

# Intellectual Property and E-commerce: How to Take Care of Your Business' Website

Lien Verbrauwheide, Consultant, SMEs Division, WIPO<sup>1</sup>

A company's website can be a great tool for promoting business online and for generating sales. However, as Web commerce increases, so does the risk that others may copy the look and feel of your website, some of its features or the content on your website. The risk also increases that you may be accused of unauthorized use of other people's intellectual assets. This article deals with some of the basic issues that you should be aware of before launching a website.

## What elements of your website can be protected?

Many parts of your website may be protected by different types of intellectual property (IP) rights. For example:

- **E-commerce systems, search engines or other technical Internet tools** may be protected by patents or utility models;
- **Software**, including the text-based HTML code used in websites, can be protected by copyright and/or patents, depending on the national law;
- Your **website design** is likely to be protected by copyright;
- Creative website **content**, such as written material, photographs, graphics, music and videos, may be protected by copyright;
- **Databases** can be protected by copyright or by *sui generis* database laws;
- Business names, logos, product names, domain names and other **signs** posted on your website may be protected as trademarks;
- Computer-generated **graphic symbols, screen displays, graphic user interfaces (GUIs)** and even **webpages** may be protected by industrial design law;
- **Hidden aspects** of your website (such as confidential graphics, source code, object code, algorithms, programs or other technical descriptions, data flow charts, logic flow charts, user manuals, data structures, and database contents) can be protected by trade secret law, as long as they are not disclosed to the public and you have taken reasonable steps to keep them secret.

## How to protect your website

Some precautionary measures are necessary to protect a website from abusive use. These may include:

- a) **Protecting your IP rights** – If you do not develop appropriate strategies to protect your IP from an early stage, you may lose your legal rights in them. You should:

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<sup>1</sup> The views expressed in this article are those of the author and do not necessarily represent those of WIPO. Comments, suggestions or any other feedback concerning this article may be sent to [lien.verbauwhede@wipo.int](mailto:lien.verbauwhede@wipo.int).

- Register your trademarks;<sup>2</sup>
- Register a domain name that is user-friendly and reflects your trademark, business name or character of your business. If your domain name can also be registered as a trademark, then it is advisable to do so, since it strengthens your power to enforce your rights against anyone else who tries to use the name to market similar products and services, and prevents someone else from registering the same name as a trademark;
- Think about patenting online business methods, in countries where such protection is available;
- Register your website and copyright material in countries which provide this option at the national copyright office;<sup>3</sup>
- Take precautions about disclosure of your trade secrets. Make sure that all who might get to know about your confidential business information (such as, employees, maintenance contractors, website hosts, Internet providers) are bound by a confidentiality or non-disclosure agreement;
- Consider to take an IP insurance policy that would cover your legal costs should you need to take enforcement action against infringers. Make sure that its existence is known about, for example by posting a notice on your website. This could deter potential infringers.

b) **Letting people know that the content is protected** - Many people assume that material on websites can be used freely. Remind viewers of your IP rights.

- It is a good idea to mark your trademarks with the trademark symbol ®, TM, SM or equivalent symbols. <sup>4</sup> Equally, you can use a copyright notice (the symbol © or the word “Copyright” or abbreviation “Copr.”; the name of the copyright owner; and the year in which the work was first published<sup>5</sup>) to alert the public that your copyright material is protected.
- Another option is to use watermarks that embed copyright information into the digital content itself. For example, a music file might be watermarked by using a few bits of some music samples to encode ownership information. The digital watermark may be

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<sup>2</sup> Trademarks are typically words, numerals and/or logos. However, technological developments are enabling trademark owners to formulate new and more creative marks. **Animated/moving image marks and sounds**, for example, are particularly suitable and ideal for the Internet environment. Some countries allow to register such non-traditional trademarks.

<sup>3</sup> Registration is not necessary to obtain copyright protection, but in countries with a copyright office, it may give you advantages to enforce your rights. A directory of national copyright administrations is available at: [http://www.wipo.int/news/en/links/cr\\_web.htm](http://www.wipo.int/news/en/links/cr_web.htm).

<sup>4</sup> The ® symbol is used once the trademark has been registered, whereas TM and SM (service mark) denote that a given sign is a trademark or service mark.

