

Best Practices for a Legally Compliant Website

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Questions We Will Answer

- Who owns my website?
- Does it matter who provides the content on my website?
- What are my obligations related to online fundraising?
- Should my website be accessible to those with special needs?
- Is my client information properly secured?

Website Development

- Who owns my website?
 - If developed by an employee, the organization owns the website
 - If developed by an independent contract, the contractor likely owns the website
 - If developed by a volunteer, and not paid for their services, likely considered an independent contractor
- What if the independent contractor owns my website?
 - You cannot modify the website without their permission

Website Development (cont'd)

- How does my organization obtain ownership of our website?
 - “Work for hire” is not available
 - ◆ Not specially ordered or commissioned; and
 - ◆ 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”

Website Development (cont'd)

- How does my organization obtain ownership of our website?
 - Agreement with contractor/volunteer should include the following:
 - ◆ An assignment of all intellectual property rights in any material provided by or created by the contractor; or
 - ◆ A royalty free, worldwide, perpetual (consider exclusive) license to use the materials and create derivative works
 - What will the independent contractor want?
 - ◆ The right to own and use templates and widgets of a general nature

Website Development (cont'd)

- How do we compromise?
 - Consider an assignment/license agreement with the contractor
 - Organization owns all aspects of the website designed specifically for the organization (specific buttons, layout, color schemes)
 - Contractor grants broad license to organization for general parts of the website for organization to use going forward

Website Content

- Does it matter who provides the content on my website?
 - Yes, your organization is potentially at risk if users post content on your website such as on bulletin boards or blogs
 - User generated content can infringe on another person's intellectual property rights
 - User generated content can cause harm to another person (e.g., defamation)
 - Organizations are generally responsible for the information posted on the website by its employees and volunteers

Website Content (cont'd)

- What steps can my organization take to minimize any associated risks?
 - Utilize social networking sites for user generated content
 - Follow steps to qualify for the safe harbor under the Digital Millennium Copyright Act (“DMCA”)
 - Follow steps to qualify for the protections afforded by the Communication Decency Act (“CDA”)

Website Content (cont'd)

- What is the benefit of utilizing social networking sites?
 - Social networking sites are designed to allow users to upload content and communicate in an interactive manner
 - Many social networking sites allow non-profits to create their own pages
 - ◆ YouTube allows non-profits to have a video page and Facebook allows organizations to create group pages.

Website Content (cont'd)

- Social networking sites are managed by third parties unaffiliated with your organization.
 - ◆ Content posted by users is not directed to your organization, but to a third party.
- The social networking site is responsible for comply with the law related to content posted on the site

Website Content (cont'd)

- Why is the Digital Millennium Copyright Act important?
 - Provides a safe harbor for website owners from indirect copyright infringement
 - ◆ The storage of information at the direction of a user, such as chat rooms, blogs, bulletin boards
 - ◆ The provision of search engine functionality and hyperlinks to other websites

Website Content (cont'd)

- How do I qualify for the DMCA Safe Harbor?
 - The DMCA sets forth specific requirements in order to qualify including:
 - ◆ Not having knowledge of the infringing activity
 - ◆ Not receiving a financial benefit from the infringing activity
 - ◆ Follow the notice and take down procedures after receiving notice of potential copyright infringement

Website Content (cont'd)

- ◆ Implementing a terms of use agreement on your website that includes:
 - 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 your designated copyright agent information with the U.S. Copyright Office

Website Content (cont'd)

- Why is the Communication Decency Act important?
 - The CDA 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 the website owner from claims for criminal offenses or intellectual property crimes.

Website Content (cont'd)

- How do I qualify for the protections under the CDA?
 - No specific steps are required to obtain these protections.
 - Terms of use on website should prohibit users from posting these types of materials.
 - You should remove such content once you have knowledge of potential claims.

Website Content (cont'd)

- If user generated content appears to be problematic can I modify the content?
 - No, the DMCA and CDA only protect website owners where the content is posted at the direction of the user.
 - If you modify the content it is deemed to be posted by you and you can be directly liable.
 - When there is any doubt, delete the content.

