WEBSITES, PART 1 — SOME LEGAL CONSIDERATIONS

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Museums of all kinds are finding the internet an effective and economical way of getting information about the museum, its activities, programs, location, hours of operation, and special programs out to its members, donors, volunteers, and the general public. Web pages range from a simple statement of mission, location, and hours of operation to the elaborate site of the Smithsonian Institutions (www.si.edu), which is almost a virtual tour of their various museums including information on everything from aardvarks to zithers. The WMA has a lot of interesting information on its website www.washingtonmuseums.org that includes some interesting links, including the British Museum, the Louvre, the Metropolitan Museum of Art, and the Seattle Art Museum. The Museum of History and Industry website (www.mohai.com) includes access to 1.5 million historic photographs. While not a museum, http://www.historylink.org, is the best single source for information on the history of the Puget Sound area. Historylink is now in the process of going Statewide.

The first thing needed in creating a website is securing a domain name. There are a number of services available that will do this for a very modest fee. (Shop Around) Domain names may have a number of extensions (suffixes), ".com" for commercial organizations and ".org" for nonprofit organizations. This distinction, however, is not always followed, but the registering agency is making efforts to have the distinction observed. Their success remains to be seen. Other suffixes in use include ".net", ".us", ".biz", ".cc", "info", ".tv", ".cc", "ws" (Web Site), and ".name". ".gov" is reserved for government websites and ".edu" is reserved for educational websites. There are also country-specific extensions.

The site recommended to me for registration of domain names is "networksolutions.com". That site has a lot of other information on how to set up your website.

One of the sites (register.com) which also registers domain names offers this "hot tip": "You don't have to settle for your second choice if you're having trouble finding an available name. Try searching for a version with another extension." This flexibility is not, however, an unmixed blessing. Some less than scrupulous entrepreneurs will pick up the name of a popular website and adopt the name using a different suffix to get people into their site by mistake. For example, "whitehouse.gov", "whitehouse.edu", and "whitehouse.org" will get into the website for The White House. However, "whitehouse.com" will get you into a directory for pornographic sites.

What steps can be taken to protect your site from opportunistic exploitation by cyber bandits? First, realize this cyber world is a frontier which attracts all kinds of bandits and opportunists and there are not a lot of legal protections available. I would recommend that a museum register its domain name as both as ".org" and a ".com" to make it more difficult for others to use confusingly similar names to attract your visitors to their site. If you are a ".gov" or an ".edu" you should consider also registering your name as an ".org" and a ".com". See The White House example above.

Some organizations also register their name as a U. S. trademark on the name in international category 041 "educational and entertainment services" which would include providing seminars, classes, conferences, workshops, speakers, historical reenactments displays and exhibits. This will give the holder of the trademark a way of preventing another from offering similar services using the same or a confusingly similar name to provide the same services. This is, however, a fairly expensive and a very time consuming process. The filing fees alone are about \$600 and the assistance of an attorney will cost at least \$900, assuming there are no problems along the way. In most situations, I would not recommend securing a trademark on your name, unless it is something

catchy that others might wish to exploit, e.g., "historylink". Even if you do not have a trademark on the name you can usually, through legal process, prevent others from using the same or a confusingly similar name to provide the same goods or services. However, to collect damages you would have to prove intent.

Copyright is not available to protect a domain name since you cannot get a copyright on a word or combination of words.

At a time when most people were not knowledgeable about the opportunities offered by the world wide web some entrepreneurial bandits registered the names of well-known companies as domain names with the intention of selling the names back to those companies. Panasonic, Fry's Electronics, Hertz, and Avon were victims of what has become know as "cybersquatting". In 1999, Congress passed into law the "Anti-Cybersquatting Consumer Protection Act', which defines cybersquatting as the registering, trafficking in, or using a domain name with the bad faith intention to profit from the goodwill of a mark belonging to someone else. The victims of cybersquatting could sue and get their domain name back and, possibly, money damages and attorney's fees. The difficulty with the law is that to recover damages you must prove bad faith, which may be difficult to do. You must also prove that your mark was distinctive at the time the domain name was first registered, that the domain name is the same or confusingly similar to your mark and that your mark qualifies for protection under federal trademark laws, that is, you were the first to use the mark in commerce. Litigation in Federal Court can be very expensive. It may indeed be more economical to settle with the Cybersquatter. In a trial you may be able to recover your costs, but this is up to the court.

