from learning of your intentions and registering the domain name ahead of you.

Equally important is knowing when your domain name registration must be renewed and ensuring that it does not expire. Your domain name is an important part of your business. If you lose it because someone forgot to send in the renewal, you'll

lose a valuable business asset and risk confusing, even alienating, your customers when they can't find you on the Web, or they find someone else in your place.

Trademark

Proper trademark usage is vital to conducting business on the Internet. When using the trademarks of other companies, be sure that the use is noninfringing and that you acknowledge the trademark's ownership status. Exercise special care if you include trademarks in metatags, which are used by search engines to direct users to your site. Improper use of others' trademarks in metatags can lead to expensive, unpleasant, and unnecessary litigation.

With your own registered trademarks, be sure that your use is "in the manner of a mark," that is, as a modifier rather than a noun to ensure that you don't lose protection of that trademark. An example of this is "Kleenex *brand tissues*" rather than simply "Kleenex." (Kleenex is, of course, a registered trademark of Kimberly-Clark Worldwide, Inc.) You must also take steps to find and challenge potential infringers of your trademarks. If you don't, you risk losing your registration and, thus, exclusive use of your trademark.

Notices and Terms of Use

Legal notices and terms of use are essential components of a Web site, especially if your company is conducting electronic commerce. Appropriate legal disclaimers and warranties can limit your liability for the products and services you offer. Similarly, properly drafted and legally enforceable terms of use can help you avoid litigation by ensuring that your users understand and acknowledge the extent of your liability before they gain access to the site.

Privacy Policies

Preparing an effective privacy policy requires substantial effort to determine what information will be

collected, where it will be stored, how it will be used, and whether users can opt out of having certain information used in specific ways. Compliance with federal law, such as the Children's Online Privacy Protection Act, is vital to avoid legal entanglements. International law and the privacy directives of the European Union raise additional legal issues that you must navigate carefully.

Post your privacy policy on your Web site to inform those who visit your site how you will use the information you collect from them. Review and revise your privacy policy often, as the law in this area is constantly changing.

Conclusion

The power of the Internet has created a host of opportunities for communication and commerce. It also has created many ways for those who use the Internet, especially for business, to unwittingly leave themselves open to legal liability. Conducting regular legal reviews of your company's Web site is crucial to reducing your company's legal exposure and essential for doing business on the Internet. **■**

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