

Is Your Web Site Exposing Your Firm to Liability?



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As a Web site owner, unless you are conscious of the legal implications of the manner in which you link, of the text you generate and of the meta-tags you utilize in developing, operating and promoting your Web site, you may be exposing your company to liability.

Specifically, the use of certain technology, such as linking, framing and the use of meta-tags, may place your company at risk and lead to claims of, among other

things, unfair competition and intellectual property infringement.

Linking. Linking is a feature incorporated into the programming language of the Internet, called hypertext markup language or HTML. Linking permits a user to jump from one page to another page of an individual Web site or to jump from one Web site to a different Web site.

Although the mere act of linking to another site is generally considered permissible, in some instances, linking can give rise to third-party claims for unfair competition and infringement. Such can be the case where a link circumvents a party's home page or the advertising portion of a Web site. When a home page containing advertising is regularly bypassed (i.e., when the home page is not hit), the dollar value that the Web page owner may command for future advertisements is diminished, as the fees for advertising depend, in large part, on the number of hits the site receives.

Other activities that could result in liability for unfair or wrongful trade practices are:

- Using links to falsely suggest an association with the host of the linked Web site;
- Stating or implying that the linked Web site has endorsed or approved your goods or services;
- Using, without authorization, corporate logos or trademark or service marks of third parties as the link button vs. simply using the company's name or Web address, thereby tripping trademark infringement.

In order to minimize the risk of liability created by linking, try to enter into a linking agreement. If such an agreement is not feasible, then, the link to another Web site should be to the home page only.

Framing. Framing is a specialized type of linking wherein a viewer who links to a new site continues to view some of the content of the originating site as a frame around the linked page. Framing arguably creates an unauthorized derivative work — the

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combination of the framer's own content with the content of the site linked. As a result, framing is likely to give rise to a copyright infringement claim since the creation of a derivative work from an original copyrighted work is one of the rights that belong exclusively to the copyright holder.

In addition to copyright infringement claims, framing may result in liability for unfair or wrongful trade practices. Since there is no way for a user to determine if the content of the site is attributed to the framing site or to the linked site, there is a high risk that a user will be deceived about the source.

By using frames, text as well as images drawn from other Web sites can be simultaneously displayed and juxtaposed with other materials, which can mislead the user about the sources of the framed content.

It can also create the false appearance of association between the framer and the owner of the Web site being framed because the framer's Web site address and other content remain on the screen while the content of the target site is displayed.

Without a linking agreement, the next best thing to avoid liability is to link the third-party site to a new pop-up window, avoiding the perception that it is actually part of the original site.

Meta-Tags. Meta-tags are strings of text embedded in the HTML code used by search engines to match a user's search query to a particular Web site. Meta-tags are often utilized to specify key words that have been matched during a search.

There exists a strong commercial incentive to employ meta-tags with extensive key word lists because the more frequently a Web site is disclosed during a computer search, the more often a site will be visited or hit. The more often a site is visited, the higher the advertising fees the Web site owner may charge.

Key-word examples in unfair competition claims include:

- The name of a competitor,
- The name of competing products,
- A registered trademark or service mark of a third-party,
- A political or social cause that is of high public interest and will thereby increase the number of hits to a particular Web site.

In order to minimize the risk of liability, Web site owners should be cognizant of the meta-tags they use in operating and promoting their Web sites. Every effort should be made not to embed third-party trademarks and/or service marks in their Web sites' meta-tags, unless authorization from the marks' owner is obtained.

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