

Website Legal Compliance

Presented to:

TechBridge and

The Pro Bono Partnership

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PURPOSE

- To provide a summary of the current legal issues non-profits face when developing a presence on the Internet and offering additional features on their websites.



AREAS WE WILL COVER

- Website development and modification
- The use of interactive content on your website
- Online fundraising and shopping
- Data collection and privacy issues
- Email communications

WEBSITE DEVELOPMENT

- Who owns the copyright in your website?
 - ✓ If developed by an employee, the organization owns the copyright
 - ✓ If developed by an independent contract, the contractor likely owns the copyright
- What if the independent contractor owns the copyright?
 - ✓ Cannot modify the website without permission

- How does an organization obtain ownership of its website?
 - ✓ Work for hire is not available
 - Not specially ordered or commissioned
 - Not within one of the statutory categories (*e.g.*, contribution to a collective work, a part of a motion picture or other audiovisual work)
 - Must also be expressed in writing that it is a work made for hire

- Obtain an assignment of all copyrighted material or a license (in some cases, exclusive) to use and make derivative works of the original work created by the independent contractor



INTERACTIVE CONTENT

- Non-profit websites are becoming more sophisticated
- Provide online communities where volunteers and participants are able to interact and share experiences
 - ✓ Posting comments and blogs
 - ✓ Sharing pictures, videos, music, text
- Schools for Schools Program
<http://s4s.invisiblechildren.com/info>

- User-Generated Content v. Company Generated Content
- Non-profits can be shielded from liability for most user generated content under the Digital Millennium Copyright Act (“DMCA”) and the Communications Decency Act (“CDA”)
- Companies are generally liable for content posted by its employees and volunteers if the actions are within the scope of the individual’s responsibilities



DIGITAL MILLENNIUM COPYRIGHT ACT

- Provides safe harbors for website owners for contributory copyright infringement
 - ✓ The storage of information at the direction of users such as from chat rooms, blogs, bulletin boards
 - ✓ The provision of search engine functionality and hyperlinks to other websites

- How to Qualify for the DMCA Safe Harbors
 - ✓ The DMCA sets forth specific requirements in order to qualify
 - ✓ Not have knowledge of the infringing activity
 - ✓ Not receive a financial benefit from the infringing material
 - ✓ Promptly remove the material after receiving notification

DIGITAL MILLENNIUM COPYRIGHT ACT (cont'd)

- ✓ Implement a terms of use agreement on your website:
 - a statement prohibiting users from posting materials that infringe on another person's copyright
 - provide accurate contact information for copyright owners to contact the website
- ✓ File a designated copyright agent with the US Copyright Office
- ✓ Do not modify content posted by others on your website



COMMUNICATIONS DECENCY ACT

- Provides a safe harbor for website owners from liability where the cause of action treats the website owner as the publisher of the information
- This includes actions for defamation, negligence and tortious interference.
- The CDA does not insulate a website owner from claims for criminal offenses or intellectual property laws

- No specific steps required to obtain these protections
- Terms of use should prohibit users from posting these types of materials



COMPANY POSTED MATERIALS

- Non-profits are not insulated from liability if material is posted by an employee or a volunteer acting in the scope of his or her responsibilities
- Consider creating a blogging policy if employees and volunteers are allowed to freely post information on the website

- Prohibit posts that:
 - ✓ infringe the copyright, trademark or other intellectual property right of others
 - ✓ defame others
 - ✓ interfere with another's business relationships
 - ✓ violate a person's right of publicity
 - ✓ disclose confidential information
- Create a review and approval process before employees and volunteers post information on the website



ONLINE FUNDRAISING

- Websites provide an excellent platform to showcase an organization and raise funds
- Soliciting charitable contributions on the Internet can require registration in other states
- Should your organization register in all states requiring registration if it solicits online donations?

- Many states define “solicitation” broadly
 - ✓ Pennsylvania: “[a]ny direct or indirect request for a contribution on the representation that [the] contribution will be used in whole or in part for a charitable purpose, including, but not limited to, any of the following: ... any written or otherwise recorded or published request that is mailed, sent, delivered, circulated, distributed, posted in a public place or advertised or communicated by the press, telegraph, television or any other media.”

- What is considered a “solicitation”?
 - ✓ Sending an email to an individual requesting a donation
 - ✓ Telephone call to an individual requesting a donation
 - ✓ Website that is enabled to accept charitable contributions???

