



Small Business Builder: Protecting Internet Rights

Tips for Playing It Safe On And Off the Internet

By Mary Campbell

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Sometimes the law seems designed to irk the innocent.

Take the harmless singing of "Happy Birthday to You" to restaurant patrons. Most establishments now serenade with something other than the traditional song, lest the copyright owner sue.

And how about McDonald's? The giant burger joint has successfully challenged small companies that used "Mc" in their business names, from McAllan's sausage stand in Denmark to Elizabeth McCaughey's McCoffee shop in California.

Then, of course, there's Verizon, the company formed when Bell Atlantic and GTE merged. On the Internet, Verizon registered not only as www.verizon.com but almost every imaginable variation and promptly challenged every perceived infringement. Finally, the story goes, the big company was outwitted by whoever registered the domain VerizonShouldSpendMoreTimeFixingItsNetworkandLessMoneyonLawyers.com.

Watch Your Back Online

Play it safe, protect yourself, and get a lawyer, advises Harvey Jacobs, managing director of the Rockville, Md.-based law firm Jacobs & Associates, which operates www.internet-law-firm.com.

"Once the business plan has been fairly well developed, the attorney can be a valued member of any business owner's team, along with a CPA and a marketing-and-PR person," says Jacobs.

Online companies are easy prey and legally vulnerable. "Doing business online can subject a small-business owner to being haled before a court in every jurisdiction able to access its Web site," warns Jacobs, who specializes in Internet law. He recommends having an Internet lawyer "prepare a privacy policy, terms of use, disclaimers, and appropriate copyright notices to be displayed on the Web site."

Surprisingly, online businesses don't always know who owns their Web site names, content and intellectual-property rights, Jacobs says. In fact, "not taking the time to firmly establish legal ownership of Web assets" is the biggest mistake he sees online companies make. Jacobs offers this advice:

Claim your name. "An online business must own its domain name," Jacobs insists. No matter which domain registrar you use, he says, "it is critical that the business owner control at least two of the three contact names required."

Give your name as the administrative and billing contact, advises Jacobs. The technical contact is usually the Web host.

"Use a highly stable e-mail address and postal address," Jacobs recommends, since this "critical

information is used for service of process for domain name disputes under the Uniform Domain Name Dispute Resolution Policies (UDRP)."

Protect your property. "The online business must make sure it owns and protects all intellectual property rights (trademark, copyrights, patents) over the content and features of its Web site," says Jacobs.

Common law dictates that whoever does creative work is its owner, whether that person is your employee or an independent contractor, says Jacobs. Get a signed work-for-hire agreement, he says, "transferring the legal rights to the creative work from the creator to the business owner," then filing for copyright, trademark or patent protection.

"Federal copyrights [from the Library of Congress] are fairly easy and inexpensive to obtain," Jacobs says. "Most filing fees are only \$30." Trademarks and patents (obtained from the U.S. Patent and Trademark Office) cost more and "require a certain level of legal skill," he points out, "and thus the business owner is well advised to consult competent legal counsel before filing for these protections."

Examine your options. Before contracting with a Web host, advises Jacobs, have your lawyer "review and compare" agreements you'd sign with any hosting providers you're considering. It's probably not necessary "for the very basic site costing under \$100 per month," Jacobs says, "but for more sophisticated e-commerce sites, legal review and negotiation of the Web hosting agreement would be prudent."

Legal advice in a box? If you're getting your legal guidance off the shelf, you might want to reconsider. Most legal software is too general to be very useful, says Jacobs. "If business owners want to save money and feel that online forms are good enough, I suggest they download them [if they can do so legally], customize them for their own particular situations, then hire competent legal counsel to review them under current applicable state, federal and international laws."

In a nutshell. Jacobs recommends caution for anyone forming a business. "Start slow and plan for the long-term," he says. "Assemble a working team of trusted advisers early in the process □ attorneys, a CPA, and marketing, technical, and creative people. Be nimble and willing to change your plan along the way when the market dictates. Make a profit on every sale, no matter how small. Start with adequate funding."

An editor since the age of 6, when she returned a love letter with corrections marked in red, Mary Campbell founded Zero Gravity in 1984 to provide writing, editing, marketing and other services to small businesses. Her presentations and workshops address small-business topics from Web sites to business writing. An editor of and contributor to dozens of publications (books, journals and newsletters), she is co-author □ with her sister, Pippi Campbell Peterson □ of the second edition of *Ready, Set, Organize! A Workbook for the Organizationally Challenged* (JIST Publishing, 2001). Please e-mail her your comments, questions and suggestions at whywalk@about.com. Small Business Builder is published every other Wednesday.

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