<sup>5</sup> If your website is regularly updated and contains items dating from many different years, you may put a range of years. For example, “© Copyright 2001-2004, ABC Ltd.”

there in a form that is readily apparent, much like a copyright notice on the margin of a photograph; it may be embedded throughout the document, in the manner of documents printed on watermarked paper; or it may be embedded so that it is normally undetected and can be extracted only if you know how and where to look. Visible watermarks are useful for deterrence, invisible watermarks can aid in tracing a work online and proving theft.

- You may also use a time stamp. This is a label attached to digital content, that demonstrates what the state of the content was at a given time. Digital time stamping is useful because it is otherwise simple to modify both the body of a digital document and the dates associated with it that are maintained by the operating system (e.g., the creation date and modification date). A specialized time-stamping service may be involved to provide a trusted source for the information contained in the time stamp.
- c) **Letting people know what use they can make of the content** – Consider having a copyright statement on every page of your website that spells out your business’ terms on use of the page. Viewers would at least know what they can do with the page (for example, whether or not, and on what conditions, they are allowed to create links to the site, download and print material from the site), and who to contact to get a copyright clearance in relation to any material on your site.
- d) **Controlling access and use of your website content** - You may use technological protection measures<sup>6</sup> to limit access to the works published on your website only to those visitors who accept certain conditions upon the use of the works and/or have paid for such use. The following techniques are commonly used:
- **Online agreements** are frequently used to grant visitors only a limited license to use content available on or through your website.
  - **Encryption.** Typically, software products, phonograms and audiovisual works may include encryption to safeguard them from unlicensed use. When a customer downloads a content file, a special software contacts a clearinghouse to arrange payment, decrypts the file, and assigns an individual “key” - such as a password - to the customer for viewing or listening to the content.
  - **Access control or conditional access systems.** In its simplest form, such systems check the identity of the user, the identities of the content files, and the privileges (reading, altering, executing, etc.) that each user has for each file. You may configure access to your electronic content in numerous ways. For example, a document might be viewable but not printable; may be only used for a limited time; or may be tethered<sup>7</sup> to the computer on which it was originally downloaded.
  - You may **release only versions of insufficient quality** for the suspected misuses. For instance, you can post images on your website with sufficient detail to determine

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<sup>6</sup> Note that the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) require countries to provide adequate legal protection and effective remedies against the **circumvention** of technological protection measures. See <http://www.wipo.int/treaties/en/index.html>.

<sup>7</sup> **Tethering** is coding a file so that it can be viewed or heard only on a particular playback or access device.

whether they would be useful, for example, in an advertising layout, but with insufficient detail and quality to allow reproduction in a magazine.

- **Fingerprints** are like hidden serial numbers which enable you to identify which customer broke his/her license agreement by supplying the property to third parties.

### Who owns the IP rights in your website?

A typical website is a collage of components often owned by different persons. For example, one company may own rights in the navigation software; others may own copyright in photographs, graphics and text; and yet another person may own copyright in the design of your site. It may not be necessary for your business to own the IP rights in all elements of your website, but you should at least **find out what you own**, what you have rights to use and in what way, and what you do not own or have rights to use.

### If you pay a person to develop your website, who owns the copyright?

If your website has been developed by your employees who are employed for this purpose, then, in most countries, you (as the employer) would own the copyright over the website, unless you otherwise agreed with your employees. However, for a small business, this is rarely the case.

Most companies outsource the creation of their website design and/or content to an outside contractor, and assume they own IP rights in it because they paid for the work. Beware! You may be surprised to find out that you do not own the IP rights in what has been created for you. Independent contractors (contrary to employees) usually own IP rights in the works they create – **even if you have paid for it** -, unless otherwise agreed in a written contract.<sup>8</sup>

In practice, this means that the independent web developer will usually own copyright and other IP rights in the website, as well as in the design and elements contributing to that design (such as colors, gifs, jpegs, setup, hyperlinks, text coding). Without a valid, written agreement transferring to you all these rights, you may end up owning nothing except perhaps a non-exclusive license to use your own site.

