

Ten Simple Ways to Get Sued

Lawsuits: Expensive and Time Consuming

Want to stay out of trouble? Unless you have been sued before you probably have no idea how expensive, time consuming, and emotionally draining it can be. A little legal preventative maintenance can keep you focused on growing your business uninterrupted. Our firm specializes in litigation; mostly defense work. That means we have a bird's eye view of what companies do to get in trouble. Here are some surefire ways to get in hot water:

1) Hire that key sales employee from your competitor, and trust him not to bring along the customer list.

The best practice is to obtain a written agreement from the prospective employee in which he agrees not to bring any trade secrets or intellectual property from a former employer. And, of course, strictly enforce it.

2) Assume that if a programmer writes code for you, then you own it.

A contractor must assign the ownership of the copyright and any other intellectual property to you in writing or he can typically resell the work, even to one of your competitors. If an employee takes work home, make sure you have a signed assignment of intellectual property in his personnel file covering after hours work.

3) Give your IT department and programmers the freedom to do their job as they see fit as long as the job gets done.

A recent survey indicated programmers and web developers believe taking code from other web sites (a very easy task indeed) is an acceptable practice. Why reinvent the wheel? Because using "borrowed code" may be copyright infringement.

4) Register on a competitor's website for competitive business intelligence, and visit often.

You had better read the website user agreement first and make sure it does not prohibit competitors from registering. A recent appellate federal court decision makes it both a criminal and civil violation of federal law to register on a website "without authorization". Many state computer crime laws will likely follow the reasoning, which could make you vulnerable to civil suits and criminal

charges on both a state and federal level.

5) Run an affiliate marketing program, let it grow wildly, and empower your affiliates to embark on creative, innovative, and totally independent paths.

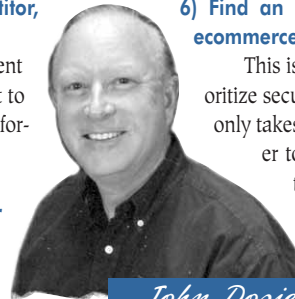
An affiliate program is, indeed, one of the killer business applications on the web. It can also be a business killer. You are liable for any spam your affiliate sends, whether or not you knew about it.

6) Find an inexpensive web host to entrust with your ecommerce web site and related transaction processing.

This is an all too common occurrence. If you don't prioritize security over cost, then you are asking for trouble. It only takes one hacker to get into your administrative server to put you in a position where you find yourself trying to comply with state data loss laws and fending off class action lawsuits, and all the while trying to manage the negative publicity.

7) Rely on the latest update of your anti-virus software to protect your business.

New viruses and the like are added only after they are identified. But it can take a long time to identify them. We worked on a case in which the US Attorney and FBI accused our client of using a "new" hacking technique involving a "new" virus in order to access business computers. We found the "new" virus described in detail in a hacker chat room...and the post was almost five years earlier! Don't be overly reliant on anti-spyware or anti-virus software. Establish internal procedures to minimize the risk and add multiple layers of security.



John Dozier

Obtain a written agreement from the prospective employee, in which he agrees not to bring any trade secrets or intellectual property from a former employer..

”

John Dozier is President of Dozier Internet Law, PC, a law firm representing small and mid-size online businesses.



8) Consummate deals by verbal agreement.

Written contracts are an essential element of risk management. At least understand the risks associated with a “handshake” deal. If a web developer is working on a project for you, will the source code be available in the future when you need to change it? Don't ever expect a developer to deliver source code to you on a handshake. If he is the only developer with access to the source code, can your budget handle the huge, but all too typical, increases in his cost to service and support the project? If you are comfortable with having no option for an exit strategy, then a handshake is fine.

9) Don't monitor the web to identify when your website content has been stolen.

You may want to register your key pages with the copysentry service at copyscape.com. You will find out very quickly if someone is stealing your content and using it on public pages. There are very quick and effective remedies available now to address online copyright infringement, without the requirement of copyright registration. If you are slow moving, one day the infringer could use the same quick and effective remedies and

have your site pulled down without notice by asserting that you stole his content!

10) Get the .com domain name and life is good!

There are many domain name issues to consider, particularly if the domain name is your business name. Get a distinctive name and get a trademark clearance. Buy every extension you can acquire. Secure every common misspelling and confusingly similar variation of the name. Buy the “derogatories”... names that could organically attract traffic to a “gripe site”. If possible, try to acquire all of these domain names at once. Don't expect to get a domain name away from someone if it is used in the US merely to complain about your company. Even if you have a right to do so, it's an expensive, uncertain process. Be proactive.

Invest in doing things the right way. Create a “compliance” culture. There are plenty of ways to get involved in litigation today, but if you avoid these ten, you will have gone a long way towards managing the risk of doing business online. 