

Website Audit Capabilities

The proliferation of websites and e-commerce has also given rise to the risks associated with these important aspects of almost any business. From copyright and trademark infringement to privacy requirements to compliance with the Americans with Disabilities Act (ADA), websites are prone to lawsuits and costly litigation.

[Buchanan Ingersoll & Rooney](#) offers an experienced, multidisciplinary team that will review your company's website to identify and mitigate potential risks.

Below are some of the areas we review to assess a company's existing website:

General Issues

1. **Who registered the site?**

Companies should be sure that the domain name registration is in the name of the company, and not in the same name of IT personnel. The danger associated with this is that an employee may leave the company, taking the registered domain with him/her. The company would then be in a position where it has to fight to regain control of the name.

2. **Does the site keep version records?**

It is considered good practice to keep complete back-ups of websites.

Terms of Use Issues

1. **How are the site's terms of use accepted?**

It is considered good practice to have terms of use on all sites. It is important to note that the method of acceptance will be a major factor in determining whether the terms are ultimately enforceable.

2. **Does the site have chat room or message board capabilities?**

If your site has chat room or message board features, the terms of use should include disclaimers against liability for copyright infringement or defamation by users. Companies should also consider including indemnity provisions.

3. **Do users make an account on the site?**

If users can establish an account on the site, the terms of use should include language that indicates the site may terminate the user's account at will.

4. **Do the terms of use contain the required State disclosures?**

Some states, specifically California, require certain information be disclosed on websites in certain situations. All e-commerce websites should have language to satisfy Section 17538 of the California Business and Professions Code.

5. **Are there "Terms of Sale" that are different than the Sites Terms and Conditions (for e-commerce)?**

Companies can have greater protection online because a "click" can serve to waive any number of standard warranties.

Privacy Policy Issues

- 1. Have you considered what privacy laws may apply to the site and the information you collect?**
There are generally applicable and industry-specific (e.g. healthcare, financial services, insurance) requirements that may apply to your online (and offline) collection of personal information.
- 2. Does the site have a privacy policy?**
Websites that gather information from site visitors—even site usage data collected via “cookies”—should have a privacy policy to comply with applicable law. It is good practice to explicitly incorporate a company’s privacy policy into its terms of use.
- 3. Is the link to the privacy policy and terms of use readily visible?**
Some laws require prominent links. Since these documents are intended to protect the site owner by disclosing actual practices, they should not be hidden.
- 4. Does the site collect personal information about visitors?**
If your website collects personal information, it may be legally required—and is certainly good practice—for the privacy policy to identify what information is collected and its intended use.
- 5. Do you disclose or do third parties have access to information collected on the site?**
Federal, state, and non-US privacy laws may impose requirements on disclosure to third parties of personal information collected on your site. The California Consumer Protection Act and non-U.S. laws may require explicit consent to collecting, disclosing, or selling personal information.
- 6. Are you doing targeted personalized advertising or other online marketing?**
If so, you need to describe how your advertising/marketing partners are using the information gathered on your site.

Social Media Issues

- 1. Does the site contain embedded content captured from or directly linked to a third-party social media account(s)?**
In addition to intellectual property law risks, embedding content from a third party social media account on a site also requires compliance with the specific social media platforms’ respective terms and conditions. Prominent social media platforms such as Twitter® and Instagram® maintain detailed terms and conditions governing how users are allowed to embed third party social media posts and content on their own site or social media accounts. Failure to comply with social media platforms’ terms and conditions can result in disablement of a party’s own social media accounts, as well as expose them to possible legal liabilities and other risks.
- 2. Formal Social Media Policies/Procedures Are Essential.**
Most businesses today likely engage in at least some form of advertising using social media. At a minimum, businesses almost certainly have employees who are active on social media. To this end, it is imperative for businesses to have formal written social media policies and procedures in place. Such policies and procedures help encourage responsible use of social media and serve a critical function in controlling how a business is portrayed on social media. Each social media policy should also be uniquely crafted on a case-by-case basis given that different requirements may apply depending on the particular structure of the business (i.e., public versus private company, non-profit organization, etc.).
- 3. Understanding the Ins and Outs of Influencers.**
Many businesses now utilize the services of social media influencers to help promote and grow their brands online. When working with social media influencers, who are likely to link content back to a business’s site, it is imperative that the influencer content contains sufficient disclosures and information to provide the consuming public with notice that the communications are advertisements. Ensuring that the influencer relationship is properly governed by a formal contract is key to maintaining control over influencer compliance.

Advertising Law Issues

1. The Truth Shall Set One Free.

Businesses should never make advertising claims or guarantees on a site that they are unable to substantiate with facts and evidence. Businesses must guard against making any claims on a site that could mislead or deceive the consuming public. Consumer protection statutes in every state protect against these types of actions.

2. Managing Consumer Reviews.

Many businesses now like to feature consumer reviews on their site. While such reviews can offer significant marketing value, they must be truthful and non-deceptive. Businesses must understand and navigate the appropriate legal requirements when asking consumers to leave reviews, including material disclosures and giving consumers the ability to leave accurate and truthful reviews.

Trademark Issues

1. Does the site use META tags?

META tags should be tailored for the site's purpose and selectively used for advertising purposes.

2. Does the site use other's trademarks?

Sites that have other trademarks displayed should be sure to have written permission to use them. Failure to do so could amount to trademark infringement.

3. Does the site use its own trademarks properly?

Trademarks should be used as adjectives, not nouns. The danger in using trademarks incorrectly is that a mark may lose its value as such.

Copyright Issues

1. Does the site have links to third-party content? If so, how is it displayed?

Does the site include third-party content such as photos, drawings, music or videos? Has that content been properly licensed?

While express permission is not generally needed to link to copyrighted materials, many sites will include, in their terms of use, "linking" requirements. These requirements may not be legally enforceable, but compliance with them is generally considered good practice and helps to reduce the risk that the company will be subject to a copyright infringement suit.

2. Does the site have proper copyright notification?

It should be in the form of © 200X-200X Your Company Name, Inc., with the dates being the date of first publication of the website up to the most recent version of the website.

Children's Online Privacy Protection (COPPA) Issues

1. Is the site directed at children under the age of thirteen (13)?

Compliance with the Americans with Disabilities Act (ADA):

1. Does the site contain an accessibility statement?

2. Does the home page have issues that could be flagged for non-compliance?

3. Does the site include an alternate method to contact the company in the event the user is not able to purchase goods & services?

After the Buchanan team has completed the review of your company's website, we will provide a comprehensive report setting forth our findings and suggested actions to mitigate your risk.

Why Buchanan?

Buchanan will not only identify areas of non-compliance, we will assist your team with concrete actions that will mitigate these risks. There is no “one size fits all” approach to website legal compliance. Rather, our approach is geared to examine our clients’ businesses and their websites to maximize compliance with all applicable laws. And we do this under the guise of attorney-client privilege. Our attorneys also stay abreast of ever-changing state and federal regulations and help our clients remain in compliance in this evolving field.

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