

social media, web design, technology strategy

& more to help your business grow and prosper!

Think Before You Click

Key considerations for operating a small business in the online environment

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social | mobile | local

technology trends, tools & strategies
for small business success

Creating the online presence

- Acquiring a trademark
- Acquiring a domain name
- Web developer agreement
- Host agreement
- Content
 - Copyrighted work – free, creative commons, fair use, and purchased
 - Trademarks – yours and others
- Privacy policy
 - Targeting 12+under
 - PCI, health or financial data
- Data security
 - Policies
 - Vendor agreements
- Usage policies
 - Third party content takedown rules
 - Policing obligations
 - Terms and conditions
- Employees
 - Computer usage policies
 - Social media policies
 - Work-for-hire
- Hiring employees
- Social media marketing
 - Social media endorsement guidelines
 - Internal best practices guidelines
- Keyword advertising

Acquiring a trademark

- A trademark is a word, name, symbol, or device that is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others
 - the goods or services of one provider from those of others - enabling consumers to know the source or origin of goods and services
 - Trademark protection of such distinctive signs aims to stimulate and ensure fair competition and to protect consumers
 - Assisting consumers to make informed choices between various goods and services
 - Trademark owners have a duty to take reasonable steps to prevent infringement on their marks

Acquiring a trademark

- Mark must be fanciful, arbitrary or at least suggestive
 - Generic terms cannot be trademarked
 - Descriptive marks must acquire secondary meaning
- Do your homework
 - Review USPTO site; check various types of goods and services
 - Run a variety of Internet searches
 - Identify the particular good
- Fanciful marks take more time to establish, but are much stronger in practice (Google, Yahoo, etc.)
- Relationship to url
 - The domain name is not a trademark
 - The closer the two identifiers can be, the greater the marketing impact
- File an intent to use application to avoid spending before securing the mark

Acquiring a domain name

- The url or domain name should be related to the trademark
- Search for urls at the same time as you develop the trademark
- Most business uses the “.com” gTLD
 - Other domestic business gTLDs.net, .info, .biz, us.
 - Some countries have good abbreviations, (.tv) but countries change
 - System is radically changing with almost unlimited gTLDs beginning next year
 - Typically a company should acquire the other gTLDs to avoid copy-cat websites; the more successful, the more sites should be acquired
- Company that provides domain can be same or different than company that hosts website
- Domains can be moved, but watch for sharp practices and attempts to move hosting or bill you by other parties
- The web hosting is much more expensive and the terms much more important than the purchase of the domain, so focus on those terms

Locating the web presence

- **Collocation.** Collocation occurs when the company locates company's servers at the provider's facility. This has been largely supplanted by cloud computing services.
- **Hosting.** In a typical hosting relationship, the provider (as opposed to the customer) provides the servers and software in addition to the Internet connection.
- **Co-Branding.** A popular technique has been to expand the scope of a customer's website by co-branding pages on a third party's servers. It is analytically appropriate to treat these co-branded pages as being hosted by the third party.
- **Outsourcing.** The customer builds a store or other presence on the web host's site. All the operational components come from the host, with the customer supplying the goods and marketing.

Locating the web presence

Key provisions

- Ownership of company content stays with company
- Limitations – host will restrict illegal content, copyright violations, spam, perhaps pornography
- Limited license for software and content of host
- Termination
- Indemnification
- Limitations of warranties
- Arbitration Services
- Uptime
- Credits for non-responsiveness
- Training and tutorials
- Ability to add or drop additional services

The web developer agreement

- Typically independent contractor (consultant) agreement
- Contract must specify that all copyrights in any original work (photos, graphics, etc.) are assigned to the company
 - This will not be work-for-hire, since outside the special categories available for such work
 - Copyright vests in the author, not the party paying for the work; so the assignment is essential
- Deliverables: Specify exactly what work is required
 - Identify the time line for each deliverable
 - If the developer isn't delivering, just move on; pay as you go so that you don't get burned

The web developer agreement

- Sites can be very simple to design based on existing architecture of the host site, or incredibly slow and complex
- The design is often separate from the architecture
 - Design, graphics, music, etc. are an independent cost and expense
 - If company is using stock materials, then the company will not own those materials; they will be on other sites as well
- The architecture is also owned by the developer which reuses its software
- Anticipate what services you need in advance
 - Content hosting
 - Credit card servicing
 - Shopping cart and invoicing

Managing content – user policies

Most **companies** post content to their sites (which is conceptually separate from the content for the site's pages, etc.). Company solely responsible for this content.

