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Common legal risks when going online

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Overview

- What are the key risks of going online?
- Focus areas:
 - Trade mark and copyright infringement
 - Australian Consumer Laws
 - Confidential information
 - Privacy and data retention
- Steps to manage risk and protect your organisation online



Going online...where's the risk?

- Website and domain name
- Social media
 - Facebook
 - Instagram
 - LinkedIn
 - Twitter
- SEO and AdWords
- Search engines
- Third party websites
- Cloud software and filing



Trade marks and copyright

- Intellectual property (IP)
 - Trade marks – signs used in trade, badges of origin
 - Copyright – artwork, literary works, original and creative expression
- Exclusivity
- Registered v unregistered rights
- National v global protection
- Common myths...



Trade mark and copyright infringement

- Use of images obtained online without authorisation or correct attribution
 - Photographs
 - Artwork/graphic design (eg logos, drawings, cartoons)
- Copying ideas versus content
- Using freelancers and third party websites
- Domain names, AdWords and SEO



How to prevent trade mark infringement

- Get brand clearance searches.
- Brand clearance searches will:
 - Identify any prior trade mark applications or registrations that may conflict.
 - Identify any unregistered brands in use.
 - Gauge the organisation's prospects of success for registration of your brand as a trade mark.
 - Gauge the organisation's risk of infringing another brand.
- Get trade mark registration!





Why should NFPs protect their brands?

- Bolsters authority, trust and credibility
- Enhances the value of the organisation
- Helps to preserve reputation
- Fundraising tool
- Internal identity, cohesion, pride
- Mitigates risk of infringement



Examples of registered NFP trade marks

- Cancer Council's trade marks:



- The Benevolent Society trade marks:





How to protect your copyright

- Make sure you own it!
- Use copyright notices
- © [Year of creation] [Owner] All rights reserved.
- Watermark images with your organisation's name
- Have a copyright policy – for internal and external use both online and offline





How to avoid copyright infringement and moral rights breaches

- Use reputable sources and make sure the terms of engagement protect your organisation and covers:
 - IP ownership and licensing
 - Moral rights – consent to breach
 - Indemnity and releases
- Get clearance searches including checks for:
 - Plagiarism
 - Similar images online
- Make sure your contractors and volunteers assign copyright
- Have a copyright policy and train your personnel!

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Australian consumer laws and passing off

- Misleading or deceptive conduct/passing off
 1. Reputation in the marketplace (passing off)
 2. Misrepresentation was made in trade
 - Likely to result in consumer being misled or deceived
 - Wrongly infer an association/affiliation or sponsorship between your organisation and a third party organisation
 3. Damages likely to be incurred as a result of the misrepresentation.
- Terms and conditions and unfair contract terms
 - Selling goods or providing services
 - Terms need to be compliant
 - New laws coming in November 2016

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How to be compliant with ACL

- Brand clearance searches
- Don't make statements that are likely to mislead or deceive...
- Ensure your website terms and conditions and other agreements are accurate, up to date and don't include onerous or unreasonable terms
- Unsure? Get a legal review.



Confidential information

- What is confidential information?

All information not generally known outside your organisation

1. finances and operations, contracts, marketing plans, business plans
2. Information about clients, volunteers, donors, sponsors, suppliers, employees, or business associates
3. inventions, discoveries, techniques, know-how, ideas, research and development



How do you protect your organisation's confidential information?

- Confidentiality deeds
 - Contractors
 - Sponsors and investors
 - Volunteers and employees
- Internal policy
- Train your personnel!



Privacy and data retention

- Private information includes personal, sensitive or health information.
- Your obligations under Privacy Laws include:
 - make individuals aware that you are collecting 'personal', 'sensitive' or 'health' information about them and the purpose of doing so;
 - Ensure consent is obtained for collection, use or disclosure of information;
 - Allow individuals the right to access the information and enable them to correct or modify it.
- Privacy statements and policies must be up-to-date and available to everyone, including to employees, volunteers, and clients.

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Protecting your organisation online

1. Get clearance searches conducted for words, images and logos
2. Register your brand as trade marks
3. Make sure you have the right to use copyright material
4. Use the TM or ® and the © symbols.
5. Control the internal and external use of your brands and IP with a brand management system including a set of brand guidelines.
6. Put in place deeds of assignment and confidentiality to protect your organisation's ideas and IP.
7. Review your contracts and website terms to ensure they comply with law.
8. Review your privacy policy and ensure it's still current and complies with laws.
9. Have a strong internet policy that covers emailing, social media, publishing material online and general web use
10. Get legal assistance from a qualified legal practitioner!

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Questions?

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