



# Fine Print

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## Legal Aspects are Vital Part of Web Site

By Alan J. Hartman

Today, even the smallest businesses usually have their own Web sites. Because most Web sites are developed for marketing purposes, it is easy to overlook the legal aspects when launching a site. Yet, it is absolutely essential to focus on this vital step.

Your Web site should include legal notices, disclaimers and restrictions on use, not only to protect you from liability, but also to protect your proprietary rights. The more interactivity your site provides, the more critical it is for your site to include the necessary legal terminology.

These items should be addressed in a Web site user ("terms of use") agreement, a privacy policy statement and specific notices, as applicable.

In some cases, you will need the user to agree to these conditions by clicking on an "I agree" button or checking a box.

### You should cover the following legal "nuts and bolts":

**Copyright and trademark notices:** Include the basic copyright notice on the bottom of each page of the site. You may include a more detailed copyright designation on a separate "notices" page or in the "terms of use" section. You should

also identify both your company's trademarks and any that are owned by other parties and included on the site with permission. In addition to these on-screen notices, be sure your Web site developer includes appropriate notices in the site's programming code.

**Content use restrictions:** Clearly describe any restrictions on the use of site materials, such as limiting use to noncommercial purposes and requiring copies of any materials

from the site to clearly display the appropriate copyright notice and author attribution.

**Content disclaimers:** Include a disclaimer statement regarding site content. A disclaimer should state that information provided at the site carries no expressed or implied warranties as to accuracy, timeliness or appropriateness for a particular purpose.

Also include a disclaimer of your responsibility for content er-

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## Use Your Trademarks Wisely, and They'll Serve You Well

By Alan J. Hartman

Your company's trademarks are valuable assets which, with proper treatment and due care, can serve you well for many years. The U.S. Patent and Trademark Office defines a trademark as a word, phrase, symbol, design, or combination of these, which identifies and distinguishes the source of the goods or services of one party from those of others. However, many trademarks, which were once proud possessions of large corporations, have been lost through misuse or because they became generic. "Aspirin" and "cellophane" are examples of marks that are now generic terms and no longer identify any particular company's product. If your company's trademarks were lost, they could be used by anyone and would no longer signal the public that the products and services they stand for are from your company. It is relatively easy to protect and care for trademarks. Follow these simple rules in all uses of your trademark, wherever it appears:

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Trademarks, cont. from page 1

■ **Use trademarks in a distinctive manner.** Always distinguish your mark from the surrounding text. The general rule is to capitalize trademarks completely, put them in italics, use initial caps with quotes, or, at a minimum, use initial caps. If you have a stylized word for a mark, consider using the stylized depiction even in text. Whatever depiction you choose for the mark should be applied consistently.

■ **Identify trademarks with their status.** If a mark has been registered in the United States Patent and Trademark Office, “®” should be used with it. If the mark has not been registered, “TM” should be used. If it is an unregistered mark for services rather than goods, it should be marked with “SM.” At the least, the proper status identifier should be used on all prominent appearances of the mark and on the first appearance of the mark in any text.

Many trademarks, which were once proud possessions of large corporations, have been lost through misuse or because they became generic.

■ **Trademarks are proper adjectives.** Use them with the generic name of their product or service. At a minimum, use the generic term after the trademark at least once in each document, preferably the first time the mark appears. For example, “Windows XP® operating system is the preferred operating system for corporate IT departments,” or, “The RegulatorPro™ UPS takes power management even further.”

■ **Never use trademarks in the possessive form.** Trademarks should never be used in the “...’s” form, unless the mark itself is possessive such as “McDonald’s® restaurants.”

■ **Don’t pluralize your trademark.** Since trademarks are not nouns, they should never be used in the plural form. Instead, pluralize the nouns they describe. For example, use “ThinkPad notebook computers are superior” rather than “ThinkPads are superior.”

■ **Trademarks are never verbs.**

For example, write “Xerox® photocopiers allow you to photocopy documents the way you want,” NOT, “You can Xerox® any document the way you want.”

■ **Trademarks are privately owned; always indicate the owner.** You can indicate the owner’s name with a simple footnote or notice paragraph that could appear on the cover page, the copyright notice page, the bottom of the page on which the trademark is used or on the last page. For software, the owner’s name can appear on the log-on screen, the splash screen, the “About” screen or another similar place. The notice may read, for example, as follows: “The following are trademarks or registered trademarks of Microsoft Corporation: ActiveX, PowerPoint, XL and design (the Microsoft Excel logo).” You may list marks in their stylized or design form, or in descriptive form as the Microsoft Excel logo was listed in the sample notice above.

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*Alan J. Hartman is a partner in the Cincinnati firm of Dressman Benzinger LaVelle psc.*

Web Site, cont. from page 1

rors, omissions or infringing material, as well as a disclaimer of your liability for damages associated with user reliance on information provided on the site. You should also disclaim all liability for any material contained in other sites linked to and from your site.

**User input release:** Include a statement indicating that you may use e-mail or material posted to your site by visitors for any purpose without compensating the contributor.

**Privacy:** Because of recent legislation governing the use of personal information, your site should have a separate privacy policy. The policy should describe in detail what type of information about the user

is collected, how that information will be used and whether it will be shared. This is especially important given the recent media stir surrounding lapses in network security at major universities and government agencies. By communicating your privacy statement, you are meeting legal requirements and assuring your customers that you are committed to protecting their privacy.

**Restrictions on links:** To limit links to your site or prohibit framing of your site, include those restrictions in the site’s terms of use. You could, for example, indicate that links to your site should not be established without your prior approval. If you take this approach,

you should provide instructions for obtaining that approval.

**Revocation of access:** Include a statement reserving the right to revoke access and use authorizations granted to site visitors.

Remember, there is more to launching a Web site than creating an eye-catching design and state-of-the-art features. You must be sure to include the appropriate legal terminology to protect your site’s content and to protect your company from possible litigation.

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