**Example:** You have your site created by a freelance web designer. There is no agreement transferring all rights to you, so the copyright belongs to the web designer (according to the national laws). A year later, you want to refresh your site and make some changes to its presentation. Under most copyright laws, you will need authorization from the web designer, and may be required to pay an additional fee, to substantially update your website.<sup>9</sup>

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<sup>8</sup> See, for more information: Lien Verbauwheide, IP Ownership: Avoiding Disputes, [http://www.wipo.int/sme/en/document/wipo\\_magazine/11\\_2002.pdf](http://www.wipo.int/sme/en/document/wipo_magazine/11_2002.pdf).

<sup>9</sup> Under the copyright laws of some countries, a modified site may be considered a “**derivative work**” of the original site. Derivative works can only be made with prior permission of the copyright owner of the original work. In most countries, you also have the obligation to respect the **moral rights** of an author. A web designer has the right to have his/her name on the work (where you changed the site, the attribution should state that the site has been changed, unless you have obtained the designer’s consent), and it is not permitted to change the site in a way that would prejudice the designer's honor or reputation.

**TIP** – It is highly advisable to enter into a clear, written agreement with the website developer that spells out who owns IP rights in each element of the site. See below:

### What topics should be included in a web development agreement?

When negotiating an agreement for the actual creation of your website with the website developer, you should have a clear **long-term vision** of the market for your product or service. A good agreement should give you all the rights you need for the **foreseeable future use** of your website. All too often businesses lose opportunities because they gave away or did not acquire the necessary rights to capitalize upon their website. Your web development agreement should at least deal with the following issues:

- a) **Scope of work to be performed** – Specify exactly what will be developed. Will the developer be responsible not only for writing the computer code, but also for the design and appearance? Will he register a domain name? Will he provide consulting services? Is he responsible for the maintenance and updating of your site? Etc.
- b) **Ownership of material** – Specify the ownership details of each element of your website. Make sure you receive ownership rights or a license that is broad enough for the use you foresee to make of your website. Consider the following:
  - Who owns IP rights in the different components of the website that are **created by the website developer** (e.g. computer code, graphics, text, website design, digital files used for creating the site, etc.)? As this is primarily a price issue, you should carefully contemplate what you need to own versus what you only need a license to use. National laws may impose mandatory requirements for transferring the IP rights; make sure your agreement complies with such conditions.
  - Who owns IP rights in material that **you have provided** to the website developer for use on the website? It is normally the case that you will supply trademarks, product logos, literary information and other subject matter that is owned by you. It would be prudent to include a list of website elements wherein your ownership of such material is clearly confirmed.
  - For any elements in which the website designer owns IP rights, **what can you do with it?** Do you have the right to sublicense, make changes, etc.? Remember that you will need permission from the original website developer to modify your website. If it is important to you that you can update the website yourself, or have it updated by another website developer, then you should make sure you obtain a perpetual license to make modifications to the site.
  - For any elements in which IP rights are **owned by someone other** than you or the website developer (e.g., text, trademarks or software), who is responsible for getting **permission** to use such third party material?
  - Who owns IP rights in the **software** that displays your website and runs the components of your website? If the developer (or a third party) retains ownership and you only receive a license that is specific to your intended use, make sure the scope of the license is broad

enough (e.g., are you able to switch developers and operating systems; can you expand the use of the sites to additional business entities, etc.).

- Can the website developer use the design as a model for other websites? Can he license the software or any other things built into your site to your competitors?

**Warranties** – Each party should warrant that it owns or has permission to use any material that it provides for the website and that the contents do not violate any law or regulation.<sup>10</sup>

**Maintenance and update** – Maintenance of the site includes such things as changes, updates, troubleshooting or repairs. You should detail the level of maintenance and the price terms. Will the developer update your site and if so, how often? What kind of endeavor is he responsible for? What kind of actions will he take when the service interrupts or brakes down?

**Confidentiality** – While divulging confidential information about your business or allowing access to your facilities, you should include a confidentiality or non-disclosure clause in your web development agreement. This can protect you against unauthorized disclosure of your trade secrets.

**Liability** – Who will bear the responsibility for the links to other sites, the designation of keywords and metatags? Who will be liable in the event of any trademark or other claims?

