

FIVE GUIDELINES TO PROTECT YOUR INTERNET WEBSITE

First impressions are often the truest, the frequently paraphrased quotation attributable to the eighteenth century British essayist, William Hazlitt, has resounding significance in today's Internet age. Increasingly, Web sites are the first and sometimes primary interface that companies and entrepreneurs have with their customers, industry member constituents and even government agencies. Too often the lasting impression of Web sites, whether consumer-oriented, B2B driven or directed to government contracting and procurement opportunities, is that they are confusing and cumbersome to navigate – if they contain any content at all.

More troublesome is that Web sites may not comply with statutes and regulations that protect the privacy of consumers, including children under the age of 13 in particular, or which may expose their owners to violations of laws in the areas of fair advertising, competitive trade practices and intellectual property, among others. In addition, "active" Web sites, like Ecommerce sites that facilitate the online ordering of products or services, or Web sites that target prospective customers beyond the Web site owner's physical operating area, or that are broadcast to promote business capabilities in a Web site visitor's area can subject a Web site owner to the jurisdiction of a court in that particular locale, whether local, state or a foreign country.

According to available FCC statistical information, well more than 12 million U.S.

residences and businesses are connected by high-speed broadband access to the Internet. The expectations that wireless applications and devices will foster precipitous growth in Internet traffic over the next five years present significant additional opportunities and challenges for Web site owners. With this in mind, Web site owners are encouraged to periodically review or audit with legal counsel their Web sites to ensure that the corresponding Web pages convey the appropriate content, comply with legal precedents and authority, and are protected to the extent they contain or promote any proprietary information or materials.

Measures for the creation and maintenance of an effective Web site include the following guidelines intended to facilitate both easy navigation by viewers or visitors and the protection of the Web site owner.

Know Your Mission and Audience: An effective Web site reflects a well-articulated business plan or model. A company's mission or vision provides the structural framework for the overall scope of any Web site content. Creating or honing the Web site consistent with the business plan enhances not only the opportunity to convey to a visitor important aspects of the company vision but also can serve to track and assess from visitor exchanges the effectiveness of the corporate model -- whether the company mission is specifically directed to government organizations and agencies; or whether the business model is electronic commerce transactions with individual consumers; or is geared to highly

specialized B2B services; or broadly embraces a range of consumer and industry specific products and services.

Less Can be More: How much information to present on a Web site must be balanced with certain considerations. A significant consideration is the ideal of not over-saturating the visitor with too much content that poses ease-of-navigation hurdles tending to potentially diminish any viewer's lasting impression. As critical a consideration is the mandate to preclude competitors from gleaning possible trade secret or confidential information. Review of all content, including even certain general corporate particulars, should be undertaken to safeguard from unwarranted Web site disclosure of important business information bearing on operations, management, and the company's products or services.

Protect Personal Information and Data: Crucial to any positive, lasting impressions of the company's Web site is the security of collected or communicated personal and related financial information. Notify viewers in conspicuously labeled hyperlinks of the specific rules and/or policy terms and conditions for viewers to access, navigate or utilize the Web site, or any Web site content. The rules and/or policies should include legal notices, warranties or disclaimers as well as define in clear and concise yet comprehensive terms the types of information collected, how it is gathered, used, maintained, protected, shared, transferred, and disseminated. These established provisions should make clear how visitors can access and amend their personal collected information, and to avoid or opt-out of certain personal information disclosures. Identify to visitors any applicable participation in and adherence to online privacy certification or seals of approval programs, and including relevant safe harbor privacy provisions.

The unauthorized disclosure of a Web site visitor's personal information will expose the company to the prospect of civil lawsuit liability whether commenced by the Web site visitor, or a consumer advocacy group, or arising from a Federal Trade Commission investigation and complaint. In addition, federal criminal sanctions exist for unauthorized personal information violations under The Identity Theft and Assumption Deterrence Act of 1998. Many states also have fortified their existing consumer protection and related privacy laws to better enforce the security of personal information. Consequently, avoiding the potential risk of liability requires the company's Web site privacy policy to keep pace with the continually evolving legal protection precedents mandated by online commerce.

Own and Protect the Web site and its Content: All too frequently, disputes over ownership of the company's Web site or the Web site content arise between the company and the Web site developer hired by the company to create, launch and maintain the Web site. More often than not, these ownership disputes occur because of the lack of any written agreement expressing the company's ownership rights. Companies and entrepreneurs, to safeguard their ownership rights, must clarify in a signed written contract, like a Work for Hire Agreement, the ownership rights in and to the created Web site content.

