

# Ten issues to know when operating your website

By Thomas R. Burke  
Special to California Publisher

A few years back, I prepared a short checklist of website legal issues. During those few years, many of the issues have substantially matured. Read along and see if you are comfortable with each of these concerns as they apply to your newspaper's website:

## 1. Does your website have a privacy policy?

Privacy policies used to be optional and infrequently used – let alone read – but increasingly, not anymore. California was the first state in the country to require websites to post a privacy policy. The law, in effect since 2004, created specific requirements about where privacy policies must be posted, what they must include and how they may lawfully be changed. Any website that can be accessed by California consumers – whether the operations of the website are physically located in California or not – may be within the law's reach. Failure to comply with this law can result in fines or an injunction. The federal government got involved in the privacy policy business years before – initially to protect minors. If your website features a cartoon page, a kid's page, or if you ask readers to identify their age before they use the site – a common registration feature – the federal Children's Privacy Protection Act ("COPPA") will be triggered. Among other things, websites covered by COPPA are required to prominently post a privacy policy and obtain parental

consent before they collect personal information from children under the age of 13.

## 2. Prepared for data breaches?

Now that your website has allowed you to conveniently collect personal information about your loyal readers, are you prepared to act promptly if this information is breached, stolen or misplaced? California was also the first to enact a law that requires notice to be given to consumers when their personal information has been compromised. For several years, federal privacy legislation has been lurking on the horizon, but largely due to the absence of a cohesive pro-privacy contingency, few federal privacy laws have been enacted. Instead, a patchwork of state privacy statutes, many of which are modeled after California's, have been passed, making data breaches a very complicated problem. If your company has not considered what it would do if user personal information were compromised, now would be a good time to do this planning.

## 3. Contests and sweepstakes.

Online promotions are a proven method of attracting traffic to a website, but they also present a variety of risks, including fines and civil liability if conducted outside the law. The vast majority of promotion regulations vary from state to state, but federal law also governs online contests and



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sweepstakes. Violating these regulations can take the fun out of any online contest, so any online contest that you feature should keep these rules in mind.

## 4. Are your domain names secure? Do you know when the registration for each of your domain names expires?

I frequently pose this question to clients and many, unfortunately, are not entirely sure. Think of your domain registrations as being equal in importance as the lease to your building. There are now vendors who will manage your various domains for you, for little cost. By the way, if you find that visitors are coming to your website from another domain (that is not owned by you, and which appears to be an intentionally misspelled knock-off of your site's address) consider sending a cease and desist letter and forcing this cyber-squatter (who is very likely taking advantage of your site's good name) to abandon this misleading domain through a relatively low-cost ICANN dispute proceeding. You should have in place a method to periodically monitor the Internet domains that are similar to your domains to detect whether a misspelling of one of your domains is being used to misdirect your readers to a website featuring pornography. This is a common online ploy and it can be quite upsetting to your regular online readers. While you're at it, also check to ensure that the information about the individual who is listed as the "administrator" for your company's domain registrations is still accurate – and that this individual is still employed by the company! Many, many

companies have encountered problems when the individual who originally registered the company's Internet domains used their own name and their own credit card and was later fired or left on bad terms.

## 5. Does your website have a "Terms of Use" policy?

Increasingly as standard as a privacy policy is a worded "Terms and Conditions of Use" policy. Your newspaper's website should have one, too. Like the privacy policy, it should be prominently located and written in plain language. These policies typically contain a variety of legal information and limitations of liability including how to give notice if copyright-protected information is placed on the website by third parties.

## 6. Are copyrights and trademarks secure?

Every website is composed of creative materials – text, photographs, graphics and computer code – that are protected by federal copyright law. Check to make sure your company – and not the builder of the website – remains the owner of all of these rights. If trademarks appear on your site, now is a good time to make sure that these marks are registered with the trademark office.

## 7. If your site conducts e-commerce, does it comply with state return statutes?

If merchandise can be purchased through your newspaper's website, it must comply with state refund statutes. These statutes vary, but typically require a website to post its mailing address, telephone number and to give the buyer notice if there will be a delay in the delivery of their purchase and provide refund opportunities.

