



This page can be found at <http://www.asaecenter.org/PublicationsResources/eNewsletterArticleDetail.cfm?itemnumber=42537&nltpe=165>



## Communication News

[Current Issue](#) | [Previous Issues](#) | [Advertise](#) | [Author Guidelines](#) | [Editorial Staff](#)

### 7 Hidden Hazards of Your Website *Communication News*, June 2009

By: *Susan J. Lutzker*

Whether you know it or not, legal pitfalls may lurk in your third-party content, your plans to redesign, and even your terms-of-use statement.

Rating: ★★★★★ [2 Reviews](#)

A trade association pays heavy penalties for posting a photographer's work on its website without permission. A financier is sued by a university with the same name for using potentially confusing trademarks on his company's website. Facebook users revolt after changes in its site's terms of use statement.

Could your website make your organization vulnerable to legal problems like these? In today's internet-connected world in which your website is your front door, the answer is definitely yes.

The following questions can help you understand where your website may put your association at risk and what preventive measures to take.

**1. Does your organization have the right to use all the content on your site?** Recently, a freelance photographer realized that two of his photographs were displayed without his authorization on a trade association website. His challenge was resolved out of court, but not until the association paid him a hefty fee. (Statutory copyright damages can be as high as \$30,000 per "work" infringed.)

Every time your organization posts third-party content—text, images, or video—you must either confirm that the content is in the public domain or else obtain a license. A possible exception: when there is a "fair use" justification for using the content without a license. However, fair use requires a complex factual balance of four statutory criteria that often mean *no* to a fair-use claim.

Here are two related caveats:

- Unless one of your employees creates a piece of content—in which case your organization owns it—you must always incorporate proper "work for hire" language in a written agreement with the independent contractor who develops the content.
- Before posting images that include identifiable people, it may be necessary to confirm that the photographer obtained proper releases. Such people may have a legally recognizable expectation of privacy (if, for example, the person in the photo is in a private place such as a home).

**2. Has your organization obtained all necessary rights from your website designer?** A nightmare scenario could result if, a few years after your organization develops a website, you want to revamp the site but are held hostage by the design firm for a big fee since you did not obtain adequate rights in the original contract.

Ideally, your organization will own the copyright to the website design and the rights to use software to modify the site. But if an outside firm retains the copyright, you will need a broad, royalty-free license—as well as the technological information and licenses—to make future changes.



Susan J.  
Lutzker

Often a properly worded agreement will allow you to accommodate your design firm's desire to protect its own proprietary software and use the site in its promotional materials. Also obtain representations and warranties from the designer as to originality so you won't be vulnerable to third-party copyright infringement charges.

**3. Is your organization's own intellectual property adequately protected?** Stanford University recently sued to enjoin disgraced financier R. Allen Stanford and his companies from using allegedly confusing imitations of the "Stanford" trademark and trade dress on their website as well as in advertisements, apparel, and sponsorships. To avoid such threats, before you invest in a new brand, you must identify potential conflicts and evaluate risks by auditing your organization's logos, taglines, and other proprietary phrases and clearing your valuable marks.

Registering with the U.S. Patent and Trademark Office will strengthen your ability to enforce your own marks on the web and elsewhere. Both unregistered and registered trademarks should be accurately denoted with the symbols ™ or ®. If your domain name includes your registered trademark, consider securing other dot-names (.net, .biz, etc.) to discourage infringement. Your website should also contain a proper copyright notice (© name, year of publication).

**4. Does your website include a privacy policy?** In 2000, the Federal Trade Commission sued Toysmart for allegedly trying to sell confidential personal information from its online purchasers in violation of Toysmart's own privacy policy, which stated that "personal information... is never shared with a third party."

The suit was settled, but FTC enforcement actions underscore that your website must prominently post privacy policies that explain:

- What, if any, personally identifiable information (PII) your site collects;
- What use your organization makes of the PII;
- With what other parties, if any, you share the PII.

Your privacy policy should also inform users about:

- Collection of demographic information (such as IP address or other sites visited) that does not by itself constitute PII;
- What technological devices (such as cookies or web beacons) you use to gather the information;
- What security measures protect the privacy of the information.

**5. Does your website include a terms of use statement?** There was an outcry in early 2009 when Facebook changed its terms of use statement in a way that appeared to give the site perpetual rights to user contributions. Facebook abruptly reversed itself and began soliciting user input to its policies.

Far from being "fine print," terms of use statements explain the conditions under which a site may be used. Be sure your site has a statement that covers such matters as how to request permission to use your organization's logo, rules for linking to your site, treatment of unsolicited submissions, disclaimers, and indemnifications.

**6. Does your site comply with applicable law?** A host of federal laws apply to websites. For example:

- If children under 13 are likely to visit your site, the [Children's Online Privacy Protection Act](#) (COPPA) requires notice and parental permission. Although COPPA does not technically apply to nonprofits, the FTC treats industry associations that operate for the economic benefit of their for-profit members as subject to COPPA.
- If you send emails from your site, you must follow the [CAN-SPAM Act](#) requirements restricting unsolicited email.
- Your organization should consider [designating](#) (both on its website and with the U.S. Copyright Office) an agent to receive notices of alleged copyright infringement to avail yourself of copyright act limitations on liability for online service providers. <http://www.copyright.gov/onlinesp/>
- If third-party trademarks are used in advertisements or metatagging, your organization must understand the parameters of allowable use.

**7. Is your organization familiar with TRUSTe certification and similar safe harbor programs?** When organizations have privacy statements, email policies, or software download programs that meet its requirements, [TRUSTe](#) offers certification seals demonstrating that a site meets good business practices. In addition, the U.S. Department of Commerce has [safe-harbor principles](#) for user privacy under a self-certification program helpful to U.S. companies dealing with European Union countries.

Again, remember that your website is your online front door. Make sure it is not only welcoming but also protects

your interests by meeting the highest legal standards.

Susan Lutzker is a partner in the Washington-DC based firm [Lutzker & Lutzker LLP](#), which specializes in intellectual property law, including internet issues. Email: [susan@lutzker.com](mailto:susan@lutzker.com). Lutzker & Lutzker is a member of the [International Network of Boutique Law Firms](#), an association of small, specialized firms offering personalized and competitively priced legal services.

### Rate this item



Rate this item: ☆☆☆☆☆  
Simply click on a star to rate this item.

### Reviews

[Write A Review](#)

☆☆☆☆☆ [Thomas Bohn](#), June 16, 2009

We are dealing with a nightmare situation of our own and this article would have been great a few months ago! Still, great information and CAE's need to take note!

☆☆☆☆☆ [Linda Bayer](#), June 16, 2009

Extremely useful information. Thanks for providing it.

---

### More Articles From Communication News - June 2009

- [Learn to Engage, Excite, and Connect in Toronto](#)
- [Stop Selling Like It's 1995](#)
- [7 Hidden Hazards of Your Website](#)
- [What Video Can Do That a Press Release Can't](#)
- [From the Blogosphere: Listening, Social Media Evolution, Clever Logos](#)

---

[Top ^](#)  
 [Subscribe to RSS](#)  
[To ASAE & The Center home](#)

---

### ASAE & The Center for Association Leadership

**ASAE & The Center Building**, 1575 I St. NW, Washington, DC 20005, P. 888.950.2723, F. 202.371.8315 or P. 202.371.0940 (in Washington, DC)

**Marriott Learning Complex**, The Ronald Reagan Building & International Trade Center  
1300 Pennsylvania Ave. NW, Washington, DC 20004, P. 202.326.9550, F. 202.326.0999

© Copyright 2008 ASAE & The Center. All rights reserved.