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Internext Seminar: A Newbie's Legal Primer (Things You Must Discuss With Your Attorney)

by Ynot News YNOT Network, LP

LEGAL BRIEFS A pervading theme during Internext was the fact that adult webmasters overlook the necessary legal measures to ensure that their websites won't be shut down by Ashcroft. Or worse, that the conservative Attorney General will imprison adult web site operators (for which he has expressed his desire) and throw away the key. With that in mind, this Internext panel, featured two prominent adult entertainment lawyers - Larry Walters (FreeSpeechLaw.com; link interview) and Robert Lombardo (in-house counsel for ALS Scan, Inc.), and a well respected and ethical adult business owner, TrueCash.com 's Oz (a regular contributor to YNOT News).

Oz immediately let the webmasters in attendance know that on his sites, he doesn't offer content without age verification on the pay sites, thus protecting his legal bases. In fact, Oz doesn't even show nipples, he told the audience. Why the self-censorship? Oz takes the present administration very seriously, he said. Oz argued that hardcore content isn't necessary for sales. Self-censorship of your tours and your home page can actually entice the surfer into buying a membership.

Robert Lombardo said that it's inevitable that some congressman's kid will be caught looking at porn. And then, Ashcroft's army will come knocking on your door. Improper copyrights can lead to a tidal wave of prosecutions. If you produce your own images, said Lombardo, you need to register every image and submit your name to the copyright office. Lombardo suggested that webmasters become familiar with copyright issues (check out www.loc.gov/copyright) so he/she is protected by the law.

As the seminar went on, much more was discussed on the multiple facets of legally registering content and providing proper documentation, such as the custodian of records information. In addition to avoiding punishment from the federal government, Lombardo also relayed to webmasters how properly copyrighting content can help avoid an expensive lawsuit or settlement.

The price for copyright infringement per image can range between \$750 to \$150,000 per image, according to Lombardo, who expressed amazement at the number of reputable and influential sites that are copying others' content and/or not properly copyrighting their own content. If you are unfortunate enough to have content stolen from you, you can find out who posted your image through an issuance of a subpoena, said Lombardo, which will result in the ISPs disclosing the content thief. Overall, said Lombardo, the law is on your side, if you cover your legal bases.

Larry Walters, an expert First Amendment attorney, offered extremely valuable advice to webmasters on how to select an attorney (hopefully an attorney will be selected before the webmaster gets in trouble, not after). Walters suggested interviewing the lawyer - don't let the lawyer interview you. Ask the attorney if he's ever defended a webmaster in court for obscenity. How many cases has the attorney worked on in regards to adult entertainment and First Amendment issues? In what cities has the attorney defended clients (states and localities have different laws and community standards)? Has the attorney's clients ever landed in jail? Is the attorney familiar with terms that are relevant to the webmaster community? (Does he or she know what a CGI script is? A TGP? Meta Tags?) Find a lawyer who won't be spending your billable time looking up terms and definitions which he/she should be familiar with, and pick a lawyer who will stick with you through thick and thin. Your attorney should have the confidence to defend your First Amendment rights.

Obscenity and how it relates to adult entertainment has been resurrected after an

approximately 20 year hibernation. Not since the Reagan (with Attorney General Ed Meese) and elder Bush days has adult entertainment been under attack. The Clinton administration, for the last 8 years (basically spanning the nascent Internet era), has largely ignored obscenity cases, thanks to a super-friendly First Amendment Attorney General (thanks Janet!).

The panelists agreed that violent criminals sometimes get more respect from a jury, judge and prosecutor than adult webmasters receive. There are presently 4 cases going to the Supreme Court this term involving First Amendment rights. These cases will heavily influence the industry as some of these cases involve the debate over virtual child porn and COPA.

The attorneys stated that the danger areas that will be scrutinized for obscenity and illegality include: celebrity sites, newsgroups, teen sites, spy cams, and fetish content.

Webmasters were also advised to set up a corporate structure or other entity, which will help protect from personal liability, though it was worth noting in the seminar that even with a corporate structure, adult webmasters are not immune to criminal prosecution.

During the Reno, Wild West Days of webmastering, record keeping and labeling wasn't on any webmaster's mind, or rather, only a select few who were privy to affordable legal access. It should now be on the frontal lobe of every webmaster's brain that they properly label their content, accurately keep their records, comply with 2257 laws, and cover every legal base.

Webmasters also should become familiar with the third parties they use, be it affiliates or content providers, etc. You don't want to get in trouble through vicarious liability (so make sure you have an indemnity clause!). Even if you cover all the legal bases, you can still get in trouble if one of the sites you link to doesn't have their images protected by copyright.

Don't get lazy and think you won't get a knock on your door from the Feds. Be anal about every legal step in the process. Go so far as to actually film the model signing her model release forms. Because of the inevitable prosecutions by Ashcroft's team of obscenity prosecutors, legal themes were widely discussed. YNOT News' coverage of Internext will prominently feature legal issues. We want to help the adult webmaster community stay out of jail and not be tarred and feathered by a reactionary government.