



EVERYTHING MATTERS

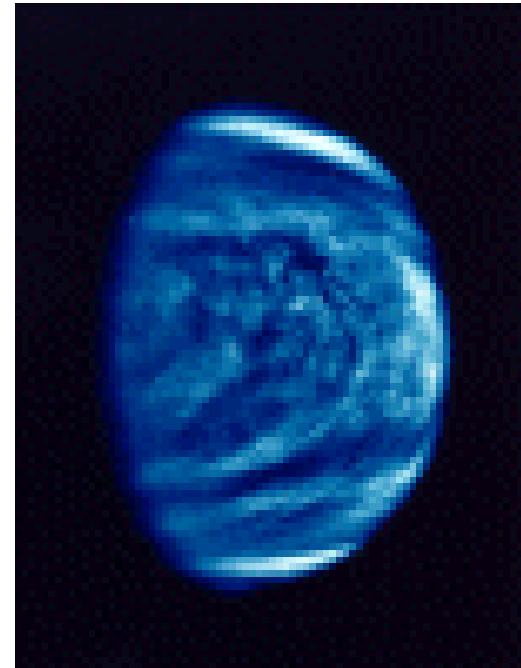
# **“Small” Business/Big Issues: E-Commerce & the Internet**

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# The Dangers of Dilbert®

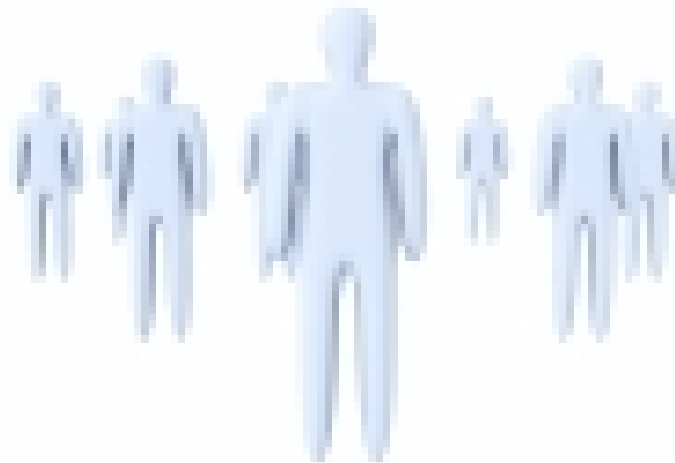
## E-Commerce is Unique

- Global
- 24/7 Customer Contact



### E-Commerce is “Anonymous”

- Websites: Private Property – Public Meeting Space
- “Anonymous” Customer Relationships
- Dependence on IT – Are the lights on?



## “New” Rules

- E-Contracts
- Customer-Provided Information
- Privacy



## E-Commerce Changes Rapidly

- Intellectual Property
- Changing Law



## Terms of Use

- Make links obvious and pervasive.
- Terms:
  - Governing Law
  - Use Restrictions
  - Venue
  - Dispute Resolution
  - Limit Liability

## Jurisdiction

- The *Zippo* Continuum:
  - Passive v. Interactive Websites
  - Commercial
- Strategies:
  - Limit Territory
  - Limit Interactivity
  - Venue Selection
  - Dispute Resolution



## Current Legal Issues

- Linking
- Framing
- Meta Tags
- Privacy
- Buying Ad Terms

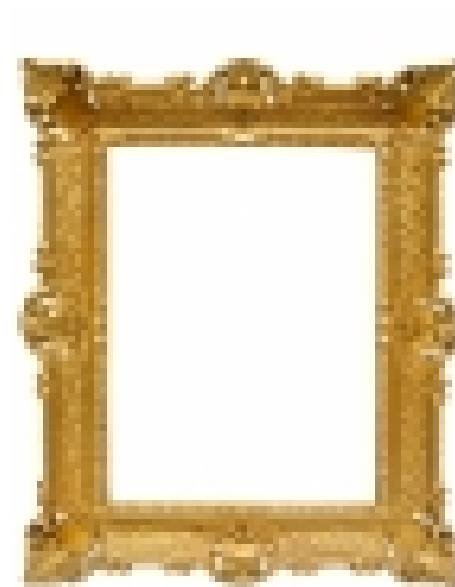
## Linking

- Risks:
  - Contributory Copyright Infringement
  - Trademark Infringement
  - Endorsement of Linked Content
  - Deep Linking
  
- Disclaimers



### Framing

- Only With Content Owner's Approval
- Prohibit Framing Without Approval
- Register Copyrights

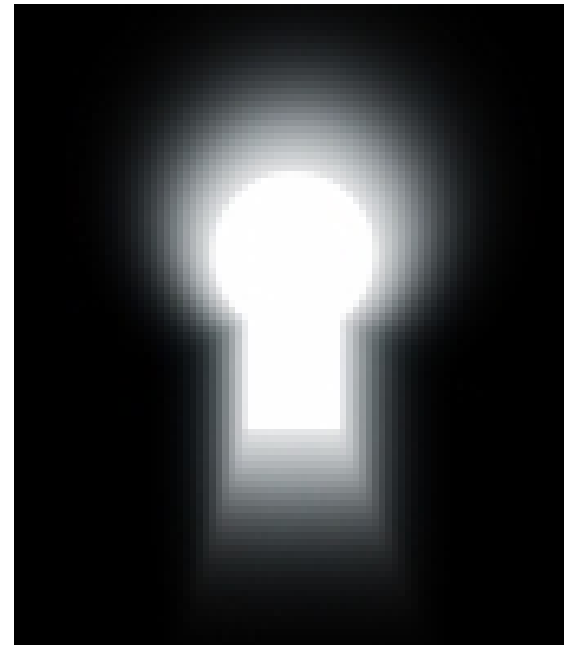


### Meta Tags

- Meta Tags Are Advertising.
- Avoid Trademarked Terms.
- Do Not Mislead or Deceive.