Online Fundraising

- What are my obligations regarding fundraising on my website?
 - Websites provide an excellent platform to showcase an organization and raise funds.
 - Soliciting charitable contributions using the internet can require registration in states where your organization may not already be registered.

Online Fundraising (cont'd)

- What is considered a solicitation?
 - Many states define the term “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.”

Online Fundraising (cont'd)

- What is considered a “solicitation”?
 - Sending an email to an individual requesting a donation
 - A telephone call to an individual requesting a donation
 - A website that is enabled to accept charitable contributions???

Online Fundraising (cont'd)

- “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

Online Fundraising (cont'd)

- 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

Online Fundraising (cont'd)

- 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
 - 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

Website Accessibility

- What does it mean for my website to be accessible to those with special needs?
 - Users with certain special needs may not be able to utilize a website in the traditional manner
 - ◆ A blind person cannot see the text and images on the screen
 - ◆ A person with sight problems may have trouble reading text on colored background
 - ◆ A deaf person may not be able to hear audio clips

Website Accessibility (cont'd)

- What does it mean for my website to be accessible to those with special needs?
 - Websites can be designed in a manner so that technology such as screen readers can convert information to other formats for people to utilize
 - ◆ Text is converted into spoken word
 - ◆ Spoken word is converted into text

Website Accessibility (cont'd)

- Are there guidelines for determining if my website is accessible?
 - The federal government has developed access standards to be used by federal agencies
 - ◆ Access Board 508 Standards
 - Web Content Accessibility Guidelines (WCAG) available at <http://www.w3.org>

Website Accessibility (cont'd)

- Why is website accessibility important?
 - Considering your audience, it may be important for your organization
 - Public perception
 - Potential for lawsuits

Website Accessibility (cont'd)

- What is the law regarding website accessibility?
 - Federal law requires federal agencies to purchase technology compliant with the 508 standards unless it poses an undue burden
 - Most states have similar laws for state government purchases

Website Accessibility (cont'd)

- What is the law regarding website accessibility?
 - Private entities are subject to the Americans with Disabilities Act and related state laws
 - It is unclear whether the law extends to websites

Website Accessibility (cont'd)

- National Federation for the Blind versus Target Corp.
 - NFB sued Target under the ADA because the Target website was not accessible by screen readers
 - Class Action was allowed to proceed
 - ◆ The website is integrated with the brick and mortar store and is a place of public accommodation under the ADA

Website Accessibility (cont'd)

- The parties recently settled the case as follows:
 - ◆ Target pays \$6 million fee to class
 - ◆ Target revise website to comply with certain internal and agreed upon guidelines
 - ◆ NFB certifies website under its certification plan
 - ◆ NFB monitors the website on a quarterly basis for 3 years

Data Security

- Is my client information properly secured?
 - Non-profits collect significant amounts of data regarding its employees, volunteers and clients
 - Some of this data is sensitive – health information, social security numbers, credit card numbers
 - Such data must be secured when transmitted outside the organization and when stored

Data Security (cont'd)

- What are the legal requirements related to the security of data?
 - Specific laws and regulations regarding certain type of data and industries
 - ◆ Financial institutions, credit card transactions
 - New laws are becoming technology specific

Data Security (cont'd)

- What are the legal requirements related to the security of data?
 - Massachusetts Regulation – 201 CMR 17.00 takes effect January 1, 2009
 - Applies to personal information of Massachusetts residents
 - ◆ Name plus social security number, drivers license number or financial account or credit card number

Data Security (cont'd)

- Requires all persons that have information pertaining to a Massachusetts resident to:
 - ◆ Have a security program that satisfies specific requirements (e.g., security breach program, third party certification, policy on transporting records)
 - ◆ Encrypt all transmission of records across public networks and wirelessly (to extent feasible)
 - ◆ Encrypt all personal information stored on laptops and other portable devices

Data Security (cont'd)

- Nevada also passed a law requiring encryption of data when it leaves the organization
- This trend is likely to continue.

Contact Information

Bill Helmstetter
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, Georgia 30309
Bill.helmstetter@alston.com