



Venable LLP, an *AmLaw 100* firm, is headquartered in Washington, DC and has offices across the country.

Our nearly 600 attorneys practice in all areas of corporate and business law, complex litigation, intellectual property, and regulatory and government affairs. To learn more about Venable's capabilities, please see our complete list of [practice areas](#).

Venable attorneys produce periodic alerts and newsletters covering a variety of topics and practice areas. For your convenience, we have assembled below a collection of the latest alerts and newsletters from October 2011. To view the full text of an article, please click on the title of the piece.

### **2012 Dollar Limits on Compensation and Benefits**

The Internal Revenue Service (IRS) has announced the 2012 annual dollar limits on benefits, contributions, and compensation. The key limits for 2012 (as well as the limits that applied in 2011) are listed in [this table](#).

### **Advertising Law News and Analysis - October 7, 2011**

#### **News**

- FTC Proposes Amendments to Telephone and Catalog Sales Rule
- Canadian Anti-Spam Law Could Be in Effect by End of Year
- Venable Scores High-Profile Wins in False Advertising, Product Liability Cases

#### **Analysis**

- Text Sweepstakes Settlement Illustrates Best Practices but Answers Few Questions

### **Advertising Law News and Analysis - October 13, 2011**

#### **News**

- Ad Groups Tracking High-Profile Regulatory Initiatives on Capitol Hill
- FTC Settlement Chills Frostwire's Use of Default Settings
- Vladeck Testifies Before House Subcommittees on Child Food Marketing Guidelines
- Venable Adds [Gregory J. Sater](#) to LA Office

#### **Analysis**

- Successful Cause Marketing Requires More Than Good Intentions

### **Advertising Law News and Analysis - October 21, 2011**

#### **News**

- Consumer Groups Ask FTC to Investigate PepsiCo's Teen Marketing
- U.S. / Canadian Consumer Protection Officials Talk Privacy at Web 2.0 Summit
- Orbitz Pays DOT \$60K for Deceptive Advertising

### **Advertising Law News and Analysis - October 27, 2011**

#### **News**

- 17 State AGs Ask FCC to Block Third-Party Charges to Phone Bills
- CA AG Files Plastic Bottle "Greenwashing" Suit
- Plaintiffs Urge Approval of Final Settlement in Visa Call Recording Class Action

### **A Collection of Venable's Nonprofit Legal Articles and Presentations from the Third Quarter of 2011**

As we have done previously (e.g., [click here](#) for our second quarter 2011 Alert), Venable's Nonprofit Organizations Practice Group will share the best of the nonprofit legal articles and PowerPoint presentations (and, for our in-house seminars/webinars, recordings of presentations) published or delivered by our attorneys. Our group has put together some very interesting, useful materials that should be of help to your organization as you tackle the always-challenging array of legal issues facing nonprofits.

## The Download - October 2011

### Heard on the Hill

- House Examines Impact of EU Regulations on U.S. Business
- Senate Judiciary Committee Passes Data Security Legislation
- Location Privacy Under Consideration

### Around the Agencies

- Federal Regulators Enforce COPPA Against Mobile App Provider
- FTC Request for Comments on Proposed Rule to Amend COPPA
- FTC Reiterates Concern About Data Transfers In Bankruptcy

### In the Courts

- U.S. Supreme Court Strikes Down Law Restricting Data Mining for Data Marketing Purposes

### International

- The EU Begins to Implement Requirements for Obtaining Consent to Use Cookies

## IP Buzz - October 2011

### Insights

- America Invents Act of 2011: Major Changes in the Law that Will Affect Patent Litigation Strategies
- Obtaining Patents Under the America Invents Act
- An Introduction to Grey Market Goods
- Fan Art: Friend or Foe?
- "Top Ten List" of Best IP Practices

### Legal News and Updates

- Why Do I Need to Know About the America Invents Act?
- Domain Name Issues Update
- Protect IP Act Update
- "Fame Monster" Terrorized by "Frivolous" Trademark Applications

## Legal Considerations for Carve-Out Transactions

Though the business community continues to recover from the economic collapse of 2008 and the more recent international debt crisis, the M&A market has experienced steady activity and even growth in recent months. This is principally the result of converging interests within the business community as sellers explore exit options and opportunities to downsize operations while buyers seek to acquire high-value businesses at discounted prices. An increasingly popular transaction structure that accommodates these harmonized interests is a "carve-out transaction," through which a company sells a stand-alone portion of its business, generally a division or subsidiary (which we will refer to in this article as a "Target Business"), to one or more acquirers. Frequently, such carve-out acquirers are private equity-backed. In an economy where cost efficiency is more crucial than ever, carve-out transactions allow sellers to divest business segments that simply do not mesh with the company's operational focus.