### Privacy

- Adopt a Policy & Write it Down.
- Follow Your Policy.
- Comply With Regulations.



## Buying Ad Terms

- Similar to Meta Tags.
- Trademarks?
- Law is Evolving.



## Web Service Providers

- You must read contracts with service providers.
- Remember: You are the customer.
- Make providers accept reasonable liability.

## Intellectual Property

- IP should be an e-business focus.
- Create a strong portfolio:
  - Build & protect the brand.
  - Protect technologies.
  - Protect web design and content.



## Patents

- Offense & Defense
- Employment Agreements
- Record-Keeping

## Trade Secrets

- Employment Agreements
- Record-Keeping
- Beware of Email & the Internet
- Non-Compete Agreements

## Trademarks & Domains

- Adopt & Protect Strong Marks
  
  
  
  
  
  
  
  
  
  
- Integrated TM & Domain Strategies

## WHAT IS A COPYRIGHT?

- A copyright does not just prevent copying of a protected work.
- A copyright is a *bundle* of legal rights that recognizes that creators of certain kinds of works (called “works of authorship”) are entitled to keep others from using that work without permission.

The bundle of rights includes:

- The right to make copies.
- The right to make derivative works.
  - i.e., works based on one or more preexisting works: *e.g.*, using quotations or excerpts taken from a book or an article in a presentation or speech; creating translations, adaptations, revisions or updates.
- The right to display works.
- The right to perform works.

# WHAT TYPES OF WORKS ARE PROTECTABLE?

- Literary works
  - Books, magazines, newspaper/Internet articles, software code & cartoons
- Musical works
- Sound recordings
- Pictorial works, graphical works and sculptures
  - Maps, charts, graphs, cartoon characters, graphics in computer programs and on web sites, and technical drawings
- Audiovisual works
  - Movies, television programs, training films, and interactive multimedia works
- Compilations & collective works
  - The right in the compilation/collective works is separate from that of the underlying works.
- Dramatic & architectural works

### WHAT IS NOT PROTECTABLE?

- Ideas, procedures, processes, systems, methods of operation, concepts, principles, and discoveries
- Facts
- U.S. Government works
- Names, titles, short phrases, and slogans
- Blank forms (generally)
- Book design & layout
- Typeface design
- Common geometric shapes

# Who owns the copyright in a work?

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## OWNING A COPYRIGHTED WORK ≠ OWNING THE COPYRIGHT

- If you buy a newspaper or magazine, all you own is that newspaper/magazine.
- Owning a copy of any copyrighted work does not give you the right to post it, display it, or make a copy of it (including by forwarding e-mail or posting to a web site).
- If you publish or subscribe to a newsletter, what you give or own is governed by the subscription agreement you provide or “sign.”
  - The devil is in the details. You **MUST** read the agreement.



## Benefits of Copyrighting:

- Provides legal grounds to stop plagiarizing.
- Very low cost safeguard with potentially large infringement awards.
- Provides legal grounds to stop theft of newsletters, songs, movies, presentations and blueprints (among others).

# Leveraging your Copyrights and Respecting Copyrights of Others

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## What is Required to Create Copyrights?

- Copyright Notice
  - © 2007 DLA Piper US LLP
- Timely Registration
  - Allows for statutory damages
  - Very low costs
  - 90 day registration window

# Consequences of Copyright Infringement

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## Additional types of copyright liability:

- Vicarious infringement
  - A supervisor is liable for her personnel's infringing acts, even if the supervisor was not aware of or did not directly supervise the infringement.
- Contributory infringement
  - Knowingly encouraging another's infringing activity.

## DEFENSES:

- Lack of intent is not a defense to copyright infringement.
  - At most, a lack of intent factors in to a statutory damages calculation
  - In very limited circumstances, may allow for reduced damages as an “innocent infringer.”
- If the publication includes a copyright notice, it is very difficult to avoid willfulness.
- “Fair use” is a very limited defense.

# Copyright Defenses

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- Fair Use (17 U.S.C. § 107)
  - Notwithstanding the provisions of section 106, . . . the fair use of a copyrighted work . . . for criticism, comment, news reporting, teaching, scholarship, or research is NOT an infringement of copyright

## FAIR USE

- Factors used in determining whether a particular use is fair include:
  - The **PURPOSE and CHARACTER** of the use, including whether such use is of a commercial nature or is for non-profit educational purposes.
  - The **NATURE** of the copyrighted work.
  - The **AMOUNT and SUBSTANTIALITY** of the portion used in relation to the copyrighted work as a whole.
  - The **EFFECT** of the use upon the potential market for or value of the copyrighted work.

# Copyright Myths

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- **MYTH:** If it is on the internet, it is public and I can use it however I choose.
- **FACT:** Most publications – internet or otherwise – are copyright protected, you must look at the website and any copyright notices to be sure.

# Copyright Best Practices

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- Do not forward suspect material.
- Forward a link instead of an article if you are not sure about the rights.
- Instead of forwarding an article which you do not/may not have rights to, summarize the article.
  - Homework Test: make sure it is a true summary, not just rephrasing each sentence.
  - Keep it short and identify the source.
- When you put out articles or materials, make sure they have an appropriate copyright notice.



# QUESTIONS

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