

Navigating the Web – Legally

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OFFERING YOUR COMPANY'S PRODUCTS ON THE WORLD WIDE WEB IS FAST becoming an essential marketing tool and can make the difference between a hot company and one that finds its merchandise taking a back seat to competition. Basic marketing guidelines are essential to setting up a web page. But costly legal pitfalls also await the unwary, and unaware, web page creator.

Selection and Registration of Domain Names

The first step in developing a website is to select a domain name. Typically, your company's brand name, well-known trademark or product lines are the first choice. An availability search should be conducted which you can do yourself at <http://interNIC.net/cgi-bin/whois>. The results of the "whois" inquiry will show whether another entity has registered your domain name. If the name is registered to someone else and is identical to your federal trademark registration, you can request the cancellation of the appropriated domain name.

If the results of your inquiry indicate that your domain name is available, go back to the InterNIC home page and follow the application procedure. It's smart to register several variations of the domain name to avoid its adoption by "cybersquatters".

Trademark Protection

Establishing a domain name is a credible marketing strategy. If you're using a domain name which is identical to a federally-registered trademark or service mark owned by your company, investigate filing an additional application if your website offers goods or services not covered by your existing registration.



This month Amy Goldsmith, a partner of regular columnist George Gottlieb, contributes her expertise to the topic.

For example, if you've added a line of related linens to your current dinnerware collection, it should be the subject of a new copyright or trademark application.

If the domain name is not the subject of a federal trademark registration or pending application, establishing a domain name through the InterNIC only offers the rights to the domain name. It is still necessary to apply for a trademark- or service mark- in order to register the name officially and have nationwide rights to that name. Moreover, be aware that registering another party's name as a domain name does not convey trademark rights to the domain name recorder, and opens the door to possible cancellation of the domain name and a civil action for trademark infringement.

Creation and Maintenance of Your WebSite

There are two options available for the creation and maintenance of your website: either do-it-yourself or hire a company which specializes in website development and maintenance. If you hire a specialist, a contract should be drafted to ensure that your company retains ownership rights to the website, including all design concepts and details, audiovisual materials, trademarks, copyrights, etc.

The website itself should contain your company's biographical data on each page. If you have a catalog, it can be part of your on-line or interactive ordering system. To avoid becoming "stale", your web site should also be updated frequently. If you own registered trademarks, design marks or service marks, the proper trademark notice – the ® symbol placed as a superscript on the upper right corner of the mark – should be used wherever the mark appears in the text. A copyright notice should also be used [© company name/year], preferably on each page of the web site.

Recently, websites have featured "terms of use" provisions in order to notify users of legal issues associated with use of the web site. The document is typically one page in length, and contains copyright and trademark warnings as well as a warranty disclaimer and a provision regarding the governing law in case of a dispute. This provision acts as a gatekeeper to the site, with the user able to accept and log on the site, or deny and refuse to view the site pursuant to the posted terms.

Copyright Protection for Your Website

The text, images and audiovisual materials used in your website are protectable under the Copyright Act. If you have hired a website designer to create your website, be sure that your written agreement explicitly states that you are the owner of all copyrights. Otherwise, the law provides that the creator (the website designer) is the proper owner. A copyright application form can be acquired from the Copyright Office at <http://loc.gov.copyright>. If your website is primarily text, use Form TX. If your website is fundamentally visual, use Form VA. Send to the Copyright Office the signed form, accompanied by a \$20.00 check payable to the Registrar of Copyrights, along with a deposit of two printouts of the entire website or a disk containing the entire site plus five representative website pages to the Copyright Office. Submission of the HTML code (hypertext markup language) is required if the web site contains complex graphics and links. Additional applications must be filed for new material added to the site, and a separate application is necessary for the software used to create a site. The deposit for the latter is the source code itself. Lastly, if other original software can be downloaded from the website, or if original information which does not appear in print on the site can be downloaded, the software and the information must each be the subject of separate applications.

Meta-tags and Hyperlinks

Now its time to think about making the site visible to search engines, such as Hotbot, Lycos, and Altavista. The company and its website designer need to consult on the keywords and site description which will comprise the Meta-Tag, the part of the HTML code viewed by the search engine. There's useful information about creating Meta-Tags at <http://vancouver.webpages.com/vwbot/mk.metatags.html>. Your website designer also has the ability to design a site with built-in links to other sites ("hyperlinks"). For instance, if your product has been featured in an industry magazine, you may wish to link the magazine's site to your own. The user, seeing a reference to the article on your web page, would click on the reference and be sent to the magazine's site for the text of the article.

This sort of hyperlink is typically unobjectionable and should not require the magazine's permission. The disclaimer included within the "terms of use" clause should state that the links are for information only and no endorse-

ment or approval of the linked material is intended. However, use of the linked site's trademarks or copyrighted works or "deep linking" (avoiding another website's protections to access internal web pages), would likely constitute a violation of the other site's privacy rights and of the trademark laws covering confusion as to source and sponsorship. The same is true of "framing", in which your website displays someone else's website context in a frame surrounded by your trademarks. The theory is that the user believes there is a legitimate commercial connection between the two web sites when none exists. Thus, these sorts of hyperlinks should be avoided.

With the numbers of consumers logging on to the web increasing monthly, developing a web site to market your name, products and services is the key to increased visibility and sales and should keep you on par with your competition.

If you have any questions regarding intellectual property protection, address them to the Editor of *Tableware Today* magazine and we will answer them directly or through this column in the future. You may request a reprint of this article (or any of the articles that have appeared in the Legal Ease column: "*Do It Yourself With Copyright*", "*Sell It and Protect It With Trademarks*", "*Unexpected Help From Design Patents*"; "*Trade Dress - a New Helping Hand for Product Protection*", "*Licensing Your Products*", "*Frequently Asked Questions About Intellectual Property Protection*", "*The U.S. Copyright Office: Update on Contact*", "*Protection From Copycats*", "*Starting Your Own Business - A Checklist*" and "*The Retailer as Accomplice to the Sale of Knockoffs*"), or our Primer, "*What's a Copyright / Trademark / Patent?*", by either calling (212) 684-3900 or faxing your request to (212) 684-3999.

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