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Protecting a Web Site through Terms of Use

Pouring hours of effort into the creation of text or graphics only to see it end up plagiarized in another person's work is akin to the feelings of a parent after the kidnapping of his or her child. In order to combat such devastating effects, the idea of copyright came into existence since the advent of the printing press. The first law protecting copyright was the Statute of Anne passed in 1710 in Great Britain ("History of Copyright"). Since then, thousands of copyrights have been passed in order to protect the intellectual rights of authors and publishers. In the United States, copyright is in effect for the life of the author plus seventy years. Copyright protects authors and their intellectual creations from plagiarism through the legal system. In the information age, protecting one's creation is possible on the Internet, as is seeking damages against those who infringe on or plagiarize work.

Web designers are creating new content on a regular basis in order to make online experiences better for users perusing through their Web site. The ease in which it is possible to steal material from the Web is alarming. Users can copy and paste content from the designer's site to use in their own fashion. Web pages can be saved to the user's computer, as can images and other media. It is important to remember that "when [a person] use[s] someone's graphic, HTML, or text without permission, [he or she is] **stealing**" unless they've obtained permission from the designer beforehand or properly cite where the intellectual property came from (Kyrnin). Though this is the case regardless of if there is a copyright notice on a page or not, it is

recommended to create a Terms of Use/Terms of Service policy in order to create a binding contract between the user and the designer's site in case he or she decides to do something infringing upon the designer's copyright on information, code, or images.

Designing a Terms of Use agreement can be daunting, as it is a legally binding contract that could perhaps protect a Web site in court in the future. Consequently, many Web designers choose to hire a lawyer specializing in writing something that is legally binding and to the point. Hiring a lawyer isn't particularly practical for those who publish to a relatively small audience. Therefore, many who wish to ensure that users are aware of the terms of them using a site create a Terms of Use policy without the aid of a lawyer. Jonathan Bailey recommends that "those seeking to protect their copyrights do everything in their power to prevent theft before it happens, including having a clearly-written copyright policy...[that] provide[s] a clear message about what is and is not acceptable use of the work". Clear examples of what is not acceptable use of a Web site's content will help developers and designers should someone try to steal their work and claim it as their own. Keeping it concise helps ensure that users will actually read the Terms of Use or Terms of Service before agreeing to it.

One of the best ways to develop a Terms of Use for a smaller site is to look at the policies used on other sites. Axgrindr, an alias for a webmaster who participates in the forum WebmasterWorld.com, offers advice on how to take bits and pieces from other sites. Here is an excerpt from his post: "When I need specific agreements and terms of service documents I first check some websites that are in the same industry as mine and grab theirs. Once I have a selection I take the bits that pertain to my situation and build my own. It's a good way of discovering some situations to cover that you might not have thought of otherwise". Though it is rather ironic that the Terms of Use/Terms of Service are to protect sites from people stealing

content are generally taken from other sites (and likely without permission), axgrindr's advice is very helpful. Most Terms of Use and Terms of Service agreements have similar-sounding language, due to the fact that they are legal contracts. And so long as the Terms of Use are tailored specifically to the Web site in development, taking bits and pieces from other sites would fall more under fair use rules as they're being used for educational purposes.

Examining the Terms of Use policy for a large company will help clarify what should be included by those seeking to develop their own policy without the assistance of a lawyer. For instance, National Geographic has a Terms of Use policy that would provide an excellent template for Web designers looking to display information more than to sell items. The following quotations are directly from National Geographic's Terms of Service.

The first section of a Terms of Use policy is generally an acceptance of terms wherein the Web site clearly states the role of the user in regards to the site. "By using the Site, you agree to be bound by the Terms. You shall also be subject to any additional terms posted with respect to individual sections of the Site" warns the user that the Terms are binding whenever the user is on the site. This disclaimer, along with the one about change, is crucial. Otherwise, a user could contest in court, should one decide to do so, that he or she never agreed to the terms and therefore couldn't be held liable for stealing content. The Terms go on to say that "[i]f you are dissatisfied with any of the materials contained in the Site, with the quality of service or Content, or with these Terms, your sole and exclusive remedy is to discontinue accessing and using the Site". This clause informs the user how to disagree with the Terms, and is also necessary in order to make it a legal contract.

