

# Web of protection

Minimize Web site copyright problems. **By Arnold B. Silverman**

**W**eb sites have become an important channel for businesses to interact with customers, employees, vendors and the public. But a company's Web site can become its worst nightmare if it doesn't secure or protect the intellectual property it displays.

If a business creates a Web site or has an employee create one, the business immediately has ownership of the copyright. But if a vendor creates the site, the business must ensure that it owns the copyright in the work of others.

The easiest way to protect your Web site is a simple written agreement covering the parties' rights and obligations, stating the creator's compensation and schedule for completion and acceptance of the Web site, and assigning worldwide intellectual property rights, including copyright, to you. Otherwise, the business may end up with only a license to use the copyrighted material, leaving the vendor free to resell the work.

A business must also be careful that its site content does not violate someone else's copyright. If the content is copyrighted by another, the business must determine whether its use of the work is fair use. For example, criticism, comment, news reporting, teaching, scholarship or research is, within certain limitations, deemed fair use.

There is no hard and fast rule for determining fair use, but there are four tests to make the evaluation.



■ Will the use be commercial, which is more likely to be held an infringement than, for example, a nonprofit, educational use?

■ How much creativity does the work embody? Facts and ideas cannot be protected by copyright. The copyright protects a tangible expression of the work. Generating a telephone directory may take substantial time, but it is not considered a great creative effort.

■ How much of the copyrighted work is used? This involves both qualitative and quantitative expression. A tobacco company once used a single sentence from a doctoral thesis in an advertising campaign, which was deemed to be copyright infringement, not fair use.

■ How much will the use damage the copyright owner? For example, reproducing someone's unpublished market research could do great damage, while posting part of a 10-year-old newspaper article likely would not.

Even if a business has permission to reproduce copyrighted material in hard copy, such as in a newsletter, it may not be able to put the material on its Web site unless its agreement with the creator says so. **ARNOLD B. SILVERMAN** is a lawyer with Eckert Seamans Cherin & Mellott. Reach him at (412) 566-6000 or [www.escm.com](http://www.escm.com).

## Madrid protocol

**I**mplementation of the Madrid Protocol by the United States, expected to be completed by the end of the year, will mean changes for trademark owners, both within and outside of the States.

The Madrid Protocol provides an international filing system that enables trademark owners to file an international application based on an application or registration in the applicant's home country.

International registration facilitates fil-

ing in member countries on the basis of a single application written in a single language.

In addition, a single fee is paid, with no need to use foreign associate representatives to file in each country designated.

In short, U.S. participation will allow owners of U.S. applications or registrations to request simultaneous extension of their trademarks to foreign jurisdictions through a single English language application. **SOURCE:** Thorp Reed & Armstrong

## Uncivil actions

When it comes to courtesy, lawyers may be more likely to displease the court these days.

A survey underwritten by The Affiliates, a leading staffing service specializing in attorneys, paralegals and other skilled legal professionals, found that 49 percent of attorneys surveyed said the level of civility between lawyers has decreased over the past five years.

Lawyers were asked, "In general, do you think the level of professional courtesy between lawyers has increased or decreased over the last five years?" Their responses:

- Decreased somewhat, 32 percent
- Decreased significantly, 17 percent
- Increased significantly, 2 percent
- Increased somewhat, 11 percent
- No change, 37 percent
- Don't know, 1 percent

"Busy attorneys may be unintentionally overlooking professional courtesy," says Megan Bush, Pittsburgh division director for The Affiliates. "For example, lawyers attempting to manage a high volume of daily e-mails and meet project deadlines may send a hasty response when a thoughtful answer would be more appropriate."

"Good manners have taken on greater importance, given the increased focus on project teams in legal firms," says Kathleen Call, executive director of The Affiliates. "More than ever, attorneys need to establish and maintain productive relationships with their peers. When it comes to interacting with coworkers and clients, strong interpersonal or 'soft' skills are as necessary as education and legal experience."

Call recommends lawyers:

- Treat others as they would like to be treated.
- Practice being a better listener.
- Review e-mails before sending them.
- Report promptly for meetings.
- Use a respectful tone with colleagues to foster stronger working relationships. **HOW TO REACH:** The Affiliates, [www.affiliates.com](http://www.affiliates.com)