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Dunner Law

Small IP Practice specializing in trademark and copyright law; IP counseling, domestic and international protection of IP portfolios; internet-issues; IP audits and strategies relating to IP portfolios; drafting and negotiating IP and IT-related agreements

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Legal Protections for Your Web Site

Companies and associations invest substantial sums of money and resources in the development and maintenance of business web sites. In order to enjoy the fruits of those efforts, it is important to implement the following legal safeguards to protect your web site.

Step 1: Deciding Who Will Create Your Site

If you hire an outside vendor to develop, design and/or contribute content to your web site, be sure to have a written agreement that assigns all rights and ownership in the vendor's contributions, including the web site as a whole, to your business. Without a written agreement to this effect, the vendor may have legitimate ownership rights in your web site. One alternative is to use your own employees to perform these services during the course of their employment, because this will ensure that your business owns and controls the web site.

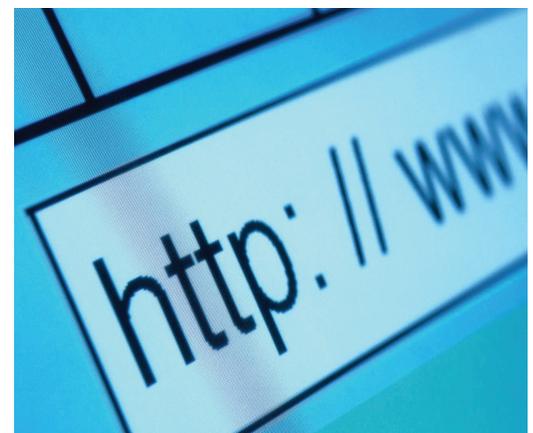
Step 2: Building the Site

Your web site should only be comprised of original works of authorship created by you, your employees, or of third party materials for which you have permission to use. Always seek permission from third parties for text, graphics, video content, and other content you

wish to use, unless you are certain that the content is in the public domain. You may have heard of the Fair Use defense in copyright law, but because of the complexity of this legal doctrine the defense is available less often than most people realize. It will cost you less time and money to seek and obtain permission to use third party content now rather than deal with a potential legal dispute down the road. Start by reviewing the legal policies of the web site for which you wish to use the content, as often times these policies will state whether third party use of their content is permissible.

Step 3: Asserting Your Ownership

Include a proper copyright notice (e.g., "© 2008 Company X") at the bottom of each page of your web site. The year refers to the date of first



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“publication” (which, for a web site, would mean when the site first went live to the public) and can be hyphenated by subsequent updated years or publications (e.g., “© 2006-2008 Company X”). A copyright notice is not required by law, but there are important benefits to using one. These benefits include: informing the public that the work is protected by copyright, identifying the copyright owner and the year of first publication, and preventing a party from claiming an “innocent infringement” defense that could reduce the damages that would normally be available in a copyright infringement lawsuit.

Step 4: Registering Your Copyright

The U.S. Copyright Office is the entity that issues registrations of copyrighted works. Registration, like using a copyright notice, is not required. However, registration is necessary in order to recover the full range of damages available in a copyright infringement lawsuit. Copyright registration covers the look, feel and content of the web site as applied for in the application. Any new or revised web site content would require separate protection, and therefore, subsequent periodic filings (e.g., every three months, six months, or annually) should be made depending on how often the content is revised or updated.

Step 5: Defining the Relationship with the User

A Terms of Use and Privacy Policy are essential components of a web site, because they establish the relationship between the web site owner and the user and the parameters of what the user can and cannot do with the content on that site. Although the needs of

these policies will vary depending on purpose and functionality of your web site, most Terms of Use policies include provisions describing the ownership of the site, license of intellectual property rights, disclaimer of warranties, DMCA provision (See Step 6 below), and limitation of liability.

A Privacy Policy is necessary if your web site collects and/or stores any personal information submitted by users. A suitable Privacy Policy informs the user of how the owner of the site uses personal information and what rights the user has to opt in or out of such procedures.

Step 6: Limiting Liability for User’s Acts of Copyright Infringement

If your web site allows users to post information to your site, then you need to guard against potential acts of infringement caused by those users. Congress enacted the Digital Millennium Copyright Act (“DMCA”) to limit the liability of web site owners who store on their web sites user-submitted content that infringes on another’s copyright (e.g., You Tube). In order to enjoy this shield of protection, web site owners must: 1) designate an agent to receive notifications of claimed infringement; 2) provide this agent’s contact information to the Copyright Office and post it on the company’s web site (typically in the Terms of Use); and 3) investigate claims of infringement and remove infringing content if necessary.

Adhering to these steps will not alleviate all legal concerns pertaining to your web site, but it will provide some peace of mind which will allow you to focus your attention on running your business or association. For further information regarding these issues, contact Dunner Law.