National Geographic continues with a section devoted to intellectual property. If a Web site has any intellectual property that the site doesn't want to be plagiarized, it would be a good idea to include a section on it as well. According to their Terms,

[a]ll of the content featured or displayed on the Site, including, but not limited to, still images, text, pictorial works, video images, still images of video, graphic designs, audio recordings, multimedia combinations, and computer programs, including web-based programs ("Content") is owned or licensed by National Geographic.

This ensures there is no question as to what content is owned by the magazine company. If a user were to take any of the content unlawfully, National Geographic would have the right to prosecute them in a court of law because of this section, which also contains information pertaining to those making claims their work has been infringed on the site.

Because National Geographic is a common resource in schools, their Terms include a section devoted to the educational use of content. Teachers, professors, and other students are allowed to use content with regards to the education of students. To protect their copyrights, they include this clause: "Content used for any purpose must always maintain unaltered copyright and other proprietary notices". Those involved in education are allowed special privileges in regards to content in books, media, and the Internet. Consequently, it would be wise for any Terms of Use policy to have a clause regarding education like National Geographic.

Another section included in their Terms is about liability—which is important in order to protect businesses from lawsuits by users. Any site wishing to keep itself from potentially being sued for content on another site that is linked to should include a liability statement protecting against the content on other pages. National Geographic then includes a section about user conduct, defining what it is users can and cannot do. As this is a legal contract, users who go

against the conduct rules can be prosecuted criminally, as is stated inside this particular section. Defining a user's role is useful in protecting a site's integrity in court.

National Geographic ends their Terms by describing how litigation against the Terms could take place. The final paragraph is of great importance. It states:

These Terms and any other operating rules or terms currently posted on the Site constitute the entire agreement between National Geographic and the users of the Site, and supersede all previous written or oral agreements between the parties with respect to such subject matter. No action of National Geographic may be construed as a waiver of any part of these Terms of Use. Should any of the above paragraphs be unenforceable, the other paragraphs will remain in full force and effect.

This further emphasizes the fact that the Terms are a legal contract between the user and the site. And, once again, it offers the site protection should a user try to file a lawsuit against them. Where possible, Terms of Use should cover any potential loopholes that a user could find in manipulating content from a Web site to do that which it was not intended to do.

If there is no Terms of Use on a Web site, defending against plagiarism becomes a particularly daunting task. The legal contract the Terms of Use creates ensures that the user knows what he or she can legally do without risking prosecution in a court of law.

Consequently, Terms of Use often discourage users from breaking the law and offer quite a lot of protection to those who have spent long hours creating a site from the ground up. Any site that displays important content that should not be used unlawfully should develop a Terms of Use policy. The best way, barring hiring a lawyer, is to follow the examples of other sites.

Works Cited

- Axgrindr. "How to Write a Solid Terms of Service Agreement." WebmasterWorld.Com. 24 Jan. 2007. 29 Feb. 2008
<http://www.webmasterworld.com/content_copywriting/3230044.htm>.
- Bailey, Jonathan. "Plagiarism Today - Ethical Plagiarism Fighting." PlagiarismToday. 5 May 2006. Plagiarism Today. 1 Mar. 2008
<<http://www.plagiarismtoday.com/2006/05/05/ethical-plagiarism-fighting/>>.
- Jennifer, Kyrnin. "Copyright on the Web." About.Com. The New York Times Company. 1 Mar. 2008 <<http://webdesign.about.com/od/copyright/a/aa081700a.htm>>.
- "National Geographic Privacy Policy." NationalGeographic.Com. 1 Sept. 2003. National Geographic. 1 Mar. 2008 <<http://www.nationalgeographic.com/community/terms.html>>.
- Tallmo, Karl-Erik. "History of Copyright: Statute of Anne, 1710." CopyrightHistory.Com. 2005. 29 Feb. 2008 <<http://www.copyrighthistory.com/anne.html>>.