**Other** - Your website development agreement will also need to include clauses related to fees and payment, indemnification, disclaimers, limitation of liability, jurisdiction and applicable law, etc.

### **Can you use material owned by others on your website?**

Current technology makes it fairly easy to use material created by others - film and television clips, music, graphics, photographs, software, text, etc. – in your website. The technical ease of using and copying these works does not give you the legal right to do so. Using material without getting permission - either by obtaining an "assignment" or a "license"<sup>11</sup> - can have dire consequences.

- Using technical tools owned by others** - If you are using an e-commerce system, search engine or other technical Internet tool for your website, make sure that you have a written license agreement, and get it checked over by a lawyer before you sign it and before any design or installation of the site begins.
- Using software owned by others** - Packaged software is often licensed to you upon purchase. The terms and conditions of the license (called “shrink-wrap licenses”) are often contained in the package, which can be returned if you do not agree with them. By opening the package you are deemed to have accepted the terms of the agreement.

<sup>10</sup> It is advisable also to include a warranty from the developer that the site will operate in accordance with certain specifications that have been agreed between you and the developer.

<sup>11</sup> An **assignment** is an agreement whereby the ownership of IP rights is transferred from one person to another. A **license** is an agreement whereby the person who owns the IP (licensor) authorizes another person (licensee) to make certain uses of the IP, under certain conditions and usually in exchange for payment.

Alternatively, the licensing agreement is included inside the packaged software. In all cases, you should check the licensing agreement to find out what you may and may not do with the software you have bought. In addition, there may be exceptions in your national copyright law that allow you to make certain uses of the software without permission, such as making interoperable products, correcting errors, testing security and making a backup copy.

- c) **Using copyrighted works owned by others** – If you want to put up any written material, photos, videos, music, logos, art work, cartoons, original databases, training manuals, drawings, etc. on your website that do not belong to you, you usually need a written permission from the copyright owner.<sup>12</sup> Even if you use just a **part** of a copyrighted work, you will generally need authorization.<sup>13</sup> Note also that material **on the Internet** or stored on web servers is protected by copyright in the same way as works published through any other means. Just because you obtain material from the Internet does not mean that you can download or reproduce it freely.

Special care should be taken when using **photographs** on your website. In addition to the authorization of the copyright owner of the photograph (usually the photographer), you may also need separate permission to use the subject matter depicted in the photograph. For example, if the photograph is of a person, you may need the permission of the person depicted in the photograph to use his/her likeness (see below); for a photograph of a copyrighted artwork, you will need clearance of the artist; and for photographs of buildings, you may need, in certain jurisdictions, clearance from the architect.

Finding the copyright owner and obtaining all necessary licenses is not always an easy task. In practice, website developers and businesses that create their own website often use material that is in the **public domain**.<sup>14</sup> There are numerous institutions (libraries, national archives, collective management organizations) and online portals that have databases with public domain works. For works that are not in the public domain, the best way is probably to see if the work in question is registered in the repertoire of the relevant **collective management organization**<sup>15</sup> or clearinghouse, which considerably simplifies the process of obtaining licenses. There are also excellent **portals** that offer online licenses for different types of works. For example, Epictura Image Bank has an online collection of an extensive amount of images, on a wide range of themes.<sup>16</sup> Some artists

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<sup>12</sup> You will need permission to *reproduce* the material in digital form and to make it available online (*communicate* it). However, most copyright laws include some **exceptions** to the exclusive rights of copyright (often referred to as “**free uses**”) which allow you to freely use portions of copyrighted works for special purposes. Examples include: publishing a picture from a book, periodical, or newspaper on your website for educational purposes; imitating a work for the purpose of parody or social commentary; and making quotations from a published work. However, such exceptions are very limited and even if you use other people’s work in free use, you may still need to indicate the name of the author (moral right).

<sup>13</sup> There is no general rule on how much of a work can be used without infringing copyright. In every case it is a question of whether an *important*, rather than a large, part is used.

<sup>14</sup> In most cases, copyright lasts for the lifetime of the author plus 50 or 70 years. After that, the work enters the “**public domain**” and may be used without authorization of the copyright owner. Some works are in the public domain because the owner has indicated a desire to give them to the public without copyright protection.

