

Intellectual Property and E-commerce: How to Take Care of a Company's Website?

Lien Verbauwhede*

Small and Medium-Sized Enterprises Division, WIPO, 34, chemin des Colombettes
1211 Geneva 20, Switzerland

Received 23 September 2004

A company's website can be a great tool for promoting business online and for generating sales. However, as web commerce increases, so does the risk that others may copy the look and feel, some features or contents of the company's website. The risk also increases that the company may be accused of unauthorised use of other people's intellectual assets. This article deals with some of the basic issues that should be borne in mind before launching a website.

Keywords: Intellectual property, E-commerce, website launching, online agreements

Different parts of a website may be protected by different types of intellectual property (IP) rights. For example: (i) E-commerce systems, search engines or other technical Internet tools may be protected by patents or utility models; (ii) Software, including the text-based HTML code used in websites, can be protected by copyright and/or patents, depending on the national law; (iii) The website design is likely to be protected by copyright; (iv) Creative website content, such as written material, photographs, graphics, music and videos, may be protected by copyright; (v) Databases can be protected by copyright or *sui generis* database laws; (vi) Business names, logos, product

names, domain names and other signs posted on the website may be protected as trademarks; (vii) Computer-generated graphic symbols, screen displays, graphic user interfaces (GUIs) and even web pages may be protected by industrial design law; and (viii) Hidden aspects of the website (such as confidential graphics, source code, object code, algorithms, programs or other technical descriptions, data flow charts, logic flow charts, user manuals, data structures, and database contents) can be protected by trade secret law, as long as these are not disclosed to the public and reasonable steps have been taken to keep them secret.

How to Protect a Website?

Some precautionary measures are necessary to protect a website from abusive use. These may include:

*The views expressed in this article are those of the author and do not necessarily represent those of WIPO. Email: lien.verbauwhede@wipo.int

Protecting The Company's IP Rights

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- Register its trademarks;¹
- Register a domain name that is user-friendly and reflects the trademark, business name or character of the company's business. If the domain name can also be registered as a trademark, then it is advisable to do so since it strengthens the company's power to enforce its rights against anyone who tries to use the name to market similar products and services, and to prevent someone else from registering the same name as a trademark;
- Think about patenting its online business methods in countries where such protection is available;
- Register its website and copyright material at the national copyright office in countries which provide this option;²
- Take precautions about disclosure of its trade secrets. Make sure that all who might get to know about its confidential business information (such as, employees, maintenance contractors, website hosts, Internet providers) are bound by a confidentiality or non-disclosure agreement;
- Consider taking an IP insurance policy that would cover the legal costs should the company need to take enforcement

action against infringers. Make sure that its existence is known, for example, by posting a notice on the website. This could deter potential infringers.

Letting People Know that the Content is Protected

Many people assume that material on websites can be used freely. Remind them of the company's IP rights.

- Mark the company's trademarks with the trademark symbol ®, TM, SM or equivalent symbols³. Equally, use a copyright notice (the symbol © or the word 'Copyright' or abbreviation 'Copr'; the name of the copyright owner; and the year in which the work was first published⁴) to alert the public that the copyright material is protected.
- Another option is to use watermarks that embed copyright information into the digital content itself. For example, a music file might be watermarked by using a few bits of some music samples to encode ownership information. The digital watermark may be there in a form that is readily apparent, much like a copyright notice on the margin of a photograph; it may be embedded throughout the document, in the manner of documents printed on watermarked paper; or it may be embedded so that it is normally undetected and can be extracted only if one knows how and where to look. Visible watermarks are useful for deterrence, invisible watermarks can aid in tracing a work online and proving theft.
- The company may also use a time stamp. This label, attached to digital content, demonstrates the state of the

content at a given time. Digital time stamping is useful because it is otherwise simple to modify both the body of a digital document and the dates associated with it that are maintained by the operating system (e.g., the creation date and modification date). A specialised time-stamping service may be involved to provide a trusted source for the information contained in the time stamp.

Letting People Know What Use They can Make of the Content

Insert a copyright statement on every page of the website which spells out the company's terms on use of the page. Viewers would at least know what they can do with the page (for example, whether or not, and on what conditions, they are allowed to create links to the site, download and print material from the site), and whom to contact to get a copyright clearance in relation to any material on the site.