- “Charleston Principles” developed by National Association of State Charities Officials
- Guidelines only and not binding on any state
- An organization should register if:
 - ✓ its website specifically target persons located in a state
 - ✓ internet-based contributions are received on a repeated or ongoing basis from a state
 - ✓ it sends email solicitations to an individual that it knows or reasonably should know lives in a particular state

- Does a charity need to register if a service provider solicits on its behalf?
- Charleston Principles suggest the following:
 - ✓ Does state require charity to register if solicitations are through a third party?
 - If no, look to the charity's website to see if it requires registration
 - If yes, suggests that states not require registration if a charity's own website does not require registration

- Recommendations
 - ✓ Determine the extent to which your organization collects contributions through your website
 - ✓ Determine the number of contributions are from states other than those in which you are currently registered

ONLINE FUNDRAISING (cont'd)

- ✓ Suggest a disclaimer on your website that donors must be located within a certain state(s)
- ✓ Consider posting your IRS Form 990 on your website with a prominent link where donations are accepted



ONLINE SHOPPING

- If you collect credit card information from users, you must comply with the Payment Card Industry (PCI) Standards, developed by major payment card entities (e.g., VISA, MasterCard),
- PCI Standards include maintaining appropriate firewalls and physical security measures, encrypting data and regular tests of systems

- State laws are beginning to codify portions of the PCI Standards
 - ✓ Minnesota requires organizations to delete all credit card data within 48 hours of collection
 - ✓ If an organization violates law and that data is breached, organization is responsible for costs incurred by financial institutions such as closing accounts, cancelling cards and issuing refunds
 - ✓ California has passed a similar measure that is awaiting the governor's signature

ONLINE SHOPPING *(cont'd)*

- Contracts with service providers should:
 - ✓ require conformance to these standards
 - ✓ indemnify you from claims relating to the service provider's failure



DATA COLLECTION AND PRIVACY ISSUES

- Best practice is to include a privacy policy on your website
 - ✓ Demonstrate to users that you care about protecting their information
 - ✓ Outline the information collected, how you use it and with whom you share it

DATA COLLECTION AND PRIVACY ISSUES *(cont'd)*

- Determine what information is collected from users on your website
 - ✓ Name, address, telephone number, email address
 - ✓ Sensitive information such as a social security number, driver's license number, birth date
 - ✓ Only collect information that you need

DATA COLLECTION AND PRIVACY ISSUES *(cont'd)*

- How is the information used?
 - ✓ Do you allow users to opt-out of certain uses of their information?
 - ✓ Do you require users to opt-in prior to using their information?
- With whom do you share user information?
 - ✓ Service providers, marketing agencies, solicitation partners, other non-profits

DATA COLLECTION AND PRIVACY ISSUES *(cont'd)*

- What restrictions do you place on other parties that have access to data collected by you or on your behalf?
 - ✓ Information should be used in conformance with your privacy policy
 - ✓ Information should only be used for specific purpose for which it has been provided



COLLECTING INFORMATION FROM CHILDREN

- Children’s Online Privacy Protection Act (“COPPA”) prohibits organizations from collecting information from children under 13 without parental consent
- COPPA does not apply to non-profits but is a good practice to follow
- If you receive information from a child you should delete the information from your records



POSTING OF INFORMATION TO YOUR WEBSITE


- Respect the privacy of your volunteers, donors and people you assist
- Be careful about posting information identifying others on your website
 - ✓ Pictures from a recent event, donor list, meeting attendance sheet, emails to the organization

POSTING OF INFORMATION TO YOUR WEBSITE *(cont'd)*

- Prior to posting such information, get the consent of the individual
 - ✓ Signed release to use image and likeness on website and other publications
 - ✓ When receiving donation require donor to opt-in to the sharing of their information

COMMUNICATING VIA THE INTERNET

- CAN-SPAM Act requires certain disclosures when sending email messages
- Commercial emails – primary purpose is the commercial advertisement or promotion of a commercial product or service
 - ✓ Political and charitable solicitations are exempt
 - ✓ Not exempt if email has offers from corporate sponsors or unrelated to organization's mission
- Transactional emails – purpose is to contact a person regarding a transaction such as providing a receipt or an account balance

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- Commercial emails must include:
 - ✓ clear identification that message is an advertisement or solicitation
 - ✓ a valid physical postal address
 - ✓ an option for the recipient to opt-out of future messages
 - ✓ no misleading transmission information
 - ✓ no deceptive subject headings



COMMUNICATING VIA THE INTERNET *(cont'd)*

- Opt-out request must be honored within 10 business days
- Opt-out obligation does not apply to transactional messages

COMMUNICATING VIA THE INTERNET

(cont'd)

- Do third parties send e-mail messages on your behalf?
- Are they required by contract to comply with the CAN-SPAM Act?
 - ✓ Disclosures
 - ✓ Opt-out
- Are opt-out requests communicated to your organization?



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