Copyright

- Unless a photograph, drawing, music or other literary work is in the public domain it should be licensed
- Creative Commons works are licensed to the public for general use, but there are limitations so read the particular version of the license
- “Royalty free” does not mean actually free, it means only one fee for use on the website
- Many licenses specify the type of work, so a license for the website may not necessarily apply to brochures and print material
- For a commercial business, there are very few situations where fair use is appropriate: (taking a copyright work without permission for comment or criticism)

Managing content – user policies

Trademark – beyond the company's mark

- One may use the marks on goods or from services from third parties to sell those goods and services
 - Mark's owner cannot stop legitimate sellers of the goods, whether authorized or not, from using the mark to sell those goods
 - Can also use another's mark for comment and criticism of the goods and services
- Cannot really use third party's mark if it does not directly relate to actual products sold or described
- Metatags and hidden text should follow these same rules
 - Rules are vague, but use of another's marks as hidden text is an unfair practice if unrelated to site's commerce

Managing content – advertising

- Banner ads, pop-ups/pop-downs, rich media, text links, instream video, sponsored content, widgets, co-branding, viral ad videos, search engine optimization, directory listings, email, etc.
- An ad network signs up advertisers and seeks out hosts – websites, mobile networks and other media to which to sell advertising.
- The host should verify that ads are appropriate (and certainly not inappropriate, illegal, or likely to result in liability).
- The host needs ad control. At a minimum, the ad network must (1) agree not to serve ads that are inappropriate to the nature of the site, violent, pornographic, etc., (2) allow the host to pre-select the types of ads that served and (3) will remove ads immediately upon a request.
- A host should get indemnification from the ad network for liability arising from illegal, infringing, libelous, etc. content.
- In the website use policy, a host should also include a statement that it does not select its advertising, but that it will respond to concerns and take down offensive ads – just like the DMCA policy.

Privacy – what information does company collect

- **Posting a privacy policy on a commercial website is required**
 - Some state laws
 - Gramm-Leach-Bliley Act
 - Fair Credit Reporting Act
 - Federal Trade Commission Act
- **FTC enforces failure to comply with posted privacy policy**
 - FTC: Say what you mean and mean what you say
 - **Create a culture of compliance.** A company's privacy policy is only as strong as the staff that implements it.
 - Train *all* employees — including your IT professionals, sales representatives, human resources specialists, and support staff — on how to protect sensitive data
- **More sensitive data – additional rules**
 - Targeting 12+under
 - Health or financial data

Privacy – what information does company collect

- **Take stock.** Know what personal information you have in your files and on your computers.
- **Scale down.** Keep only what you need for your business.
- **Lock it.** Protect the information in your care.
- **Pitch it.** Properly dispose of what you no longer need.
- **Plan ahead.** Create a plan to respond to security incidents.
- **Credit Cards – PCI or the law of Visa**
 - Federal law requires you to shorten—or truncate—the electronically printed credit and debit card receipts you give your customers.
 - You may include no more than the last five digits of the card number, and you must delete the expiration date.

Data security

- **Physical security**
 - Protect computers, laptops, phones and thumb drives
 - Primary threat – employees (theft, revenge, etc.)
 - Paper has PII – protect it too
- **Off site back-up required**
 - Encryption required (from your employees and the employees of your vendors)
 - Regular e-mail is not secure
- **Safety**
 - Maintain firewalls, anti-virus protection, etc.
- Credit card data and other PII must use Secure Socket Layer protection
- Cloud computer services are fine provided they adopt these steps

Data security

Policies

- Each step should be part of a written security policy
- All employees need to be trained on the policies
- Limit use of computers to business use
- Require strong passwords and change them regularly
- Do not store protected data on laptops or mobile phones without encryption
- Do not ever store credit card information
- Create a culture of security that is part of a professionalism program
 - We're secure to support our customers and give them confidence
 - We apply best business practices in each aspect of our business

Website usage policy

- **Do you need to enforce the policy against site users?**
 - Sites that allow gaming, posting and participation need a binding contract
 - If users only browse, company is unlikely to enforce the terms
- **No less restrictive than your host company**
 - You need to be able to enforce what your host company requires
- **Safe harbors**
 - **Copyright:** DMCA takedown provisions
 - **Trademarks:** Google has good example; not legally required
 - **Defamation:** Consumer Decency Act immunizes unedited third party content; company must adhere to its own policies, if they offer more

Website usage policy

Other terms – many are business specific

- Eligibility restrictions (if usage limited to particular users); sometimes used to state that site is not open to minors under 13
- Right of company to post and re-use content posted by participants on site
- Transfer of copyright (for game sites that include creativity of players)
- Statement that links to the site are for content from third parties
- Warranty disclaimers
- Releases
- Limitations of liability

Employees

Who owns employee content:

- If salaried and create content as part of employment, then employer owns content
- If independent contractors or if the occasional content is outside job description then an assignment is needed

Computer usage policies:

- **Have specific rules**
- **Only have rules that are enforced**
 - Can machines (and Internet) be used for personal activities
 - Does employer own content stored on machine
 - Does employer have the right to inspect the contents on the machine without permission
- **Regular practice may trump employee handbook**