A similar practice goes on today. These are entrepreneurial pirates who anticipate upcoming celebrations or events and secure domain names using the name of the event, names of historic persons connected with the event, and any catchy phrases or slogans that might be used in the event. The commemoration of the 200th anniversary of the Lewis and Clark expedition, which started this year, provides a good example. There is one entrepreneur who purchased over a hundred domain names using names or phrases that would be associated with the commemoration of the event and offered them for sale. On learning of planned promotional campaigns, he would use phrases that were being considered as part of a public relations campaign and buy domain names using those phrases. None of this activity is illegal. There are two lessons here. One is register your possible domain names early (you can always abandon some later) and do not leak any information about your planned public relations plans.

Tax Considerations

With all the web activity going on you can be certain that this has attracted the attention of the Internal Revenue Service. I have been told, from a reliable source, that the IRS employees are surfing the net looking for indications of unrelated business activity on the part of tax exempt organizations. An organization otherwise exempt from federal income tax is subject to tax on its unrelated business taxable income. (Internal Revenue Code, § 511). The IRS has indicated that the use by exempt organizations of the internet to accomplish some of its objectives does not alter the way the tax laws are applied. However, the options and interactions made possible by the internet do not always fit into existing regulatory categories.¹

On October 16, 2002 the IRS gave notice that it is "considering the necessity of issuing guidance that would clarify the application of the Internal Revenue Code to use of the internet by tax exempt organizations". The IRS received 4000 to 5000 comments in response to its request. The matter is still under evaluation. The only guidance so far received is, first, that the exempt organization may use electronic mail to satisfy the requirement

¹ For example, Charles P. Barrett, IRS Tax, IRS Tax-exempt/Government Entities Divison said in Washington, D.C. on April 24, 2002, at Georgetown University Law Center's annual program, Representing and Managing Tax Exempt Organizations, "Saying we are going to apply the same rules and making it happen are two different things."

that written acknowledgement be provided to the donor for all gifts over \$250 (IRS Code § 170(f)(8) and §6115,² and, second, that an exempt organization's providing a sponsor's website address in the form of a hyperlink will not constitute a "substantial return benefit". (Treas. Reg. § 1.513-4(f), Example 1) If a sponsor does receive a "substantial return benefit" for its sponsorship donation such donation would be taxable to the exempt organization as unrelated business income.

Verification of Eligible Recipients: It is now easier for prospective donors to find out if their donation to a particular recipient is deductible from their (the donor's) income tax as a charitable contribution under § 170 of the Internal Revenue Code. Publication 78 "Cumulative List of Organizations Described in Section 170(c) of the Code is now available on line at www.irs.ustreas,gov/prod/bus infor/eo/search.htm. Substantial information about prospective donees can be found at sites such as www.guidestar.org.

LEGAL NOTICE

Law Notes is intended to be an informational tool that generally outlines the broad elements of the legal and regulatory framework of a variety of Washington State and federal laws, which are of interest to or may affect museums in effect as of the date set forth. Accordingly, it is not within the scope of Law Notes to analyze specific legal policy or technical issues that may arise in museums. Specific questions about particular matters should be addressed in the context of the facts that underlie them. The information contained in Law Notes does not constitute legal advice and is not intended to take the place of legal counsel or other professional services. The author and the Washington Museum Association do not make any warranty or representation, either express or implied, with respect to the accuracy, completeness, or utility of the information contained in Law Notes. The Washington Museum Association and the author do not assume liability of any kind whatsoever resulting from the use or reliance upon the information, conclusions, or opinions contained in Law Notes.

² A detailed discussion of this topic and model acknowledgements can be found in the Museum Messenger for Winter 1995, Volume 6, Number 4. "Exceeding the Value"