<sup>15</sup> **Collective Management Organizations** (CMOs) monitor uses of works on behalf of creators and are in charge of negotiating licenses and collecting remuneration. There is often one CMO per type of work (such as publishing, music, screen writing, film, television and video, visual arts) and per country. Details of the relevant CMOs operating in your country can generally be obtained from the national copyright office, or from your industry associations.

<sup>16</sup> See: <http://www.epictura.com/>.

and companies even release their artwork, photos, backgrounds, wallpapers, banners, logos and other material **as free** for certain uses. Such material is often called clipart, freeware, shareware, royalty-free work or copyright-free work. However, do not assume that you can distribute or copy freeware without limitation. Read the applicable license agreements first to see what uses can be made of these works.<sup>17</sup>

Note that in most countries, when you use a copyrighted work in your website, you also have the legal obligation to respect the **moral rights** of the author. You must make sure that:

- The author's name appears on the work;<sup>18</sup> and
- The work is not used or changed in a way that would tend to damage the author's honor or reputation. For example, you may not be allowed to color a black and white picture; or to resize, recolor or spindle an artwork without authorization of the author.

- d) **Using** trademarks owned by others – Many websites contain discussions of products and services of other companies. There is usually nothing wrong with identifying competitors' products on your website by using their trademarks. However, you should avoid using a trademark in a way that might cause confusion among consumers as to the source or sponsorship of the webpage. Such use might well constitute trademark infringement or an act of unfair competition.<sup>19</sup>

Some Internet practices may raise trademark issues, such as metatagging, linking & framing, and using trademarks in domain names (see below). You should be careful to check the law that applies to your business on this issue and to ensure that you have permission to show trademarks owned by other companies, if the law requires it.

- e) **Using** others' likenesses – In many countries, the name, face, image or voice of an individual are protected by publicity and privacy rights. The area of protection is regulated differently in various national legal systems. Before using such elements on your website, it would be advisable to check the applicable laws and to request permission, if needed.

**TIP** - No matter what material you ask permission for, you should **clearly outline the scope of your license**. Think through thoroughly what rights you need to exploit the material for which you are asking permission, now and in the future. For example, what use will you make (marketing and promotional campaign, educational purposes, etc.); in what media (for your website only, or also for prints, motion pictures, games, DVD); for how long; in what languages; do you want the right to sublicense the rights; etc. You should also get a **warranty** from the licensor that the material is not infringing any third party rights. An attorney may help negotiate the terms and conditions of the license agreement.

<sup>17</sup> For example, Creative Commons (see: <http://creativecommons.org/>) has a website that allows artists to offer, for free, *some* of their rights to any taker, and only on *certain conditions*. The license may not allow you to change the images; may require that some type of credit is given to the author; may let you use the work for non-commercial purposes only, etc.

<sup>18</sup> Be Careful. Do not think that you do not need to get licenses if you indicate who the author is. This is a common misunderstanding. Attribution is not a defense to copyright infringement.

<sup>19</sup> Note also that, in many countries, "**famous**" trademarks are provided enhanced protection. You could be forced to stop using a famous trademark on your website if such use causes **dilution** of the distinctive quality of the mark. Dilution differs from normal trademark infringement in that there is no need to prove a likelihood of confusion to protect the mark.

## What to keep in mind when creating, launching, maintaining or developing a website?

There are quite a few perils inherent to running a website. Below are some tips for keeping your website legal.