## Lobbying: What Does It Mean for 501(c)(3) Organizations?

501(c)(3) organizations that engage in federal lobbying are subject to at least two separate—and very different—definitions of lobbying in order to comply with applicable federal tax and lobbying disclosure laws. This QuickCounsel will review the definitions and reporting requirements for 501(c)(3) public charities under the Internal Revenue Code (the "Code") and under the Lobbying Disclosure Act ("LDA") and provide a guide for compliance efforts under each legal framework.

## Lobbying: What Does It Mean for Nonprofits?

Nonprofit organizations that conduct federal lobbying must be cognizant of at least two different definitions of lobbying in order to comply with applicable federal tax law and federal lobbying disclosure laws. Section 162(e) of the Internal Revenue Code (the "Code") defines "lobbying" and requires most tax-exempt organizations either to pay a proxy tax on lobbying expenditures or inform their members that a portion of their membership dues are non-deductible as a result of such expenditures. The federal Lobbying Disclosure Act (the "LDA") provides a second definition of "lobbying" and requires organizations to track and disclose the amount spent on such activities.

## **SBA Proposed Rules On Business Integrity and Subcontracting Plans Will Significantly Affect Government Contractors**

The Small Business Administration recently issued two proposed rules implementing key elements of the Small Business Jobs Act of 2010. See [Venable's GVC Update of September 2010](#) (summarizing the requirements of the Act). These rules will have a significant impact on both small and large Government contractors. It is important that your business understand these new rules and how they will impact your business decisions.

## **SOX Whistleblowers May Now Claim a "Very Broad Spectrum of Adverse Action"**

The whistleblower provision of the Sarbanes-Oxley Act ("SOX") protects an employee who provides information regarding fraud and violations of rules or regulations of the SEC. Toward that end, Section 806 states that no company "may discharge, demote, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment" because of the protected activity. In the past few years, whistleblowers claiming they have been subjected to adverse employment actions for reporting violations under SOX have had to overcome a relatively high hurdle. Administrative law judges ("ALJ") borrowed a standard of review that had been applied in Title VII cases, and required SOX whistleblowers to show that they experienced a significant, tangible employment action—such as demotion, discharge, or other unfavorable reassignment—as a result of their reporting. Citing a concern with the "incautious application of Title VII precedent to [SOX] whistleblower cases," the Department of Labor Administrative Review Board ("ARB") recently placed SOX whistleblowers firmly in their own category and clarified the standards applicable to adverse actions taken in SOX cases.

## **Unrelated Business Income Tax for Nonprofits: The Basics**

A tax-exempt organization is generally exempt from federal corporate income tax on income derived from activities that are substantially related to the organization's tax-exempt purposes. However, a tax-exempt organization may be subject to a federal corporate income tax on income derived from unrelated trade or business activities. This is known as the Unrelated Business Income Tax ("UBIT").

## **Venable's Los Angeles Office Secures Preemption Victory in California Medical Device Consumer Class Action at the Ninth Circuit**

In a ruling issued on September 28, 2011, the United States Court of Appeals for the Ninth Circuit held that federal law preempted California consumer class action claims against the manufacturer of a contact lens cleaning solution because those claims would have required the manufacturer to conduct premarket testing beyond that required by the FDA. *Degelmann v. Advanced Medical Optics, Inc.*, \_\_ F.3d \_\_, 2011 WL 4470641 (9th Cir. Sept. 28, 2011).

## **Widely Attended Gatherings, Internet Disclaimers, and Internet Fundraising: Three New Developments in Political Law**

Recently, the Federal Election Commission ("FEC") and the Office of Government Ethics ("OGE") issued notices of proposed rulemaking that will impact the conduct of political law. You may be interested in submitting comments to help shape these proposed regulations.

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We would also like to highlight an upcoming Venable event that you may be interested in attending. Please click on the event title for additional information.

## **Fiduciary Self-Audits for Nonprofits: Evaluating Decision-Making Processes and Controls**

**November 10, 2011**  
**12:00 p.m. - 2:30 p.m. EDT**

Nonprofit officers, directors and senior staff owe fiduciary duties across a range of corporate governance, investment and accounting functions, and increasingly are becoming subject to greater levels of scrutiny and accountability. The potential liability risks to the individuals personally as well as to the nonprofit organizations they serve are high. Self-audits can be an effective and useful tool for nonprofits to evaluate and timely improve their decision-making processes and controls. Join us for an interactive discussion to learn more about what the law and other standards require of fiduciaries (from a practical perspective), what the risks are, how best to design and execute self-audits, what are other ways to mitigate risk, and where and how to effectively focus your efforts.

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