## 8. What editorial review process governs your site? What policies govern archives?

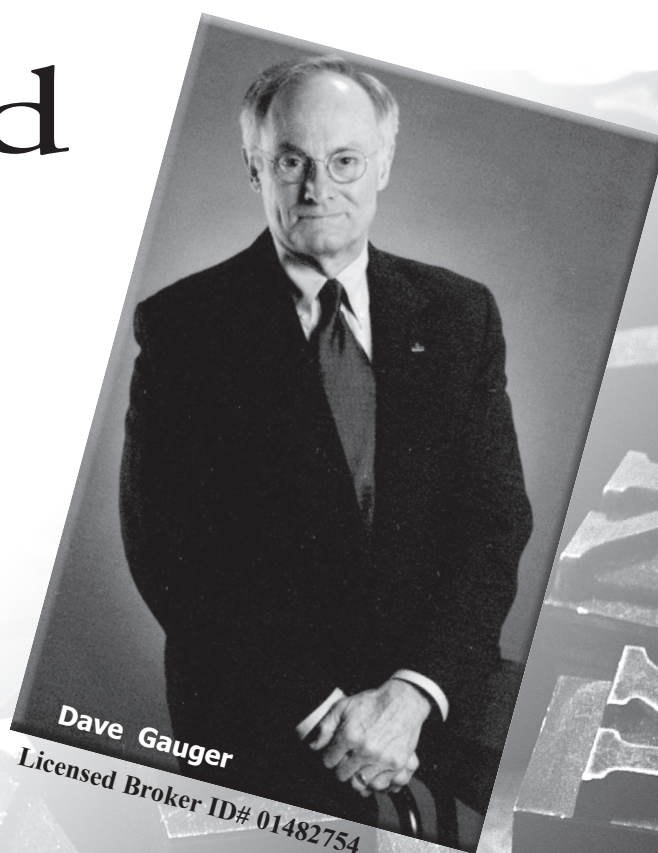
In earlier times, some newspapers organizationally structured their online operations to be separate – and isolated – from the traditional editorial review processes of the newsroom. Some newspapers still operate this way. However your online operations are structured, care should be taken to have internal editorial procedures in place to respond to potential defamation, invasion of privacy and copyright claims. If you have yet to develop an online corrections policy, you are overlooking a simple procedure to reduce your potential liability for online defamation claims. If you have not registered with the U.S. Copyright Office to take advantage of the safe harbor provisions available under the Digital Millennium Copyright Act, you should seriously think about doing so to avoid potential copyright claims. Finally, start asking questions internally about how to handle demands to remove "objectionable" content from your archives – if this complicated issue has not yet come your way, it will soon.

## 9. Immunity for third-party content

Whether it's photographs taken from cell phones or competing blog posts about a hot topic, the new wave is content created by users. Fortunately, as dicey as some of this content can be, the owners of websites enjoy federal immunity for civil liability from most if not all claims that can arise from content that is created by users, including claims for libel and privacy. See Section 230 of the Communications Decency Act of 1996. Even with the immunity that the law provides, consider whether the individuals in charge of monitoring online chat (if it is monitored on your site) are well-versed in the law and have the requisite common sense to deal with the challenging situations that are created by users. Also, continue to watch this space to learn what the Ninth Circuit Court of Appeals decides in the Fair Housing Council v. Roommates.com Section 230 case that will be reheard by the court in early 2008. The Roommates.com decision in this case is likely to provide valuable guidance to website owners about the scope

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# Break up the gang

It may be the best photo page you've ever designed—and you've done more than a few in your time.

The photos are prize-winners. The structure is sound. The spacing helps to set off each of the photos while maintaining the integrity of the group. They're tightly edited and properly sized. The frames are carefully selected. The headline typeface you've chosen for the caption is just right for the tenor of the page. Even the typography in the caption is matched with care.

And yet the page fails. Readers have trouble making sense of it. They just don't have the patience to figure out the design.