- a) **Watch out with linking** – Hyperlinks<sup>20</sup> to other websites are a useful service to your customer, but in many countries there is no clear law on when and how you can use links. In most cases, links are completely legal and no permission is needed from the linked site to include a link. However, some types of links can create legal liability:
- Links that lead web users to sites containing **illegal content** (a pirated copy of a song, perhaps, or an unlawful software program) may subject you to legal liability.
  - Links that comprise a company's **logo** (for example, using the Nike logo) may violate copyright, trademark or unfair competition laws.<sup>21</sup> It makes sense to get permission for them.
  - **Deep links** are links that go straight to a specific page other than a website's home page. For example, instead of linking to the home page of a newspaper, a deep link might take the user directly to a newspaper article within that site. Deep linking is generally not allowed if it is a way of bypassing a subscription or payment mechanism, or if it is expressly forbidden by the site itself.<sup>22</sup> It is necessary in such cases to obtain permission.
  - **Framing** means that you divide your webpage into separate framed regions and display the contents of someone else's site within a frame at your site. The difference with normal linking is that the user is linked to another website in such a way that it is not obvious that what he is viewing is from another website. **Inlining or mirroring** occurs when you incorporate (or "inline") a graphic file from another website into your own website. For example, if a user at your website can, without leaving your site, view a picture featured on another site. Framing and inlining are controversial practices, because they can create the impression that the information belongs to the website doing the framing or inlining. Always get written permission before doing this.
- b) **Watch out with metatagging** - Metatags are keywords or phrases embedded in a website's HTML code which are invisible to the visitors of the website but are read by some search engines. In theory, metatags allow website developers to provide information making search engines more efficient. However, instead of using terms that properly describe the site, some website developers place the names of competing companies in their metatags. For example, a small chocolate shop may bury the famous trademark "Godiva" in a metatag. Then, anyone searching for "Godiva" would be directed to the

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<sup>20</sup> A **hyperlink** takes a user from one website page to another simply by clicking on a word or image.

<sup>21</sup> Linking can raise concerns of trademark infringement if it suggests an **unwarranted association** between the linking and linked sites, and leads a user to believe that an unassociated web page is affiliated, approved or sponsored by the trademark owner.

<sup>22</sup> Sites can lose income, because their advertising revenues are often tied to the number of users who pass through their home page. Some enterprises also dislike deep linking because it may falsely create the impression that the two linked sites are associated or endorse each other.

chocolate shop's site. This kind of deceptive use of another company's trademark in a metatag may constitute unfair competition or trademark infringement.<sup>23</sup>

- c) **Choose carefully your domain name** - Be sure that you do not enter into conflict with an existing trademark or other designations (such as International Nonproprietary Names for Pharmaceutical Substances, names of intergovernmental organizations, names of persons, trade names and geographical indications). It is strongly advisable to do a **trademark search** before you register your domain name, since domain registrars generally do not check if a requested name violates an existing trademark. If you do receive a domain name that conflicts with someone else's trademark, you could lose the right to it if the trademark owner takes legal action against you.<sup>24</sup>
- d) **Be sure not to disclose trade secrets** – Any confidential business information that gives your business a competitive advantage, such as sales methods, consumer profiles, lists of suppliers, manufacturing processes, marketing plans, etc. can be protected by trade secret law or laws on unfair competition. If a trade secret is disclosed, even accidentally, It will no longer be protected the information. Imagine the disaster that would follow if you inadvertently post photographs of a secret manufacturing process on your company's website. Before your website goes live, you should scrutinize every page of it and make sure that it does not contain any confidential business information of commercial value.
- e) **Be sure not to disclose patent related information** – In order to obtain a patent, an invention must be “new” or “novel”. This means that the invention must not have been disclosed to the public prior to the filing of a patent application. If your business has conceived a valuable invention for which it wishes to obtain a patent, you should abstain from any marketing efforts or disclosures of information relating to the invention prior to filing a patent application. Offering the products for sale on your website will destroy the novelty of the invention and render it not patentable. Equally, when you market your products on your website and the description of the product discloses its innovative qualities, such a disclosure will most likely bar you from obtaining patent protection.
- f) **Respect other people's personal data** - If your website receives consumer information, be sure you comply with the applicable data protection or privacy laws. You may be obliged to take certain steps to assure consumers that personally identifiable information is protected, and to display a clear privacy policy on your site.
- g) **Immediately remove infringing material** - If someone complains about an unauthorized use related to your website, you should remove that material (or disable the link to that material) pending resolution of the dispute. Continuing to use infringing material after being notified may aggravate the claim and increase the chances of your being found liable (and increase the amount of damages you may have to pay).
- h) **Be sure your online agreements are enforceable** - If you sell products or services on your website, or allow users to download software, you may have specific agreements

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<sup>23</sup> The laws are complex in this area. Usually, the courts regard the practice of metatagging as potential trademark infringement or unfair competition, if the use might **suggest sponsorship or authorization** of the trademark owner, or if consumers looking for the products of the trademark owner might be **misdirected and diverted** to a competitor's website and be at least initially confused in their search for the trademarked goods. Conversely, where the use of trademarks as metatags is not unfair or misleading, such practice may be allowed.

