

Web Site Legal Issues

Major areas of concern:

- copyright infringement
- domain name concerns
- trademark concerns
- defamation
- linking and framing

1. Copyright Infringement: Web Sites

Obtaining images – Options

- create from scratch
- obtain explicit permission
- fair use defense – unlikely for commercial
- licensed images – abide by terms!
 - corporate logo licenses
 - clip-art libraries
 - open access licensed images

- Search images by Open Access License
Across the Web:
 Creative Commons Search Engine
<https://search.creativecommons.org/> - 300 million images
Individual Repositories:
 example: Flickr - use "Advanced Search" option
 .

Cautions:

- misappropriated & licensed images
- publicity rights for images of people

Developing Web Page Text - Options

- create from scratch
- obtain explicit permission
- fair use defense – unlikely for commercial
- Search text by Open Access License?
 - CC search coming for text and code
 - Caution: misappropriated text

Computer Code and Scripts - Options

- commercial: typically create from scratch
- know sharing library license terms!!

2. Domain Name Concerns

- Selecting a Domain Name
 - Anybody have? WhoIs search
 - Trademark search? Perhaps
- Reclaiming a Domain Name
 - Live with it?
 - U.S. Anticybersquatting Act?
 - Best shot is strong trademark or famous person
 - Uniform Domain Name Dispute Resolution Policy (ICANN)

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- Administrative process.
- Trademark owner must show:
 - trademark is same or confusingly similar to registered second level domain name;
 - party has no legitimate right or interest in domain name, and
 - domain name was registered and used in bad faith.

- Defenses:
 - use is in connection with bona fide offering of goods or services prior to notice of dispute;
 - owner has been commonly known by the domain name; **or**
 - owner making legitimate noncommercial or fair use of the domain name, without intent of (i) commercial gain, (ii) misleadingly diverting consumers, or (iii) tarnishing trademark at issue

- If challenger proves case, admin panel cancels or transfers domain name

- Domain Name Concerns (con'd)**
- Obtaining Domain Name
 - easy online process
 - Protecting a domain name
 - acquire a trademark?
 - Obtaining multiple domain names
 - generic (.com, .org, .net, .info), sponsored for specific industries, generic restricted for specific purposes, & infrastructure ... 1000+

- 3. Trademark Concerns**
- Discussing trademarks of others - typically legal but use of logo may draw inappropriate infringement claim
 - Link to a party through their logo – same issues
 - Selecting a trademark - consider strength and market value
 - Protecting – federal registration

4. Defamation

- False statement damaging to reputation of someone or organization
 - Elements:
 - published to third parties (text or oral)
 - knew or should have known statement was false
- Defenses: 1st Amendment, truth, etc.
- Potential liability for service providers

5. Linking and Framing Concerns

- linking results in no copying
- **Derivative Work** - still a derivative work through contributory © infringement
 - link another's art/photo to appear on your website
 - link to pass off another's work as one's own
- **Defamation** – link to defaming statement e.g. this imbecile killed my dog

Linking and Framing Concerns (cont'd)

- **Trademark Infringement** – linking leads public led to believe TM owner is affiliated with or approved/sponsors the page
- **Framing** – splits screen into multiple sections; may be used to inappropriately show content from another site without direct copying
 - still contributory © infringement