Employees

Social media policies must be reasonable

- Employees have a right to use social media as part of their general right to organize for wages and working conditions
- National Labor Relations Board has conducted nine investigations
 - No liability for firing employees where employees used blog to insult customers or disparage employer
 - Liability (including damages, back-pay, and rehiring) when social media used to reach out to other employees to complain about wages, treatment, etc.
- Treat trade secret policy separate, but be sure employees know they overlap
 - Educate employees on what information is protected
 - Make clear what should not be posted, blogged or discussed

Employing

Adapted from Is The Jury Still Out On Social Media
Background Checks?, Anthony Zaller

- Can you search a potential employee candidate online? Yes
 - Do not search illegal criteria
 - Do not ask any questions you cannot ask in person
 - Do not falsify your identity when searching
 - Do not create fake identities in order to gain access to individual's social networks
 - Do not require your candidate to friend the interviewer
- Rely on common sense and make the determination about hiring or firing based on the same criteria that employers already use and not on any illegal criteria
- If using an outside company, make sure the background check complies with the Federal Fair Credit Reporting Act and any state equivalent

Employing

Adapted from Is The Jury Still Out On Social Media
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- Generally, under Federal law, employers may utilize social networking sites to conduct background checks on employees if:
 - The employer and/or its agents conduct the background check themselves;
 - The site is readily accessible to the public;
 - The employer does not need to create a false alias to access the site;
 - The employer does not have to provide any false information to gain access to the site; and
 - The employer does not use the information learned from the site in a discriminatory manner or otherwise prohibited by law.

How to Write a Social Media Policy, Tiffany Black, Inc.

1. Remind employees to familiarize themselves with the employment agreement and policies included in the employee handbook.
2. State that the policy applies to multi-media, social networking websites, blogs and wikis for both professional and personal use.
3. Internet postings should not disclose any information that is confidential or proprietary to the company or to any third party that has disclosed information to the company.
4. If an employee comments on any aspect of the company's business they must clearly identify themselves as an employee and include a disclaimer.
5. The disclaimer should be something like "the views expressed are mine alone and do not necessarily reflect the views of (your company's name)."

How to Write a Social Media Policy, Tiffany Black, Inc.

6. Internet postings should not include company logos or trademarks unless permission is asked for and granted.
7. Internet postings must respect copyright, privacy, fair use, financial disclosure, and other applicable laws.
8. Employees should neither claim nor imply that they are speaking on the company's behalf.
9. Corporate blogs, Facebook pages, Twitter accounts, etc., could require approval when the employee is posting about the company and the industry.
10. That the company reserves the right to request that certain subjects are avoided, withdraw certain posts, and remove inappropriate comments.

FTC: Social media marketing

Endorsement + Compensation = Mandatory Disclosure

- Fundamentals: FCC updated promotional rules in 2009 to cover social media
 - endorsements must be truthful and not misleading
 - ads must clearly and conspicuously disclose the generally expected results in the depicted circumstances; “unusual results” disclaimer insufficient
 - connection between an endorser and the marketer should be disclosed, unless the status of the endorser makes the paid status self-evident (actors in commercials, celebrities, etc.)
- Scope – applies to all media including blogs, websites, Facebook and Twitter; TV, print, and radio have ads separated from content so less change to existing law
- Social media rules
 - If a person who is not obviously paid for an endorsement (celebrity) receives compensation (cash, goods or services), then the person must disclose it when promoting that item
 - A general statement that this review blog sometimes takes goods is insufficient (though a prominent statement that we review items given to us might work)
 - No need to disclose if the review is unrelated to the gift (given a camera to promote, no disclosure needed to review the restaurant at which the photos were taken)

Disclosure Best Practices Toolkit

Select advice from a broad array of very helpful tip sheets -

- Disclose who we are, who we work for, and any other relevant affiliations from the very first encounter.
- Require all employees to disclose their employer when using social media to communicate on behalf of the company or about company-related topics.
- Provide a means of communicating with our company in order to verify our involvement in a particular item of social media content.
- Employees will specifically clarify which post or comments are their own opinions vs. official corporate statements. Writing which does not mention work-related topics does not need to mention the employment relationship.
- If employees post or comment anonymously, they should not discuss matters related to the business of their employer.
- If employer-related topics are mentioned, they should disclose their affiliation with the company.
- Not use services or technologies for mass-posting comments.
- Use extreme care when communicating with minors or using social networks intended for minors.
- Contractually guarantee that any third-party outreach program we participate in meets or exceeds our internal standards.

