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ATTORNEYS AT LAW

## Social Media & The Internet

### Avoiding Legal Pitfalls


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719.381.1708 | fax: 719.466.8076 | info@blspeer.com | www.blspeer.com  
29 EAST MORENO AVENUE, COLORADO SPRINGS, CO 80903-3915

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## Disclaimer!

- This may be boring
- You may not learn anything
- If you do learn something, it may be just enough to make you dangerous
- This is **NOT** legal advice



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## Introduction

- Cyberspace is **NOT** lawless
- Presentation purpose:
  - Provide you with enough information to **identify potential issues** **NOT** analyze or resolve potential issues

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## New Communication Forums – Same Old Laws

- New communication forums: Websites, Social Media Sites, Blogs, Tweets, Texts...
- Same old laws:
  - Copyrights
  - Trademarks
  - Trade Secret
  - Defamation
  - Trade Libel
  - Right of Privacy
  - Right of Publicity
  - *And the list goes on...*

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## Copyrights

- **What?** **Original works of authorship** fixed in any **tangible** medium of expression
- **Acquisition of Rights?**
  - Upon **creation**
  - US Copyright Office
- **Works?**
  - **Literary** works
  - **Musical** works (including any accompanying words)
  - **Dramatic** works (including any accompanying music)
  - **Pictorial, Graphic and Sculptural** works
  - **Pantomimes and Choreographic** works
  - **Motion Pictures** and other **Audiovisual** works
  - **Sound Recordings**
  - **Architectural Works**



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## Copyrights

- **Rights?** Exclusive **RightS** to:
  - **Reproduce** the work
  - **Prepare** derivative works
  - **Distribute** copies
  - **Perform** publicly
  - **Display** publicly
- **Where?**
  - **National** Border
  - **International** Reciprocity



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## Copyrights

- **How Long?**
  - **Individual Work:** Life of author plus 70 years
  - **Joint Work:** Life of last-surviving author plus 70 years
  - **Anonymous Work, Pseudonymous Work, Work for Hire:**
    - Earlier of 95 years from publication
    - 120 years from creation
- **Public Domain?**
  - **Expiration** of term: BEFORE January 1, 1923

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## Copyrights

- **Marking? NOT required**
  - **Copyright**
    - Symbol (©)
    - Word (Copyright)
    - Abbreviation (Copr.)
- **Year of Creation or Publication**
- **Author Name**





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## Copyrights

- Using any copyrighted work without permission = **INFINGEMENT**
- **Legal Pitfalls:**
  - Public **Availability** ≠ Public **Domain**
  - **Attribution** ≠ **Permission**
  - Non-commercial use (no **remuneration**)
  - Author **promotion**
  - Website linking: derivative works (image); passing off (incorrect links/correct links); frames
  - **Fair Use**
    - Use of **X number of words** or **Y%** of a work is OK
    - **Transformation** by **Z%** is not infringement

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## Trademarks

- **What?** Indicator of source or origin of a good or service
- Trademarks may consist of:
  - Words (includes domain names) 
  - Phrases 
  - Designs 
  - Or combinations thereof 

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## Trademarks

- **Scents, Sounds & Colors**
  - **Scent**
    - Smead Vanilla and others for office supplies 
  - **Sound**
    - NBC Chimes for broadcasting services 
  - **Color**
    - Owens Corning Pink for insulatio 

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## Trademarks

- **Trademark owner:** Exclusive right to use trademark with particular goods and services.
- **Marking? NOT required.**
  - MARK® (Federal Registration)
  - MARK™ (State Registration and/or Common Law Usage)

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## Trademarks

- **Acquisition of Rights?**
  - Upon **use** of the mark in **commerce**
- **Registration is NOT required**
  - US Patent & Trademark Office
  - Secretary of State

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## Trademarks

- **Legal Pitfalls**
  - Using a mark that is
    - Substantially similar (looks and/sounds to another's mark) and
    - The use is likely to cause consumer confusion (does NOT have to actually confuse consumers)
  - Using a mark to suggest trademark owner endorsement

