



Auditing the Non-Profit Website

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An Internet website is an important marketing tool for many non-profit organizations. An organization's supporters can access a website to obtain information or to make an online donation. Many non-profit websites allow supporters to interact with one another to share ideas and discuss an organization's goals and programs. An organization's online presence raises new legal issues that require periodic review. These reviews, often referred to as "website audits," examine a website and its content, links and policies to determine whether they forward an organization's goals while minimizing liability exposure. This article discusses some of the most common issues that are examined in a typical website audit.

1. Ownership and Third Parties. The first question often addressed in a website audit is the ownership of the website itself. Like other for-profit entities, non-profit organizations often hire third party contractors to build their website. Many organizations are surprised to hear that, absent a written agreement, the United States Copyright Act vests ownership in the third party contractor. Care should be taken at the outset of any contracting relationship to ensure that appropriate assignment and "work made for hire" language is inserted into the website development agreement.
2. Third Parties Generally. Frequently third parties may be used to provide other support for an organization's website. In addition to building the site, types of services can include designing the website, hosting the website, providing technical support, and so on. These services all should be memorialized with a written agreement that clearly spells out areas of responsibility, deliverables, and ownership of information.
3. Terms of Service. Every website should have a Terms of Service that is accessible from every website page. The Terms of Service is an agreement between a website owner and its users. It often contains provisions granting users certain rights to use the website and a description of permitted and prohibited uses. In addition, it often contains provisions that limit an organization's liability and inform a user of what data is being collected by a website's servers.
4. Copyrights. A non-profit organization should make sure that proper copyright notices are included on all online materials. The most common forms of notice are "Copyright, Year, Author" or "© Year, Author". The year is the year in which the work was first published and may often consist of multiple years. For example, a website may contain the notice "© 2002, 2003 Author". Many websites also contain a variety of third-party information. A non-profit organization should obtain appropriate licenses prior to uploading any third-party material to its website. In some cases, using third-party material is "fair

use” under the United States Copyright Act. A non-profit organization should check with outside counsel to ensure that a proposed use is permissible.

5. Trademarks. Many non-profit organizations have registered their trademarks with the United States Patent and Trademark Office. Registration entitles an organization to utilize the “®” symbol, which should be added to each instance of the trademark on the organization’s website. It is also good practice to include trademark attribution on the bottom of each page of the website. Any third-party trademarks should be clearly identified with proper notice, i.e. ™ or ®, and, depending on the nature of the use, an organization may want to obtain permission to use the trademark in advance from the owner.
6. Linking and Framing. While it may seem counter-intuitive, many websites have specific policies that restrict or inhibit links from other websites. An organization should evaluate its external links to ensure that they do not violate any third-party linking policies. An organization should also examine the way in which it uses third-party linked content, especially when it is incorporated into “frames” or “pop-ups”. In some cases, these methods may constitute violations of third-party rights. An organization should also consider whether to inform visitors when they use a link that they are leaving the organization’s website. In addition, an organization should be aware of the implications of linking to certain websites, particularly if those websites are those of for-profit entities, or may contain political messages. Tax-exempt organizations must be careful not to endorse commercial products or services, or to have political statements imputed to the organization.
7. Privacy Policies. Online privacy is one of the most important topics facing website managers. Indeed, many organizations have employees dedicated to the management and protection of information submitted by customers and consumers. Every organization with a website should have a privacy policy prominently displayed and communicate its terms in a clearly to its users. In some instances, specific privacy laws are implicated in a website’s data collection practices. For example, the Children’s Online Privacy Protection Act (COPPA) may apply to websites that target children or knowingly collect information from them. Privacy policies should inform visitors what data is collected and how, how that data is used, who it is shared with and how it is protected. A privacy policy needs to accurately reflect current circumstances and thus should be reviewed and updated when the website or the technology supporting the website changes.
8. Data Collection and Use. An organization’s website may also collect information that triggers additional legal requirements. For example, if credit card information is collected, many states require that the credit card holder be notified if the security of that data is breached. In addition, industry standards for the secure collection of credit card information (“PCI standards”) must be followed. Regulations are increasing in the area of data use, regardless of methods of collection. For example, selling information collected from a website or other sources, or collecting and using information about behavioral use of websites is coming under regulatory scrutiny. These are tricky areas for which expert legal and technical advice should be sought.
9. Right of Publicity. An organization’s website often contains the names, likenesses or other distinctive characteristics of its sponsors or members in the form of photographs or member lists. Such uses implicate the “right of

10. Forums & Message Boards. While some organizations maintain passive or “one-way” websites, others provide interactive functionality that enable members to communicate with one another and post information online. Interactive websites increase the potential for liability in many areas, including intellectual property infringement and defamation. An organization with an interactive website should make sure that its Terms of Service (see Section 2 above) addresses these areas and provides adequate protection for the increased liability exposure.
11. Disaster Recovery. Organizations that depend on their website for revenue collection or member support should make sure that they have an adequate disaster recovery plan in the event that their website goes down or their online service provider goes out of business. For some websites, this is as simple as making off-site backups which can then be uploaded to another provider. For others, especially those with custom software, additional preparations may be necessary to ensure that a new site can be up and running with minimal downtime.
12. Insurance. Many insurance companies now write insurance policies covering many aspects of online liability. Organizations should reach out to their insurance agents to determine what coverage is available and appropriate based on their online operations.
13. Increasing Regulation. The issues around personal information, including the use of e-mail addresses (e-marketing), health information, and financial information (bank account number, social security number, credit card number, etc.) are increasingly the subject of regulation by various states and the federal government. There is a trend towards regulating specific technical requirements, such as the use of encryption technology for certain types of information. As an organization’s website develops, it is important to keep track of what information is collected and used, and check those collections and uses against this growing body of requirements.
14. Increased Transparency. Both the IRS and the public expect increased transparency in the operations of tax-exempt organizations. Some 501(c)(3) organizations now post their Form 990, Return of Organization Exempt From Income Tax, and Form 1023, application for tax-exemption, on their websites in order to comply with the IRS public disclosure requirements.

It is important to note that the foregoing list is non-exhaustive. The changing nature of Internet law requires periodic reviews of websites to ensure compliance with new case law, statutes and regulations. There are online resources available to help an organization keep up with these changes. For example, the [International Association of Privacy Professionals](#) has a free daily newsletter. The [Federal Trade Commission](#) maintains a website on privacy and security issues, as well as a website on spam and e-marketing requirements at <http://www.ftc.gov/bcp/online/edcams/spam/rules.htm>. The [California Office of Privacy Protection](#) maintains a website full of general information as well as California-specific requirements. In addition, many law firm websites include free libraries with links to U.S. and foreign privacy resources.

Integrating the website review into existing compliance procedures is the best way to minimize liability exposure. With proper planning, a website can be an invaluable tool to further the goals of a non-profit organization.

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