<sup>24</sup> WIPO offers a list of free online trademark search portals at <http://arbitrator.wipo.int/trademark/index.html>.

posted on your site that contain warranty information or disclaimers, limits on your liability and other significant terms. Generally, for a person to be bound by the terms of an agreement, he must indicate in some way that he agrees to the terms. If you wish for terms in your online licenses and other agreements to be enforced, your website must be structured so that the agreement terms are *reasonably apparent* and users have the opportunity to review and agree to the terms, or to disagree and opt out, before proceeding through the site. Additionally, there should be a mechanism for users to *indicate their assent*. The best practice is to have the agreement appear on the screen as the first step of the ordering or downloading process. The user should be required to scroll through to the bottom of the agreement and click an “I accept” button *before he can access to the site*. This scrolling through and clicking assent process will help ensure that your agreement is an enforceable “clickwrap” agreement.

- i) **Post notices and disclaimers** – Notices and disclaimers<sup>25</sup> are rarely a cure-all for legal claims, but if a notice or disclaimer is prominently displayed and clearly written, it may limit or even prevent your liability. Your notices and disclaimers should be tailored to fit the specifics of your website. For instance, if your website posts reviews of tennis rackets and offers links to resellers, you might post a disclaimer in a visible place on your site stating “If this site provides links to other sites, the owner of this site is not liable for any information on or practices of the linked sites, nor does a link indicate any association with or endorsement by the linked site to this site.”
- j) **Other legal issues** – It would be prudent to consult with an Internet lawyer to make sure your website complies with the applicable laws. Issues you may want to discuss include:
- What is your **liability**, as the proprietor of a website, for the content of your website? What should you pay attention to when entering agreements with persons that provide content for your website? Do you need an online liability insurance?
  - If you allow people to post content or comments on your site, do you need a policy for dealing with **postings**?
  - If you place **advertising** on your site, what issues should your online advertising agreement cover? Are there any specific laws and regulations you must comply with?
  - Are your **marketing practices** legal? For example, comparative advertising, unsolicited e-mails and bonus or discount schemes are forbidden in some countries.
  - If you trade online, what **tax regulations** are applicable to e-commerce?
  - If you sell online to consumers, do you need to fulfill with any **distance selling** regulations?
  - If your website contains statements about, or links to, other persons, companies or organizations, are there potential liabilities for **defamation**?
  - If your website is directed toward **children**, are there any specific legal requirements you must comply with?
  - If you are running an online **education** site, are there any specific issues regarding rights, licensing and free use of copyright material?

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<sup>25</sup> A **disclaimer** is a statement waiving liability for a potentially unauthorized activity or denying an endorsement for or from another site.

- What activities are you engaged in that could give a foreign court **jurisdiction** over disputes involving your business and website, and what is the **applicable law**?<sup>26</sup> How can you reduce the risk of being sued abroad?
- Is it advisable to use **alternative methods of dispute resolution**, such as arbitration or mediation?<sup>27</sup>

**CONCLUSION** - Websites are common targets for infringement lawsuits. If you are not cautious, you can lose your IP rights or be liable for infringement of the IP rights of others. This article has tried to provide some tips that can help businesses better protect their website and its content, as well as avoid legal trouble. As with any undertaking, prevention is better than cure. Before going online, businesses should consult with a specialized Internet attorney on IP and other legal concerns involved with the creation and management of a website.

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<sup>26</sup> **Jurisdiction** refers to the country the courts of which would take jurisdiction in a lawsuit involving your company. **Applicable law** refers to the law that the court is likely to apply to determine the outcome of the lawsuit.

<sup>27</sup> **Arbitration** is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. In a **mediation** procedure, a neutral intermediary, the mediator, helps the parties to reach a mutually satisfactory settlement of their dispute. Mediation is a non-binding procedure. However, once an agreement has been reached and documented, it is binding on the parties and can be enforced. See <http://arbitrator.wipo.int/center/index.html>.