

Smart Web practices

How your website and social media can get you into legal trouble

INTERVIEWED BY ADAM BURROUGHS

Even well-established companies can inadvertently trigger litigation through a violation of the law made through their Web practices, including how they employ website and social media strategies.

“Companies don’t get into trouble just while constructing their initial website. The troubles evolve as companies, both big and small, and their products evolve,” says Bob Jefferis, an associate at Fay Sharpe LLP.

Smart Business spoke with Jefferis about the legal issues companies can encounter when employing their Web strategy.

What common legal problems do companies face when building a website?

Companies get into trouble when they start copying images, articles or videos from the Web and putting them on their websites for information or to enhance the appearance. Shortly after, the company gets a cease and desist notice from the copyright holder requiring it to remove the infringing property and pay money. Even though a website may say something downloaded can be used for free, that’s not always the case.

As companies evolve from a primarily informational website to one that facilitates product ordering or other customer-oriented features, they can run into patent problems. If you integrate mechanisms for conducting transactions without securing the proper rights, you may get a notice that you’ve infringed someone’s patent. You can’t just take the infringing mechanism down or stop using it. That may mitigate damages, but it doesn’t end the repercussions. The statute of limitations on U.S. patent infringement damages goes back six years.

What issues can arise when marketing a business in several countries?

Every country has its own system of

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protection and use. If, to use a simplified example, you get a patent or trademark in the U.S., it doesn’t carry legal weight in China. You need to protect your intellectual property (IP) by obtaining rights in each country that you do business.

Another concern is how you use the personal information of foreign customers. In some foreign regions you can only use customer information for the purpose under which you obtained it. You can’t use or sell client information for other purposes.

Further, be cautious because, in some cases, if someone in another country uses your website, you could be subject to its laws. Some countries look for a contact or transaction, as evidenced by shipping, which can be electronic or physical. A customer paying to download an item from your site is a transaction, which may be enough to become subjected to that country’s laws.

What’s important to keep in mind when working with Web designers?

Amazingly, many companies hire a Web designer on a verbal contract. Then, it’s not clear who holds title to the designed product, introducing issues of work product for hire. If the designer is an independent contractor, you may find you only have a license to use the materials as delivered and can’t sell what’s been created. The designer may have rights to modifications that a

company makes to the designed product.

Let’s say, you start using what the designer produced on your website and find out he or she didn’t have clear title. You can get pulled into court. That’s why companies should at least put an indemnification in the contract to have recourse against the designer who put them into the position to get sued.

How might using social media channels for commercial purposes create trouble?

Social media sites offer access to many people, which intrigues many companies. However, before diving into social media, read the terms of use.

Facebook’s rights statement says that when sharing content and information you give Facebook a non-exclusive, transferable, sub-licensable, royalty-free worldwide license to any IP content you post. They’re also careful to protect their own rights; you cannot use their copyrights, trademarks or similar marks except under their brand usage guidelines or prior written permission. Further, if anyone brings a claim against Facebook related to your actions, by agreeing to the terms and conditions you’ve indemnified Facebook. It’s not the bargain many companies expect.

Companies are learning that just because you can, doesn’t mean you should. Not to say you shouldn’t utilize social media, but be careful. It’s not a passive pipeline to customers. ●