

# **Copyright Law, Social Media, and the Internet**

***What You Need to Know to Protect  
Your Business***

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# Agenda

- Briefly explain the basics of copyright law
- Discuss how copyright related risks can arise in social media marketing and other Internet activities
- Provide practical tips to help you prevent problems

# Copyright Basics: What is Protected?

- Copyright law protects “original works of authorship”
- For our purpose, the most of important of these are:
  - Literary works (all types of text from novels to source code)
  - Sound recordings
  - Movies/video
  - Photographs

# Copyright Basics: What is Protected?

- Copyright Law gives the owner of the copyright in a work the *exclusive right to do, and authorize others to do, the following*:
  - **Copy, adapt, perform, display** and **distribute** his/her/its work of authorship
  - The rights above are often called the “**bundle**” of copyright rights
  - The rights can be divided in thousands of ways
- If the copyright owner grants someone the right to use his/her/its work, it should always be done in writing
  - But it often is not, which is what keeps me in business

# Copyright Basics: What About Rights That Aren't Granted?

- Copyright does not protect ideas!
- All rights in a copyrighted work that have not been granted are retained by the owner
  - The grant of rights is often quite specific (i.e., the grant of the right from Photographer to Company to use a photograph in a brochure does not grant the right to Company use the photo on Company's Web site)
- The *Fair Use Exception*

# Copyright Basics: The Fair Use Exception

- The *Fair Use Exception*
  - An “affirmative defense” with the key word being “defense” (i.e., you would be guilty of copyright infringement but for this defense)
- Section 107 of the Copyright Act provides that certain types of uses of copyrighted works, even without the permission of the copyright owner, may be permissible
  - The statute says these uses are “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research”

# Copyright Basics – The Fair Use Exception

- *In determining* whether the use made of a work in any particular case is a fair use the factors to be considered shall include:
  1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
  2. The nature of the copyrighted work
  3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole
  4. The effect of the use upon the potential market for or value of the copyrighted work

# Copyright Basics: Ownership of Copyrighted Works

- The copyright in a work exists from the moment the work is created and fixed in a tangible medium of expression
- The copyright in the work is the property of the author who created the work
- In the case of works created by an employee for an employer during the course of the employee's normal job duties, the employer and not the employee is considered to be the author

# Copyright Basics: Ownership of Copyrighted Works

- Works created *by non-employees* must be subject “specially commissioned” and subject to a written “work made for hire” if the hiring party wants to own the copyright as a work made for hire
- Only a small group of types of works can even be “works made for hire”

# Social Media Marketing: Big Opportunities

- Sites such as LinkedIn, Facebook and the like present potentially powerful marketing opportunities
  - Facebook in February 2010, nearly 128 million unique visitors and over 2.8 billion hits
- Advertising on such sites tends to be part of a less formal marketing program that can be less subject to scrutiny than more traditional marketing endeavors
  - Informality is a key to success according to “The Art of Facebook Advertising”

# Social Media Marketing: Can Bring Significant Risks

- The speed and informality of marketing through social media sites can sometimes lead to relaxed scrutiny over what is being said and done than would be the case with traditional media
- The potential for interactivity with and between your customers as they become your “fans” and you build your online community has the potential for big business payoffs
- Both of the above can get you into hot water

# Copyright Risks: Getting Yourself into Hot Water

- You use copyrighted works (photographs, movies/video/sound recordings, etc.) that you:
  - Do not own the copyright in; and/or
  - For which you have not obtained the proper written permission from the copyright owner for the *intended and actual use* of the work

# Copyright Risks: Letting Others Get You Into Hot Water

- You allow others to post copyrighted works on your Web site or on your social media site and they:
  - Do not own the copyright in those works
  - They don't have the proper written permission from the copyright owner for their use of the work
  - You know or have reason to know of the infringing activity and have some active participation in it
    - Active participation could be inducing, causing or contributing to the infringement

# Copyright Risks: Staying Out of Hot Water

- Make sure you have written permission use the material that you are using on your site
- If you allow user to post content, make sure to have a user agreement that makes it clear that it can only be their material (with appropriate warranties; indemnification and other clauses)
- Follow-up and remove and suspicious content

# Copyright Risks: Getting Out of Hot Water

- Digital Millennium Copyright Act might help
  - Applies to providers of “online services or network access, or the operator of facilities therefore” (OSP)
  - Four types of “safe harbors” for OSPs
- Requires the OSP to have “clean hands” concerning the infringement, as well as to remove infringing content when it become aware of it or receives notice
- Most businesses are not OSPs

# Copyright Risks: Getting Out of Hot Water

- Can attempt to comply with the DMCA provisions if there is a possibility that it might apply
- At a minimum, monitor your site carefully and make sure that it is easy to locate the appropriate person to notify should a copyright holder claim to have located infringing content on your site

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***Questions?***

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