Controlling Access and Use of the Web Content

The company may use technological protection measures⁵ to limit access to the works published on its website only to those visitors who accept certain conditions on the use of the works and/or have paid for such use. The following techniques are commonly used:

Online Agreements

These agreements are frequently used to grant visitors only a limited licence to use content available on or through the website.

Encryption

Typically, software products, phonograms and audio-visual works may include encryption to safeguard them from unlicensed use. When a customer downloads a content file, a special software contacts a clearinghouse to arrange payment, decrypts the file, and assigns an individual 'key' - such as a password - to the customer for viewing or listening to the content.

Access Control or Conditional Access Systems

In its simplest form, such systems check the identity of the user, the identities of the content files, and the privileges (reading, altering, executing, etc.) that each user has for each file. Access to the electronic content of the website may be configured in numerous ways. For example, a document might be viewable, but not printable; may be used only for a limited time; or may be tethered⁷ to the computer on which it was originally downloaded.

Releasing Versions of Insufficient Quality for the Suspected Misuses

Images may be posted on the website with sufficient details to determine whether these would be useful, for example, in an advertising layout, but with insufficient detail and quality to allow reproduction in a magazine.

Fingerprints

These are like hidden serial numbers, which enable the company to identify which customer broke his/her licence agreement by supplying the property to third parties.

Who Owns the IP Rights in the Web-

site?

A typical website is a collage of components often owned by different persons. For example, one company may own rights in the navigation software; others may own copyright in photographs, graphics and text; and yet another person may own copyright in the design of the site. It may not be necessary for the company to own the IP rights in all elements of its website, but it should at least know what it owns, what it has rights to use and in what way, and what it does not own or have rights to use.

If a Company Pays a Person to Develop its Website, Who Owns the Copyright?

If a website has been developed by the company's employees who are employed for this purpose, then, in most countries, the company (as the employer) would own the copyright over the website, unless otherwise agreed with its employees. However, for a small business, this is rarely the case.

Most companies outsource the creation of their website design and/or content to an outside contractor, and assume they own IP rights in it because they paid for the work. However, these companies would be surprised to find out that they do not own the IP rights in what has been created for them. Independent contractors (contrary to employees) usually own IP rights in the works they create – even if they have been paid for it -, unless otherwise agreed in a written contract⁷.

In practice, this means that the independent web developer will usually own copyright and other IP rights in the website, as well as in the design and elements

contributing to that design (such as colours, gifs, jpegs, setup, hyperlinks, text coding). Without a valid, written agreement transferring all these rights to the company that has paid the developer, the company may end up owning nothing except perhaps a non-exclusive licence to use its own site.

Example: A site has been created for a company by a freelance web designer. There is no agreement transferring all rights to the company. As a result, the copyright belongs to the web designer (according to the national laws). A year later, the company wants to refresh its site and make some changes to its presentation. Under most copyright laws, it will need authorisation from the web designer, and it may be required to pay an additional fee to substantially update its website⁸. It is better to enter into a clear, written agreement with the website developer that spells out who owns IP rights in each element of the site.

What Topics should be Included in a Web Development Agreement?

When negotiating an agreement for the actual creation of the website with the website developer, the company should have a clear long-term vision of the market for its product or service. A good agreement should give the company all the rights needed for the foreseeable future use of its website. All too often businesses lose opportunities because they gave away or did not acquire the necessary rights to capitalise upon their website. The web development agreement should at least deal with the following issues:

Scope of Work to be Performed

Specify exactly what will be developed. Will the developer be responsible not only for writing the computer code, but also for the design and appearance? Will he register a domain name? Will he provide consulting services? Is he responsible for the maintenance and updating of the site? etc.

Ownership of Material

Specify the ownership details of each element of the website. Make sure that the company receives ownership rights or a licence that is broad enough for the foreseeable use of its website. The following points are to be considered:

- Who owns IP rights in the different components of the website that are created by the website developer (e.g. computer code, graphics, text, website design, digital files used for creating the site, etc.)? As this is primarily a price issue, the company must carefully contemplate what it needs to own versus what it only needs a licence to use. National laws may impose mandatory requirements for transferring IP rights; make sure the agreement complies with such conditions.
- Who owns IP rights in material that the company has provided to the website developer for use on the website? It is normally the case the company will supply trademarks, product logos, literary information and other subject matter that is owned by it. It would be prudent to include a list of website elements wherein the company's ownership of such material is clearly confirmed.
- What can the company do with the elements in which the website designer owns IP rights? Does it have the right to sublicense, make changes, etc.? Remember that permission will be needed from the original website developer to modify the website. If it is important to the company that it can update the website itself, or have it updated by another website developer, then it should make sure that it obtains a perpetual licence to make modifications to the site.
- Who is responsible for getting permission to use third party material like text, trademarks or software in which someone other than the company or the website developer owns IP rights?
- Who owns IP rights in the software that displays the company's website and runs the components of the website? If the developer (or a third party) retains ownership and the company only receives a licence that is specific to its intended use, make sure the scope of the licence is broad enough to switch developers and operating systems, expand the use of the sites to additional business entities, etc.
- Can the website developer use the design as a model for other websites? Can he licence the software or any other things built into the company's site to competitors?

Warranties

Each party should warrant that it owns or has permission to use any material that it provides for the website and that the contents do not violate any law or regulation⁹.

Maintenance and Update

Maintenance of the site includes such things as changes, updates, troubleshooting or repairs. The level of maintenance and the price terms should be detailed. Will the developer update the site and if so, how often? What kind of endeavour is he responsible for? What kind of actions will he take when the service interrupts or brakes down?

Confidentiality

While divulging confidential information about the company or allowing access to its facilities, the company should include a confidentiality or non-disclosure clause in its web development agreement. This can protect the company against unauthorised disclosure of its trade secrets.

Liability

Who will bear the responsibility for the links to other sites, the designation of keywords and metatags? Who will be liable in the event of any trademark or other claims?

Other

The website development agreement will also need to include clauses related to fees and payment, indemnification, disclaimers, limitation of liability, jurisdiction and applicable law, etc.

Can the Company Use Material Owned by Others on its Website?

Current technology makes it fairly easy to use material created by others - film and television clips, music, graphics, photographs, software, text, etc. - in the website. The technical ease of using and copying these works does not give any one the legal right to do so. Using material without getting permission - either by obtaining an 'assignment' or a 'licence'¹⁰ can have dire consequences.

Using Technical Tools Owned by Others

If the company is using an e-commerce system, search engine or other technical Internet tool for its website, make sure that it has a written licence agreement, and get it checked by a lawyer before signing it and before any design or installation of the site begins.

Using Software Owned by Others

Packaged software is often licensed to a customer upon purchase. The terms and conditions of the licence (called 'shrink-wrap licences') are often contained in the package, which can be returned if the customer does not agree with them. By opening the package, the customer is deemed to have accepted the terms of the agreement. Alternatively, the licensing agreement is included inside the packaged software. In all cases, the company should check the licensing agreement to find out what it may and may not do with the software it has bought. In addition, there may be exceptions in the national copyright law that allow to make certain uses of the software without permission, such as making interoperable products, correcting errors, testing security and making a backup copy.

Using Copyrighted Works Owned by Others

If the company wants to put some written material, photos, videos, music, logos, art work, cartoons, original databases, training manuals, drawings, etc. not owned by it on the website, it usually needs a written permission from the copyright owner¹¹. Even for the use of just a part of a copyrighted work, authorisation will generally be needed¹². Note also that material on the Internet or stored on web servers is protected by copyright in the same way as works published through any other means. Just because the material obtained is from the Internet does not mean that it can be downloaded or reproduced freely.

Finding the copyright owner and obtaining all necessary licences is not always an easy task. The best way is probably to see if the work in question is registered in the repertoire of the relevant collective management organization¹⁴ or clearinghouse, which considerably simplifies the process of obtaining licences. There are also excellent portals that offer online licences for different types of works. For example, Epictura Image Bank has an online collection of an extensive amount of images on a wide range of themes¹⁵. Some artists and companies even release their artwork, photos, backgrounds, wallpapers, banners, logos and other material as free for certain uses. Such material is often called clipart, freeware, shareware, royalty-free work or copyright-free work. However, this freeware should not be distributed or copied without limitation. The applicable licence agreements should be read first to see what uses can be made of these works¹⁶.

Note also that in most countries, there is a legal obligation to respect the moral rights of the author when his/her copyrighted work is used in a website. The company must therefore make sure that the author's name appears on the work;¹⁷ and that the work is not used or changed in a way that would tend to damage the author's honour or reputation. For example, it may not be allowed to colour a black and white picture, or to resized recolor or spindle an artwork without authorisation of the author.