Further, the entire Web Site itself, separate and apart from the individual Web site content intellectual property components identified as logos, designs, brands and trademarks, among others, is capable of protection as a copyrighted work, if not also the subject of certain patent rights. As a copyrighted work, for example, the Web site can be infringed by a competitor that misappropriates as its own a Web site that

either “looks and feels” in its entirety, or contains certain individual components that are, substantially similar to the company’s Web site. Concurrently, the company’s Web site itself must be scrutinized as susceptible to an adverse infringement claim, and particularly if the Web site might include proprietary information or materials that the company does not own or license such as possibly clip art appearing overtly on the Web pages, or a competitor’s trademark appearing covertly in embedded code like a metatag.

And Last, Nothing but the Truth: In addition to safeguarding any proprietary Web site content while also securing the trust of the Web site visitor that any personal information is protected, the Web site needs to comport with consumer protection and related fair advertising laws and regulations. The content, including any advertisements and product warranties, should be closely reviewed to ensure that the information is reliable and meets the applicable federal, state or foreign nation or jurisdiction consumer protection and related fair advertising statutes and guidelines. A practical concept to bear in mind in closing is that the fundamental consumer protection and related fair advertising concepts that exist for other media like print, point-of-sale and telephone communications carry-over to the Internet. Yet, the safeguarding of Web site visitor personal information as well as the emergence of Ecommerce contractual transactions have generated Internet specific laws requiring perpetual vigilance to protect the company’s Web site.

<p>UNITED STATES JOINS INTERNATIONAL TRADEMARK REGISTRATION SYSTEM</p>

President Bush signed into law, effective on November 2, 2003, the United States’ ascension to the Protocol Relating to the

Madrid Agreement Concerning the International Registration of Marks (“Madrid Protocol”), one of two complementary, long-standing international treaties¹ that will greatly benefit U.S. trademark owners seeking to protect their marks and brands outside the U.S. The Madrid Protocol specifically permits U.S. trademark owners to obtain registration protection -- an “International Registration” -- in any or all of the current 57 signatory member nations with a single application that is initially filed with the United States Patent and Trademark Office (“PTO”). Any registration covering all the member states will automatically expand registration rights into countries, or even territories like the European Community, that may subsequently become members to the Madrid Protocol.

A significant value to U.S. trademark owners is the opportunity for substantial cost containment by virtue of the fact that the registration process can be conducted via communications with the PTO,² thus, avoiding the necessity of foreign agent expenditures in each country or territory, unless a specific issue, obstacle or challenge arises requiring local representation in a capacity other than as merely a designated agent for WIPO correspondence like the certificate of registration. Basically, there is an official or government WIPO application fee of about \$470.00 for a word mark covering up to three Classes of goods or services plus a nominal WIPO cost of roughly \$53.00 for each designated protocol member state intended for

¹ The other treaty known as the Madrid Agreement Concerning the International Registration of Marks, and both jointly referred to as the “Madrid System.”

² All “international registration” applications are certified and forwarded by the PTO to the International Bureau of the World Intellectual Property Organization (WIPO) in Geneva. Please note that WIPO, not the PTO, is the official responsible authority and registrar of any “International Registration.”

registration protection by the applicant, trademark owner.³ In this regard, an International Registration applicant currently can designate up to 57 protocol member states. In addition to the WIPO application charges, the PTO will charge a nominal fee for its handling of International Registration applications. Final PTO fees to be enacted into law are expected in the next several months. These fees, which are currently proposed for enactment into law, amount to approximately \$350.00 for "review, certification and transmission" of the basic/supporting U.S. application or registration to WIPO. Accordingly, the overall International Registration application fees constituting both the PTO and WIPO charges are about \$820.00, plus the \$53.00 in costs for each designated member state.

In all, the single International Registration application may result in a registration protecting the mark in the 57 current member states constituting Antigua, Armenia, Australia, Austria, Belarus, Belgium, Bhutan, Bulgaria, China, Cuba, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Kenya, North Korea, South Korea, Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Macedonia, Moldova, Monaco, Mongolia, Morocco, Mozambique, Netherlands, Norway, Poland, Portugal, Romania, Russia, Sierra Leone, Singapore, Slovakia, Slovenia, Spain, Swaziland, Sweden, Switzerland, Turkey, Turkmenistan, Ukraine, United Kingdom, Yugoslavia and Zambia, as well as any added member states or jurisdictions.

Many U.S. companies with affiliates or

³ This basic application fee is a little higher for claims of color in marks such as color designs or logos.

subsidiaries located in the member states have long utilized and are well experienced with the International Registration system. More commonly, U.S. companies and entrepreneurs are familiar with and have benefited from the European Community trademark registration system than any other of the several region-specific treaties conferring reciprocal registration rights. The European Community trademark registration system may evolve to ascend to, or establish complementary registration rights with, the Madrid International Registration trademark system. Until then, it is vital to the interests of trademark owners to devise with their IP counsel strategies that take advantage of the different benefits attributable to both systems.

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