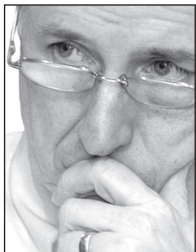
In your efforts to create a stunning page, you've made your readers work too hard — by creating a "ganged" caption. Instead of placing a separate caption below each photo, you assembled one caption that refers readers to each photo.

By doing so, you're forcing your readers to begin "... at left ..." and go to the photo (hoping to make sense of the caption) then return to the caption (hoping to make sense of the photo) then go to the next photo (hoping to make sense of the caption) then back to the caption. And on and on.

Of course, each time your readers go from caption to photo, their odds of finding the correct photo are even, at best. And every time they return to the caption, they have to swim around for a second or two to find where they left off.

Put together more than a half-dozen photos on a typical photo page and the ganged caption becomes a reader nightmare.

And your reference to the photo "... at left



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..." fails if there's more than one photo to the left of the caption.

What's the best way to fix the ganged caption? Kill it. Instead, use the caption space to write a copy block that tells the story behind the photos. And then go back ... rework the page ... placing a caption below every photo. Can you still create a stunning page? Absolutely. And underlying all of its visual power will be a page that is much improved — because it places the reader first.

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## LITTLE

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redundancy elimination or anything else, but it adds up to low employee morale, which greatly affects productivity.

It is times like these that truly separate the leaders from the managers. It's pretty tough to keep morale, spirit and productivity high. But some things can be done. One is to set smaller benchmark goals. Make sure they are realistic and attainable. They might be focused on individual sales drives, special promotions or sections, new contract drives, online contracts, etc. Look for people doing things right and recognize their efforts. Financial rewards would be great, but recognition for their accomplishments in front of their peers is of equal value to them.

Secondly, keep people in on the "big picture" as much as possible. They need to hear that the company is aware of how difficult things are and that they recognize individual effort. They need to know that getting through this is a team effort and you're all in it together. It's OK to share negative news with them. It's better for them to hear it from you than out on the street, in trade publications or on the Internet.

Finally, the staff needs to hear the positives of being in the newspaper business. One way

is to ask each member of the management team to be prepared to bring one positive bullet point to the management meetings. Newspapers are perhaps in the most challenging time in their history. But there is also great hope for the future. Newspaper companies are now thinking of themselves as being in the "information" business and offer unequaled reach of the community with a mix of a mainstream newspaper, niche and specialty publications, sophisticated direct-mail programs and a strong, highly viewed online presence. It's not the only game in town, but it's still the best one.

I tell young people who are thinking of leaving, or entering, newspapers that there has never been a better time to be in this business and that there is more innovation and contemporary thinking going on than ever before. I also tell them that there's never been a greater need for smart, energetic, creative people. But such people need to be given a chance to be winners.

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## BURKE

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of immunity available under Section 230.

### 10. Is your website insured?

Operating an interactive website presents a host of new and different kinds of potential liability for libel, privacy and copyright claims. Be sure you have fully explored with your insurance broker whether your website's operations are covered under your present liability policy. Watch out for insurance that may exclude valuable coverage if changes are made to your site without the

insurer's prior approval (this sounds bizarre, but such conditions have been floated) and generally be leery of insurance being offered by an insurer who doesn't seem to understand or appreciate how you (and others in the industry) are actively publishing on the Internet.

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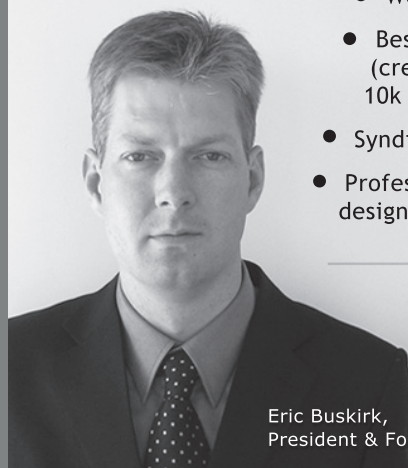
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