

How to avoid getting sued over social media

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February 02, 2010

Article Highlights:

- Traditional intellectual property rights still apply to the internet and online forums
- Make sure your agreements give you the right to use material in a new form of distribution
- If your copyright is violated, put the offending party on notice

The online arena is still an emerging landscape for intellectual property (IP) where it is easy to misstep in trying to avoid IP landmines. Whether you are a small business looking for content to help get your website up and running or suddenly find an image or text you created on another company's site, it's possible you haven't taken the appropriate steps to protect yourself and prevent IP theft.

Marketers and online content creators often struggle to understand how traditional IP best practices apply to internet content. Major companies like Toyota and Skittles have recently come under fire for their usage of user-created media.

When Toyota launched a new microsite to promote the 4Runner SUV, the company did what others before had done: aggregated content from social networks to help promote the brand. This strategy didn't necessarily break the mold. After all, Skittles launched a similar website earlier this year with a much-publicized social media home page including Twitter feeds, comments from Facebook fans, and content from Flickr and YouTube.

Skittles ran into a problem with the inappropriate, and sometimes vulgar, content that appeared on the site, Toyota faced accusations of copyright infringement from photographers who had posted images on Flickr.

Social networks are free and flourish with user-generated content. The platform lends itself to a sharing environment, where copyrights and trademarks often aren't considered. However, as these sites become increasingly popular venues for marketing, a basic understanding of how IP law applies to online property will help you avoid finding yourself on either side of a dispute.

Here are a few simple steps to prevent an online intellectual property theft accusation:

1. Traditional intellectual property rights still apply to the internet and online forums.

There is a misconception in some quarters that if content appears online, particularly in a social forum or blog, it's public domain material. That's false.

An author of a statement and a trademark owner still control the rights to their copyrights and brands when they place their materials on the internet. One common element for online content is that the forum host typically posts a policy that notifies contributors that by placing content on the host website, the poster is granting the host a license to use and republish that content. While such policies might provide a valid license for the website host to republish material actually owned by its posters, it provides no license or rights to third parties visiting such websites.

2. Register your IP and know the scope of your licenses.

These are fundamental prerequisites to IP management. Copyrights protect expressions, which include a wide range of on- and offline content including writings, drawings, songs, pictures and movies. Trademarks protect identity. Registering your copyrights and trademarks enhances your rights, provides significant leverage in enforcing those rights and, in the case of trademarks, provides constructive notice nationwide of your rights.

Also, if you obtain permission to use material offline, you can't assume that it's fine for you to post or distribute that material electronically. You need to verify that the preexisting license included the right to use the material in the new form of distribution.

3. Prominently display your IP protection.

Many people copy online content out of ignorance. To help prevent this, post your notice of copyright in near proximity to your works. The notice should state the year the work was completed, the legal name of the entity/person that owns the work, and the copyright symbol.

The following is a standard format: ©2009 by Coats and Bennett, PLLC. A copyright footer on each page is not highly effective for giving notice that particular works on the page are copyright protected. If you operate a high-content site, it's a good idea to dedicate a page to "copyright information" where you state your position on other people using your content.