

BUSINESS LAW

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Intellectual Property (IP) and E-Commerce

It is undeniable that Intellectual Property (IP) is important to E-Commerce and vice versa because of several reasons. Experts believe that any business entity or individual that trades or wants to trade electronically must be aware and adhere to certain laws regarding intellectual property. As compared to other business systems, E-Commerce is more inclined in selling products and services that are based on IP and its related licensing attributes. For example, products and services such as pictures, music, systems, software, training modules, and photos can all be bought and sold through E-Commerce due to the fact that IP is the key element of value in the transaction process. IP is an essential element because all transactions that are conducted through the Internet must be protected because of the many threats that this medium pose to such important transactions. This can be achieved through IP protection mechanisms like IP laws and technological security systems. The World Intellectual Property Organization (nd) argues that a business can be destroyed if such measures are not adhered to because someone else might steal or pirate such properties.

IP is also related to E-Commerce because the latter helps the other to work. Internetworking software, user interface, designs, networks and hardware such as routers, chips and switches all fall under IP. It is imperative to understand that all these are often protected by IP rights. This relationship shows how the two independent entities are related to each other. On the same note, trademarks, which form an integral part on the survival of any E-Commerce business through customer recognition, branding and goodwill also falls under IP. As a matter of fact, trademarks, which form part of IP plays a vital role in web-based businesses because they protect such business entities from unfair competition (World Intellectual Property Organization, nd).

Finally, IP serves as a platform on which all E-Commerce business entities base their value. For this reason, the valuation of any E-Commerce business is affected by whether that business has protected its IP or not. Just like other technology firms, E-Commerce businesses have patent trademarks and portfolios that must be protected because they relay the value of the business to present and would-be clients.

Taking Care of your Business' Website

In the present business environment, having a website is essential. This is because websites have a major impact on the image of any company. Due to this importance, taking care of this vital entity is vital. It is important to understand that similar to other properties, a website should be treated as an IP by protecting the following components in a website.

- E-commerce system: this component is comprised of search engines and other technical internet tools. Taking care of this component involves protecting it using utility models or patents.
- Software: this component is comprised of text based codes such as HTML which are used to develop and maintain a website. Taking care of this components involve protecting it by copyright and/or patents, depending on the country's IP laws.
- Website design: this vital component of a company's website should be maintained by copyrighting it.
- Creative website content: this essential component of a website, which comprises of text, photographs, videos, music, written material and graphics, must also be protected by copyright since this forms part of the maintenance process.

As highlighted in the above points, website maintenance entails protecting the vital contents that are integrated to create a website. Apart from the components highlighted above, other components that need maintenance through copyright protection include company databases, company names, brand names, logos, and domain names. Other than these visible components of a website, hidden aspects of a company website must also be maintained by protecting them using trade secret laws. These aspects include source codes, algorithms, confidential graphics, object codes, and database content. It is imperative to understand that all this maintenance and protection is aimed at protecting a company's IP from hackers who can bring a company to its knees once they have access to such property (Verbauwhede, 2012).

Protecting your Website

There are various ways through which a company or person can protect a website from unnecessary abuse. These may include;

a) Protecting IP rights

Many companies and individuals are often caught off guard and end up losing the legal rights of their IP because they fail to develop appropriate protective strategies from an early stage. To prevent such situation from happening, companies and individuals must ensure that they register their trademarks as soon as possible. Other than this, they must ensure that they register a domain name that is not only user-friendly, but also mirrors your character of business, trademark or business name. Moreover, it is important to patent online business methods in nations where such protections can be found. Companies that operate in countries that have copyright laws must take the initiative of registering their websites and copyrighted material at the national copyright offices. Never disclose trade secrets to anyone because no body can be trusted. Finally, it is advisable for company and individuals to take an insurance policy for their IP so that they can take legal action in case somebody

infringes on the IP. As (Verbauwhede, 2012) contends, it is important to reveal the existence of a copyrighted product through a personal or company website so that infringers can be deterred.

b) Let People Know that the Content is protected

Many people who access information from websites believe that that material is free. Companies and individuals must make it clear that the content of their websites are protected by highlighting their IP rights. For example, website owners can use watermarks that embed copyrighted IPs into the digital content. Verbaauwhede (2012) argues that watermarks are vital for deterrence because invisible watermarks can help in tracing and proving the unauthorized use of copyrighted material.

c) Controlling Access and Use of Your Website Content

There are several ways through which companies or individuals can control the access and use of their websites by third parties. Many people rely on technological protection mechanisms. These mechanisms may limit or bar the access to published materials on your website. For example, these mechanisms may only allow visitors who are willing to comply with certain conditions or are willing to pay for before accessing the content of your website (Verbaauwhede, 2012).

Who Owns the IP Rights in your Website?

A typical website is comprised of a wide range of components that are owned by different individuals. For example, whereas a company may own rights in the navigation software, other individuals may own copyright of the graphics, photographs, and texts within that website. Moreover, another party may own copyright in the design of the same website. As aforementioned, it may be difficult for a company to own the IP rights for an entire website. In this regard, all parties that are involved in creating website must establish what IP rights they own, which ones

they have the right to use and in what ways, and which they have no right to use.

Who Owns the Copyright when a Company Pays Someone to Develop a Website?