Keyword advertising

How keywords work (Google)

- Your keywords are the words or phrases your customers would use when searching for your product or service. Keywords allow you to target your ads to your desired audience.
- For example, if your business sells cameras online, you can use "buy digital camera" as a keyword in your AdWords campaign. When a Google user enters "buy digital camera" in a Google search, your ad could appear next to the search results. In addition, your ad can appear on sites and products in the Google Network that relate to your keyword.
- By creating a highly relevant keyword list, you can show your ads to only the most interested users. This will improve the performance of your ads and help you to maintain low cost-per-clicks (CPCs).
- **Ad status:** In the Status column of the table, you'll find information on the current state of each ad.
- **Clickthrough rate:** This shows how often people click your ad after seeing it.
 - As a rule of thumb, a CTR under 1% on Google and the Search Network indicates that your ads are not targeted to a relevant audience.
 - If you find that your CTR is lower than 1%, try improving your ads using these ad tips.
- **Ad Performance report:** This report lets you view performance data for each of your ads, including average position, clicks and impressions, CTR, and cost.
- **Compare ad variations:** If you have more than one ad in an ad group, your ads will be rotated and take turns showing. By comparing the performance of your different ads, you can find out what your customers find the most compelling.

Use of trademarks in keyword ads

- Google/Microsoft generally not liable for use of a third party's trademark used in keyword/adword advertising, but both will typically remove use of the mark upon request
- A company may successfully sue a competitor for steering customers using the company's trademark. Use by one company of its competitor's trademark in advertising more likely to result in liability, but law unsettled

Example: Google's takedown policy -

- **What is Google's AdWords and AdSense trademark policy?** Google takes allegations of trademark infringement very seriously and, as a courtesy, we investigate matters raised by trademark owners. Trademarks are territorial and apply only to certain goods or services.
 - The trademark owner doesn't need to be a Google AdWords advertiser in order to send a complaint.
 - Any such investigation will only affect ads served on or by Google.
 - Google's trademark policy does not apply to search results. Our investigations only apply to sponsored links. For trademark concerns about websites that appear in Google search results, the trademark owner should contact the site owner directly.

Keyword advertising

list of reasons for rejecting keyword advertising (Microsoft)

- Claims made in ads must be accurate and supported by research.
- Combined ad title and text must contain 6 or more words.
- Combined mobile ad title and text must contain 3 or more words.
- Consecutive non-alphanumeric characters.
- Content guidelines violation.
- Disallowed pop-ups.
- Display URL issue.
- Excessive capitalization.
- Forbidden characters in phone number.
- Forbidden content.
- Forbidden content in phone number.
- Inaccessible site.
- Inappropriate use of foreign language.
- Incomplete Supporting Information.
- Incorrect grammar.
- Incorrect punctuation.
- Incorrect spelling.
- Insufficient supporting information.
- Multiple editorial violations.
- Offer not found on the site.
- Phone number has no digits.
- Phone number is not valid.
- Phone numbers.
- Repetition of words or characters.
- Site accreditation missing.
- Style guidelines violation.
- Unsubstantiated claim.
- URL format error.
- Advertising that inappropriately uses texts or rituals of religion is not allowed.
- Advertising for certain knives or blades is not allowed.
- Advertising for products and services that may facilitate deception of a public system or process is not allowed.
- Advertising for replicas or imitations of designer products, or for counterfeit, fake, or bootleg products, is not allowed.
- Advertising for smokeless tobacco, tobacco products, electronic cigarettes, or parts used in these devices is not allowed. (United States and Canada only.)
- Advertising for some pyramid schemes and business opportunities is not allowed.
- Advertising for some supplements and health products, for example, non-FDA approved HIV testing kits, is not allowed. (United States and Canada only.)
- Advertising for some weapons accessories is not allowed.
- Advertising for the online sale of fireworks and pyrotechnics is not allowed.
- Advertising for the sale or use of web cams or surveillance equipment for non-legitimate use is not allowed.
- Advertising for websites that offer access to Usenet newsgroups is not allowed. (United States and Canada only.)
- Advertising may be disallowed if the legality of a particular content type may be unclear.
- Pharmacy content.
- Trademarked content.
- Advertising or sale of ammunition is not allowed.
- Advertising or sale of some integral gun parts is not allowed. (United States and Canada only.)
- Advertising or websites that include politically sensitive content or “hot button” topical content are not allowed. Alcohol content.
- Disallowed content.
- Drug content.
- Hate speech content.
- Political content.
- Providing access to peer-to-peer file-sharing networks or promoting unauthorized file sharing of copyrighted content is not allowed.
- Sites that offer or promote bulk-marketing products or services are not allowed if the stated or implied use of the product is unsolicited spam.
- Tobacco content.
- Violence content.
- Weapons content.
- Advertising for competitions or sweepstakes must not constitute online gambling, must comply with all applicable laws, and must feature terms and conditions prominently. (United States and Canada only.)
- Gambling content.

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Questions?

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