

LEGAL MISTAKES TO AVOID

ON YOUR WEBSITE

PRESENTED BY

GARVEY
SCHUBERT
BARER
Attorneys



MELODIE A. VIRTUE
MEDIA FINANCIAL MANAGEMENT
50TH ANNUAL CONFERENCE
NASHVILLE, TN MAY 24, 2010

Keep Your Website Legal:

1. Know who owns rights to the site
2. Have authority to stream or podcast
3. Don't infringe copyright/trademark rights
4. Handle collected information carefully



2

Click here to listen to us anywhere in the world

KNFC-FM

95.5 MZ in Washington DC
and on the Internet at www.gsblaw.com

KNFC-FM is giving away free tickets to the Pomegranate Bowl. Click here to enter our grand drawing to be held Thursday, June 17, at 6 PM

Many of the almost hits of the '20s and '30s®

Rights to the Site

Assert Intellectual Property Rights

- Who holds the copyright to the website?
- Do agreements with website contractors or consultants designate their work product as a "work made for hire"? If not, do they include an assignment clause?
- If no written "work for hire" or assignment agreement, what are the webcaster's license rights to the consultant or contractor's work product?
 - How may license rights be terminated?
 - Is assignment of rights restricted?



Rights to the Site

Assert Intellectual Property Rights

- Is the copyright properly asserted?
- Does each trademark have the appropriate symbol (® or ™) ?
- Who registered the domain name?
 - Who has the password?
 - When does the registration expire?



5

Authority to Stream

Does your site stream music? If so:

- Was a Notice of Use filed with the U.S. Copyright Office?
- Were on-line licenses obtained from ASCAP, BMI & SESAC?
- Are monthly Statements of Account and Reports of Use filed with SoundExchange?
 - Reports are 24-7 monthly under CRB terms & NAB deal except for minimum fee broadcasters



6

Authority to Podcast

Do you post podcasts? If so:

- Were releases obtained from persons interviewed or from program hosts?
- Was a mechanical license obtained from the music publisher for use of any musical work?
- Was a master use license obtained for any sound recording?
- Was a synchronization license obtained for any musical work used in an audio visual work?



7

3d Party Trademarks

- Does the site have a Legal Disclaimer notice that trademarks or logos are the property of the respective owners?
- Are any domain name links trademarks of others?
- Avoid using third-party marks in metatags or keywords



8

3d Party Copyrights

- Any images of a living person?
 - Approval of Photographer & Subject
- Any links to content posted on third party websites?
- Any content “pulled” into your site from another website or network?
 - This includes images in third party banner ads
- Do your links to a third party websites comply with their Terms of Use governing linking practices?



9

3d Party Copyrights

- To sum up: what rights have been granted to you by the source of the content?
 - By written agreement or terms of use governing content use?
 - Is an assignment of rights to you restricted?
 - Are there “non-infringement” warranties and indemnification provisions?



10

User-Generated Content

- Any content posted by consumers
 - Comments and reviews
 - Social networking
 - Blogs
 - Beware FTC's new endorsement guides



11

User Generated Content

- What's the risk?
 - Limited Immunity from Defamation
 - Communications Decency Act (Sec. 231 of Comm. Act)
 - Protection for limited good faith blocking/screening of offensive materials (e.g., obscene, lewd, lascivious, filthy, harassing, excessively violent)
- How to control?



12

Terms Of Use

- Why have Terms of Use?
 - Control access to and posting of content on your site
 - Protect how others use your site
- User acceptance
 - How to create legally binding agreement
- Beware cut and paste from other sites



13

Terms of Use

Typical terms:

- Claim right to user-generated content
- Disclose policy on user submissions
- Establish rules of conduct
- Contain disclaimers and limitation of liability



14

Copyright Agent Designation

- Include “notice and takedown” language in TOU
 - copyright holders may notify you of claims that your site contains unauthorized copyrighted content, and demand that it be removed
- Post copyright agent contact information in TOU or in copyright policy
- File “Interim Designation of Agent to Receive Notification of Claimed Infringement” with Copyright Office
 - Facebook requires Agent Designation & Privacy Policy



15

Information Collection

Danger Zones

- Failure to Adequately Protect against the Disclosure of Personally Identifiable Information (“PII”)
- Failure to Maintain and Adhere to a Written Privacy Policy
- Failure to Adhere to COPPA Requirements



16

Personally Identifiable Information

- PII:
 - any piece of information which can potentially be used to uniquely identify, contact or locate a single person
- Adopt procedures:
 - Secure storage (encryption, limited access)
 - Sharing with third parties
 - Third party commitments on use of PII
 - Plan of action in the event of security breach
 - Recovery of data in disaster recovery plan



17

Information Collection

- Why have a Privacy Policy?
 - Promises users how information they provide will be used
- A Privacy Policy should disclose:
 - What information is collected
 - How it is collected
 - Why it is collected
 - How it is used
 - Who has access to it
 - What choices the user has – opt-in/opt-out



18

Information Collection

Does your Privacy Policy:

- allow you to share information you collect with a subsequent owner of the website?
- spell out how your affiliates and partners may use information collected on the site (*e.g.*, targeted advertising)?
- fully disclose if your website downloads any software onto visitors' machines?
- contain a carve-out for disclosure to law enforcement officials?



19

Information Collection

Does your Privacy Policy:

- impose its obligations on all of your affiliates, partners, and contractors?
- address the special issues raised by several states (*e.g.*, California) with stricter privacy statutes?

Does your website have an audience in the European Union?
– compliance with European Union Privacy Directive

Potential new federal regulation of privacy



20

Children's Online Privacy Protection Act

COPPA Requirements

- Cannot collect PII from children under 13 without prior actual parental consent
- Cannot easily be forged by someone under 13 (e.g., fax-back forms)



21

Children's Online Privacy Protection Act

- Website should have mechanisms to allow parents:
 - to opt out of further collection of PII from their children
 - to view the information you have collected from their children and ask for its deletion (you do *not* have to allow them the opportunity to edit the information)
- Don't collect more information than is absolutely necessary to participate (e.g., contests)



22

Broadcaster Requirements

- EEO Requirement
 - EOE notice
 - Annual EEO Public File Report posting
- Upcoming television requirements
 - Local Public File on website
 - Quarterly Standardized Television Disclosure Form
- Extension to radio



23

Contact Info

Melodie A. Virtue, Esq.
Garvey Schubert Barer
1000 Potomac Street, NW
Washington, DC 20007
202-298-2527
mvirtue@gsblaw.com



24