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The Top Five Technology Legal Traps for the Unwary Nonprofit Organization

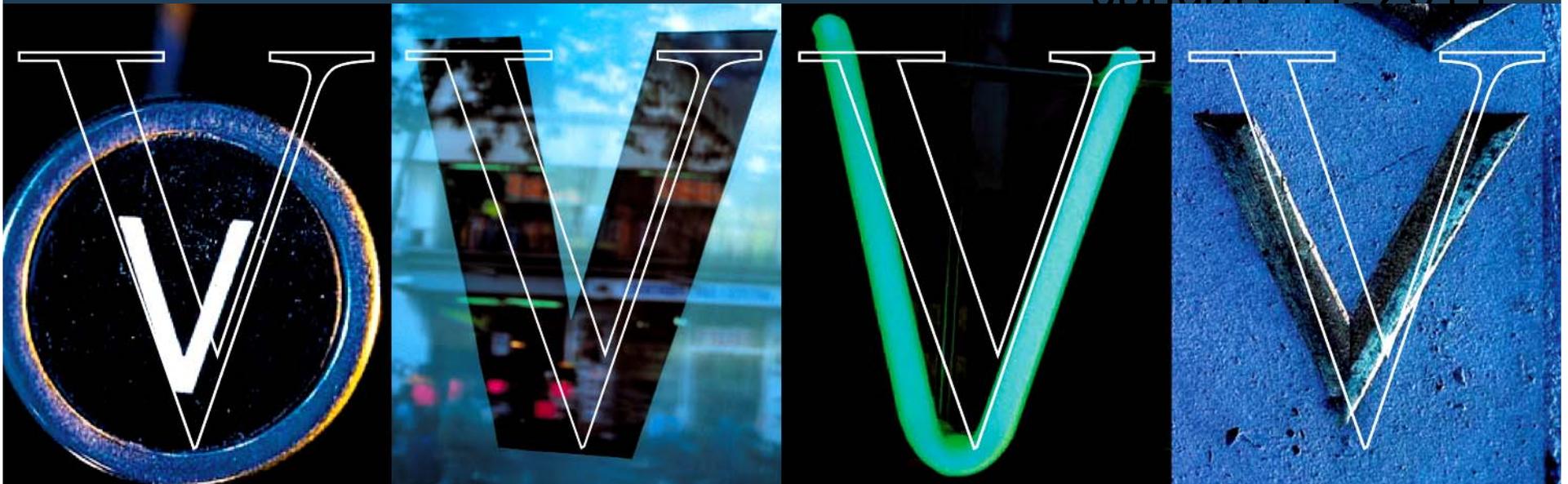
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Overview

- New technology brings new opportunities for nonprofit organizations
- Potential legal risks associated with new technology expose the unwary nonprofit to potential liability
- Nonprofit organizations should be aware of legal traps and take proactive steps to avoid them
- Top five technology legal traps
 - Electronic Contracts, Social Media, Trademark, New Technology, Employee Use



The Online/Electronic Contract Trap

- Electronic contracts are generally enforceable
- Nonprofits must be mindful of contractual requirements
- Electronic contracting requires consideration of unique issues
 - For example, electronic signature processes and identity authentication
- If using electronic contracts, consider setting forth specific terms and conditions of use
- Nonprofit organizations should not rely solely on mere notice to create enforceable terms and conditions



The Social Media Trap

- User postings on nonprofit operated social media sites may include content that infringes on the rights of others
- Federal Digital Millennium Copyright Act
 - Safe harbor provision for third-party communications if the nonprofit maintains neutral role
- Federal Communications Decency Act
 - Protection from defamation/tort liability for third-party communications if no role in publication
- How to avoid potential liability?
 - Post terms and conditions governing third-party posters and employees
 - Maintain a clear policy governing employee social media use
 - Be aware that it is easy to masquerade as someone else on social media sites
 - Declare ownership of the nonprofit's official sites
 - Provide rules for usage of the nonprofit's name or trademarks on unofficial sites



The Trademark Trap

Avoid Misuse and Infringement

- Prevent electronic misuse of third-party trademarks
 - Get permission
- Steps to protect the nonprofit organization's own trademarks
 - Monitor impermissible use by conducting periodic searches
 - Protect against trademark infringement via online advertising or social networks
 - reserve the nonprofit organization's trademarks as user account names and/or as online search keywords
 - notify search engine operators or online advertisers of misuse
 - Create an express policy prohibiting third-party use of the nonprofit organization's name and/or trademarks as an account name or avatar



The Trademark Trap

Domain Names

- Another area where trademark rights are easily trampled
- New forms of cybersquatting always arise
 - “Front running”
 - Avoid by simultaneously registering for the domain name associated with new trademark applications
 - “Drop-catching”
 - Avoid by proactively renewing domain names



The New Technology Trap

- Be aware of requirements and risks associated with the use of new technology
- Compliance with PCI Data Security Standards
 - Applies to nonprofit organizations using debit/credit cards to process payments
 - Several states enacting similar statutory requirements, e.g., Minnesota
- Employee use of employer-issued mobile communication devices
 - Invest in anti-malware programs
 - Create procedures for lost or stolen mobile devices



The Employee Use Trap

- Electronic information storage and new technology make it difficult to protect trade secrets
 - Implement a policy prohibiting disclosures online or through mobile communication devices
- Remote access expands notion of traditional workplace
 - Monitor employee use of employer-issued mobile communications devices
- Nonprofit organizations may be liable for inappropriate use of employer-issued mobile communications devices
 - Establish policies to deter inappropriate use in and out of the office



Questions?



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