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MICHAEL LASKY

Think before you link to avoid copyright violations

Often, the fastest way to communicate information digitally is to “link” to it. This allows the viewer to be directed to the website on which the linked information appears. However, making a digital copy of copyrighted material and forwarding it by email can be a violation of copyright laws. So where does lawful linking end and unlawful copyright infringement begin?

Merely linking to the homepage website does not constitute copyright infringement. However, different types of linking raise different legal issues. As such, PR firms, along with all companies that perform services and rely on linking, should be particularly careful. Below are the five recommended questions to consider before linking to online content owned or controlled by someone else:

•**Am I allowed to link?** Many websites have terms and conditions of usage specifying whether and what type of linking they allow. There is uncertainty regarding the effectiveness of whether these terms can obligate users unless they have specifically agreed to them. Nonetheless, the best practice is to check and follow them. In addition, many websites have tools that allow users to create and send links through the websites’ own servers and preferred format for linking. It is safest, wherever possible, to link through those tools.

•**What am I linking to?** Linking is allowed if the material linked to is not itself infringing copyrighted materials. However, a company may be held liable if the purpose of linking is to distribute infringing material or induce infringement. The best way to minimize this risk is to link to original, reliable sources on the Internet and avoid linking to content that obviously infringes on original content.

For example, do not link to a poor quality video that an unidentified user has posted on YouTube. Rather, link to the video that is available on an original programming source’s website or on an official YouTube channel. If you are given notice of an infringing link, you should remove it promptly.

•**How am I linking?** There are different ways of linking. These are “deep linking,” “embedding,” and “framing” – and they all raise different degrees of potential liability.

Deep linking involves linking to a specific page on a website other than its homepage. Some website owners complain that deep linking steals both traffic from their

homepages and ad revenue. No court has yet found deep linking to be copyright or trademark violation, but it can be risky, especially if a company deep links to the website of one of its competitors.

Embedding, also known as in-line linking or hotlinking, is a practice that uses code to display an image hosted on another server in the context of a website. The image itself is never copied on the company’s own server, but looks, to the ordinary viewer, as though it is a part of your website. The use of hotlinks raises the potential for added concern. For example, a hot link to another company’s trademarked logo may create the impression that you are affiliated with or endorsed by the linked-to website.

The framing practice divides a web page into multiple sections (or “frames”) and uses code to pull content from different sources, including from different websites. Thus, a framing website can incorporate another website’s content into its own navigation tools, text, banners, trademarks and/or advertising, and can change or block the context of the original content. The juxtaposition of the two websites might make it appear that the framing website is either the source of the framed content or it can create the mistaken impression of sponsorship or association between the two websites. The unauthorized use of framing has the potential to be a copyright and trademark violation.

•**How much am I linking?** In some cases, such as in a viral campaign, a link causes so much traffic to the linked-to website that the servers become overloaded and inoperable. Thus, when linking in a context that has the possibility to become viral, it is best to get permission from the linked-to website.

•**Should I get permission?** You can safely link to the homepage of a website or through its own linking tools. However, if an ounce of prevention is worth a pound of cure, it is best to get permission when embedding, framing, or using links that may go viral.

The ease of linking is yet another reason why it is more important than ever for communications firms to understand copyright and trademark protections and how to minimize risk. ■

Michael Lasky is a senior partner at the law firm of Davis & Gilbert LLP, where he heads the PR practice group and co-chairs the litigation department. He can be reached at mlasky@dglaw.com.