Questions often arise about who owns the copyright to a website when a company pays someone to develop its website. While this question might be confusing, law experts hold that the company, which is an employer in this case, owns the copyright over the website. However, this situation may be different if the company (employer) and the developer (employee) agreed otherwise. However, Verbauwheide (2012) argues that this is rarely experienced in small businesses. In the present business environment, many companies have resorted to outsourcing the creation of their website designs and content to outside contractors. Naturally, these companies assume that the IP rights belong to them since they have paid the contractors for this work. Unfortunately, things may not turn out as expected because the rights may end up being the contractors'. In contrast to employees, independent contractors often own IP rights of their creations even if you have paid. To prevent such situations from arising, it is important that the two parties make an agreement in written contract (Verbauwheide, 2012).

In practice, the IP rights as well as the copyright rightfully belong to the independent developer. This rights ownership also includes the design as well as the elements that contribute to that design such as jpegs, gifs, colors, text coding, and hyperlinks. Property law experts contend that all copyright and IP rights do not belong to the company, irrespective of whether the company has paid or not unless a valid, written agreement that transfers ownership has been formalized. Verbauwheide (2005) gives us an example of a company that has solicited the services of a freelance web designer to develop its website. According to the national laws, the copyright belongs to the designer because there is no agree-

ment for transfer of ownership between the two parties. Under such circumstances, the company will need authorization if wants to refresh or make any changes to its website years later. Moreover, the company will be compelled to make additional payment for the designer to make the required changes.

Can you use Material Owned by Others on Your Website?

The current technological advancements makes its easy for one to use material created by others, including television clips, music, films, photographs and software in your website. However, it is not legal to do this despite the ease of copying and using such properties in your website. As a matter of fact, using IP without prior permission, either by obtaining a license or an assignment can have far reaching consequences (Verbauwhede, 2005). Below are some guidelines that offer direction on how to use materials owned by others on a website without infringing on the IP rights of the owner.

a) When using technical tools such as search engines or e-commerce systems that are owned by others, ensure that you are in possession of a written agreement, and have it ascertained by a lawyer before signing into it or prior to conducting any design or installation of the site begins.

b) If you wish to put other peoples' photos, written material, logos, music, cartons, drawings, training manuals, and original databases on your website, ensure that you acquire a written permission to do so from the copyright owner. It does not matter whether you intent to use whole or part of the copyrighted material, you will generally need authorization before use. it is imperative to understand that all material stored on web servers or accessed via the internet are protected by

copyright in the same way as other materials that have been published through other means. () argues that it is wrong to download and reproduce other peoples' materials just because they can be accessed via the Internet.

c) It is important to be cautious when using other peoples' trademarks despite the fact that there is nothing wrong with identifying a competitor's products on your site using their trademarks. This infringement can only be avoided if one avoids using someone else's trademark in a manner that may confuse a consumer.

Guidelines for Creating, Launching, Developing and Maintaining a Website

There are many challenges that one must deal with when running a website. Some tips for keeping a website legal are highlighted below.

a) Beware of links

There are no clear laws that offer direction on how or when one is supposed to use links in many countries. Usually, using or following links is legal and no prior permission is needed from the linked site to use a link. However, bloggers or surfers must be wary of links that lead them to compromising situations such as; illegal content, deep links, framing or links that might compromise a firm's logo (Verbauwhede, 2005).

b) Beware of metatagging

Metatags are invisible phrases or keywords that are embedded in a website's HTML codes but visible to some search engines. Theoretically, these keywords allow developers of websites to provide information that make search engines more efficient. However, rather than using terms that exclusively describe a site, some web developers use the names of competing companies in their metatags. It has been estab-

lished that some web developers use metatags as disguising tools for directing consumers into unwanted sites. Therefore, this deceptive behavior amounts to unfair competition or trademark infringement (Verbauwhede, 2005). Metatags are invisible phrases or keywords that are embedded in a website's HTML codes but visible to some search engines. Theoretically, these keywords allow developers of websites to provide information that make search engines more efficient. However, rather than using terms that exclusively describe a site, some web developers use the names of competing companies in their metatags. It has been established that some web developers use metatags as disguising tools for directing consumers into unwanted sites. Therefore, this deceptive behavior amounts to unfair competition or trademark infringement (Verbauwhede, 2005).

c) Choosing a domain name carefully

When picking a domain name, it is imperative that you choose a unique domain name that is not trademark of an existing company. Many IP laws consider this practice, also referred to as 'cyberquatting' as a trademark infringement. Failure to adhere to this law might force an SME to cancel or transfer the domain name. In severe cases, the infringing company may be compelled to pay for damages. Choosing a unique domain name is very simple, just search through the many databases on the web to establish if your preferred domain name is a registered trademark or not (Verbauwhede, 2005).

d) Never Reveal Trade Secrets

It is important for any business to maintain its competitive advantage by keeping vital information such as sales methods, list of supplier, marketing plans, consumer profiles and manufacturing away from competitors. This can be achieved by protecting this information using laws on unfair competition as well as know trade secret laws. Verbrauwheide (2005) believes that any trade secret that has been exposed is no longer protected. Thus, a company must ensure that its website pages do not contain any information that might compromise the security of confidential business information.

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