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## Trade Secrets

- **What?**
  - **Business information** that has **commercial value** which provides an **actual or potential economic advantage** over others and is **maintained in confidence**
  - Proprietary or confidential information
- **Rights?**
  - Exclusive right to use
  - Upon creation
  - Not Registered – Contractual Right



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## Trade Secrets

- **Where?**
  - State by State
  - Other areas of legal recognition
- **How Long?**
  - As long as maintained in confidence
- **Public Domain?**
  - Disclosure
    - By **anyone**
    - With or without fault

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## Trade Secrets

- **Legal Pitfalls**
  - Disclosure by an employee via the Internet



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## Defamation

- **Stuff You Say About Others**
- **What?** The **explicit or implicit injury to a person's reputation** caused by the publication of spoken or written words, or **dishin' dirt** about others.
- Two types of defamation:
  - **Libel** (written or **L**iteral)
  - **Slander** (oral or **S**spoken).




**Defamation**

- **Who?**
  - **Natural, living persons** (human beings)
  - Artificial persons, or **existing entities** (going-concern companies)
  - NOT the dead (but not polite and potentially bad karma)
- **Levels of protection:**
  - **Least Protection: Public Officials**
  - **Some Protection: Public Figures** (notable people in the public eye, such as celebrities, both voluntary (Britney Spears) and involuntary (Kato Kaelin).)
  - **Greatest Protection: Private Figures** (average citizens)

**Defamation**

- **Legal Pitfalls**
  - It's just my "opinion"
  - I am just telling the "truth"




**Trade Libel**

- **Product disparagement**, is akin to **defamation**.
- **What?** Trade libel is a **false statement** that **injures** the **business reputation** of a company or the sale of a company's products or services.
- **Legal Pitfalls:**
  - Same as defamation




**Right of Publicity**

- The **right of publicity** is the right to **prohibit others from using your persona for commercial purposes**.
- **Your Persona:**
  - **Likeness** (what you look like and other identifying idiosyncrasies, such as hand gestures)
  - **Voice** (what you sound like)
- **Who?**
  - **Natural persons**, both **living and dead**
  - **NOT** all-encompassing and does **permit** the use of another's persona for purposes of reporting, scholarship and commentary
  - Governed by **state law** and varies from state to state




**Right of Publicity**

- **Legal Pitfalls:**
  - State law
  - Reporting, scholarship and commentary



**Right of Privacy**

- The **right of privacy**, also known as **invasion of privacy**, is the right **to be let alone**. Only **living, natural persons** have a right of privacy.
- **What?** An invasion of privacy occurs when there is:
  - **Public disclosure** of **private facts**
  - **Portrayal** of a person in a **false light**
  - **Physical intrusion** into a person's **private space**
  - **Misappropriation** of a person's **name or likeness** (Right of Publicity)



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## And The List Goes On...

- **Digital Rights Management (DRM)**
  - **What?** Means to **prevent copying** of digital materials
    - Civil and Criminal penalties
- **Digital Millennium Copyright Act (DMCA)**
  - **What?** Criminalizes the **production** and **dissemination** of technology to **circumvent DRM safeguards or circumventing an access control**
  - Online copying
    - Insulation of ISPs - **take down notice** to Designated Agent

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## And On...

- **CAN-SPAM Act**
  - Applies to email senders and email initiators and regulates the manner in which and to whom commercial emails may be sent
- **Truth In Advertising**
  - Advertising must be truthful and non-deceptive; advertisers must have evidence to back up their claims; and advertisements cannot be unfair.
  - Blogger disclosure for paid reviews
- **Children's Online Privacy Protection Act (COPPA)**
  - Applies to operators of commercial websites and online services directed to children under 13 that collect, use, or disclose personal information from children, and
  - Operators of general audience websites or online services with actual knowledge that they are collecting, using, or disclosing personal information from children under 13

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## Free Legal Advice

- Ignorance of the law is **NEVER** a defense
- It is **ALWAYS** better (cheaper) to ask for permission (seek legal advice) than beg for forgiveness



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## Questions

- **ANSWERS**
  - The Answer to Life, the Universe and Everything is **"42"**
    - Douglas Adams, Life, the Universe and Everything (Hitchhiker's Guide to the Galaxy Trilogy)
  - **"It Depends"**
    - Universal legal answer