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The New World of Cyberspace: Be Careful When Working the Web

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It has become extremely common for individuals and businesses to establish a presence on the World Wide Web. Extravagant home pages have been appearing with regularity for not only the large multinational corporations, but also for smaller companies. In fact, many small businesses have begun to construct websites, and the trend is growing. While there are no decisive studies on the extent of commerce that actually occurs on the Web, there is some indication that marketing on and surfing the Web has become increasingly more popular and commonplace.

Unfortunately, this popularity has raised significant questions regarding the extent of legal protection on the Web. One of the earliest cases involved the **Church of Scientology** and raised the issue of whether the copyright laws of the United States, as well as the laws surrounding trade secrets, are enforceable in cyberspace. In that case, former church members were sued for putting copyrighted material they had received in confidence on the World Wide Web.

The court held that these traditional forms of intellectual property protection were, indeed, applicable in cyberspace. In addition, it was held that the Internet-access provider could also be exposed to liability for merely permitting the infringing material to appear on the Web. As elsewhere, one who facilitates or aids in the commission of an infringing act in cyberspace may also be liable as a contributory infringer.

More recently, a number of cases have dealt with issues of trademark law. In those cases, the applicability of federal trademark law and the question as to which jurisdiction was proper for

purposes of litigating the wrongdoing were considered. While the issues have not been definitively resolved, the trend appears to be in favor of extending the trademark laws to cyberspace and holding infringers liable wherever their infringing activity can be accessed.

In a comparatively recent case, an enterprising individual residing in Illinois decided to register a number of popular business names as website domain names. When the business owners who had previously registered these names as trademarks attempted to obtain their company names as domain names, they were told that they were too late. The companies filed suit in California, alleging that the appropriation of the protected trademarks as domain names by one who lacks authority from the trademark owner is an infringement. The court agreed and suggested that this outrageous conduct would result in liability.

The defendant in this case objected to being sued in California, stating that he was located in another state and that all his infringing activity actually occurred within his home state. The California court made it clear that, since the infringing site could be accessed in California and since the infringer was trying to extort money for sale of the marks from California, the case could be properly brought there.

At least one recent case appears to have taken an opposite stance. In that situation, a European restaurant bearing the same name as a restaurant in the United States established a website. The American company sued, alleging trademark infringement, and the court held that it was unlikely that the European restaurant would cause the kind of market confusion necessary to establish trademark infringement by advertising on the Web and having those advertisements viewed in the United States.

So, it would appear that even in cyberspace, it will be necessary to establish that there is a *likelihood of confusion* and that the infringer somehow appropriates business from the owner of the protected trademark before liability will be imposed.

The extent of litigation that has resulted from activity on the World Wide Web suggests that care must be taken when establishing your presence in cyberspace. This new dimension does give rise to increased, and often desired, exposure, but the result can be devastating for a small business.

Even the simple act of advertising a product for retail sales could have serious consequences if you are not careful. For instance, if you market or sell a copyrighted item and you have obtained permission to advertise this item for sale, you may still, nonetheless, not necessarily have the right to scan that image into your computer and put it on your website. It may be necessary for you to obtain permission to replicate the work in two dimensions before engaging in cyberspace promotional activities.

Similarly, you have to recognize the fact that the Web is **world wide** and that your material may find its way into jurisdictions that do not have copyright treaty relations with the United States or

that do not respect our trademark laws. In this event, you may find that you have lost control of your protected work.

By proceeding with caution and consulting with experienced intellectual property lawyers who have been involved with the World Wide Web, you can remain on the cutting edge of cyberspace.

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on **February 4, 2014 at 10:28 AM** said:

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