

## Cyberspace Law: A Crucial Component for Effective E-Commerce

Once they decide to create an e-presence, many brick and mortar businesses simply mix up a batch of original graphics, add a few company logos, some creative content and a shopping cart, and serve up a full course Website. Cyberspace law experts, however, warn that there is much more to creating an online business.

For instance, the issue of Cyberspace jurisdiction is one of which content providers should be aware. Internet jurisdiction involves who says what applies to whom and when. Thomas Vartanian, Chairman of the American Bar Association's Cyberspace Law Committee, states that "The absence of predictability and certainty with respect to the question of what countries' laws apply to websites is a stumbling block that prevents e-commerce from realizing its true potential."<sup>i</sup> In *A Global Approach To The Laws of Jurisdiction in Cyberspace*, Vartanian adds, "[T]here is no more fundamental issue that must be resolved... than the question of whose laws apply to electronic commerce."<sup>ii</sup>

In one recent battle, a French court ordered that Yahoo! Inc. abide by French anti-hate laws and block French residents from access to Nazi memorabilia available on its auction sites.<sup>iii</sup> The court subsequently granted a temporary reprieve in order to research ways to enforce the ruling, however, consumer pressure from a similar case against eBay caused that auction giant to ban the offending items of its own accord.<sup>iv</sup> Whether France's ruling against Yahoo! stands or not, it will behoove savvy Webmasters to keep the issue of Internet jurisdiction firmly in mind when preparing online content.

Another volatile issue that continues to occupy the media, and which is of great importance to Webmasters, is that of Website visitors' privacy. The Consumer Privacy Protection Act<sup>v</sup> clearly sets limitations on the use and disclosure of personal information. According to Bill S.2606.IS, site owners must completely disclose how personal information is to be used and may not share that information without express permission from Website users. While the legislation is clear, litigation continues, including a class action suit filed by Christopher Sprecht against Netscape, an America Online subsidiary, for allegedly using its Smart Download software to secretly monitor users' actions. No verdict has yet been rendered in that case, but the threat of lawsuit in itself is enough to warrant consideration.<sup>vi</sup>

Of relevance to potentially all e-commerce Websites, especially those with an established offline brand, is the issue of trademark infringement or dilution. While most content strategists are aware of the legalities of copyright, many of those same professionals are uneducated in the proper use of trademarks. A trademarked name should *always* include a trademark symbol (™). Continued disregard for proper use has cost more than one entity its trademark registration by reducing its perceived uniqueness.

In one such case, Pro-C Ltd., a software developer in Waterloo, Ontario, won a \$1.2 million lawsuit against Computer City (a Tandy company) for trademark infringement of

its Wingen name. Following the 1994 launch of Computer City's Wingen computer system, Pro-C's [Wingen.com](http://www.wingen.com) Website was inundated with visitors, complaints and issues revolving around the use of the trademarked name. Pro-C subsequently lost its trademark because of market dilution. Pro-C's Web server logs, however, which showed visits from Computer City's top level domain just prior to launch of the computer, eventually convinced the courts that Computer City and Tandy were indeed liable for trademark infringement.<sup>vii</sup>

Another legal aspect of Website development that has landed more than one company in court is the issue of "deep-linking," or bypassing a Website's home page and linking directly to an interior page. While linking to another Website is often considered compliment, the controversy stems from those who believe that encouraging site visitors to circumvent their home page cheats advertisers out of the added exposure those visitors represent. Such is the issue with TicketMaster Corporation who sued Microsoft Corporation, and later Tickets.com for linking directly to sales pages for special event tickets, thereby avoiding the policies and services pages mapped out by TicketMaster. While Microsoft agreed to link only to TicketMaster's home page, thus settling that dispute, a judge ruled against TicketMaster in the Tickets.com case.<sup>viii</sup> While Tickets.com ultimately won its case, content developers should still consider this a warning of the potential dangers of linking to another Website without permission.

The quest for quality content is a capricious one, leading content planners down paths of dazzling prose and creative graphics in search of perfectly designed Websites. The goal for savvy strategists, however, must be to provide original, resourceful content while understanding and adhering to proper legal guidelines.

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<sup>i</sup> Telephone interview with Thomas Vartanian, 202-639-7200

<sup>ii</sup> *A Global Approach To The Laws of Jurisdiction in Cyberspace*,  
<http://www.kentlaw.edu/cyberlaw/housetestimony.html>

<sup>iii</sup>

[http://www.perkinscoie.com/casedigest/icd\\_results.cfm?keyword1=jurisdiction&topic=Jurisdiction/Venue](http://www.perkinscoie.com/casedigest/icd_results.cfm?keyword1=jurisdiction&topic=Jurisdiction/Venue)

<sup>iv</sup> <http://www.gigalaw.com/articles/morris-2000-06-p4.html>

<sup>v</sup> <http://thomas.loc.gov/cgi-bin/query/D?c106:6:./temp/~c106CHTDvc::>

<sup>vi</sup>

[http://www.perkinscoie.com/casedigest/icd\\_results.cfm?keyword1=privacy&topic=Privacy](http://www.perkinscoie.com/casedigest/icd_results.cfm?keyword1=privacy&topic=Privacy)

<sup>vii</sup> Web logs used to prove trademark infringement.  
<http://www.globetechnology.com/archive/gam/E-Business/20000907/TWGEIS.html>

<sup>viii</sup> <http://www.gigalaw.com/library/ticketmaster-tickets-2000-08-10-p1.html>