

Bringing Your Business Online: Third Party Content

The current COVID-19 pandemic has forced many businesses online in order to survive. In many cases, businesses had no plans to be online. Others were forced to move online more quickly than planned. In order to assist these businesses, we are preparing a series of articles discussing some of the more important legal issues to address when moving your business online. In [Article 1: Website Terms](#), we discussed online terms and conditions to protect your business. In [Article 2: Privacy Policy](#), we discussed a privacy policy to disclose how your business collects, uses and discloses personal information of others.

Article 3: Third Party Content

Another area to consider relates to when you can and cannot use someone else's content on your website. As a general rule, one **cannot** use or copy content you find on the Internet without permission. This rule applies to all creative content: text, videos, photographs, maps, cartoons and drawings, and music. This is true even if the content or the website does not have an explicit copyright notice or copyright symbol © (the letter c in a circle). Federal copyright law protects the creator of the content from the use of that content by others without permission, whether or not the content contains a copyright notice when published.

Posting an unauthorized copy of someone else's content on your website often proves to be expensive. This practice can expose you to charges of copyright infringement, even if you did not intend to infringe, and even if the content was added by your web designer in creating your website. In a lawsuit, there are numerous ways compensation may be pursued. The copyright owner can request that you pay "actual damages," which are often the amount that the owner would have charged to license the content. In some cases, as an alternative, the owner can ask to court to award "statutory damages" in an amount between \$750 and \$30,000 without any requirement to show actual damages. In addition, you may have to pay the owner's legal fees, in addition to your own for defending the lawsuit.

Some content is acceptable to use. For example, U.S. government works, including laws, regulations, opinions, reports, photos and videos, are not protected by copyright and are free to use by anyone. But that does not mean that everything on a federal government agency website is free to copy. Someone other than a government employee could have taken photos and then given the agency permission to use the photos on the website. Content first published in 1924 or earlier, unpublished content created by unknown authors prior to 1900, or by authors who died in 1950 or earlier, also are no longer covered by copyright and are free to use. There are also a number of websites that offer "public domain" photos, graphics or music that is available for use for free or a nominal fee. It is much safer to use this content than to copy content from another website.

Another practice that is generally acceptable is to link to the content on another site where it appears. This enhances the value of your website by directing the user to useful content. But there are some traps, even with linking. Be careful to provide just a link that directs the user to the other site, but does not repeat the content found there. In addition, you should review the terms and conditions of any site to which you link in order to determine whether the site allows linking.

If you have any questions about whether or not you can use content on your website, we would be happy to discuss your requirements and assist you. Partridge Snow & Hahn Partner [John Ottaviani](#) has over 25 years of experience bringing businesses online and can provide the guidance needed to make the transition as painless as possible. He can be reached at jottaviani@psh.com or 401-861-8253.

Date Created

April 28, 2020