Using Photographs on the Website

Special care should be taken when using photographs on the website. In addition to the authorisation of the copyright owner of the photograph (usually the photographer), a separate permission may be needed to use the subject matter depicted in the photograph. For example, if the photograph of a person is to be included in the website, the permission of the person depicted in the photograph may be needed. For a photograph of a copyrighted artwork, clearance is required from the artist; and for photographs of buildings, in certain jurisdictions, clearance may be needed from the architect.

Using Material Available in the Public Domain

In practice, website developers and businesses that create their own website often use material that is in the public domain¹³. There are numerous institutions (libraries, national archives, collective management organisations) and online portals that have databases with public domain works.

Using Trademarks Owned by Others

Many websites contain discussions of products and services of other companies. There is usually nothing wrong with identifying competitors' products on a website by using their trademarks. However, avoid using a trademark in a way that might cause confusion among consumers as to the source or sponsorship of the webpage. Such use might well constitute trademark infringement or an act of unfair competition¹⁸.

Some Internet practices may raise trademark issues, such as metatagging, linking and framing, and using trademarks in domain names. Care should be taken to check the law that applies to the business on this issue and to ensure that permission is taken to show trademarks owned by other companies, if the law requires it.

Using Others' Likenesses

In many countries, the name, face, image or voice of an individual are protected by publicity and privacy rights. The area of protection is regulated differently in various national legal systems. Before using such elements on a website, it would be advisable to check the applicable laws and to request permission, if needed.

TIP – No matter what material the company asks permission for, it should clearly outline the scope of licence. It should think thoroughly what rights it needs to exploit the material for which it is asking permission, now and in the future. For example, what use will it make (marketing and promotional campaign, educational purposes, etc.); in what media (for the website only, or also for prints,

motion pictures, games, DVD); for how long; in what languages; does it want the right to sublicense the rights; etc. The company should also get a warranty from the licensor that the material is not infringing any third party rights. An attorney may help negotiate the terms and conditions of the licence agreement.

What should a Company Keep in Mind When Creating, Launching, Maintaining and Developing a Website?

There are quite a few perils inherent to running a website. Some tips for keeping a website legal are:

Linking

Hyperlinks¹⁹ to other websites are a useful service to customers, but in many countries there is no clear law on when and how links can be used. In most cases, links are completely legal and no permission is needed from the linked site to include a link. However, some types of links can create legal liability:

- Links that lead web users to sites containing illegal content (a pirated copy of a song, perhaps, or an unlawful software program) may subject the company to legal liability.
- Links that comprise a company's logo (for example, using the Nike logo) may violate copyright, trademark or unfair competition laws²⁰. It makes sense to get permission for them.
- Deep links are links that go straight to a specific page other than a website's home page. For example, instead of linking to the home page of a newspaper, a deep link might take the user directly to a newspaper article within

that site. Deep linking is generally not allowed if it is a way of bypassing a subscription or payment mechanism, or if it is expressly forbidden by the site itself²¹. It is necessary in such cases to obtain permission.

- Framing means that a web page is divided into separate framed regions and displays the contents of someone else's site within a frame. The difference with normal linking is that the user is linked to another website in such a way that it is not obvious that he is viewing from another website. Inlining or mirroring occurs when a graphic file is incorporated (or 'inlined') from another website into the company website. For example, a user at a website can, without leaving the site, view a picture featured on another site. Framing and inlining are controversial practices because they can create the impression that the information belongs to the website doing the framing or inlining. Hence written permission is to be taken before doing this.

Metatagging

Metatags are keywords or phrases embedded in a website's HTML code which are invisible to the visitors of the website, but are read by some search engines. In theory, metatags allow website developers to provide information making search engines more efficient. However, instead of using terms that describe the site, some website developers place the names of competing companies in their metatags. For example, a small chocolate shop may bury the famous trademark 'Godiva' in a metatag. Then, anyone searching for 'Godiva' would be directed to the choco-

late shop's site. This kind of deceptive use of another company's trademark in a metatag may constitute unfair competition or trademark infringement²².

Selection of Domain Name

Ensure that there is no conflict with an existing trademark or other designations (such as International Nonproprietary Names for Pharmaceutical Substances, names of intergovernmental organisations, names of persons, trade names and geographical indications). It is advisable to do a trademark search before registration of the domain name since domain registrars generally do not check if a requested name violates an existing trademark. If the domain name conflicts with someone else's trademark, the right to it could be lost if the trademark owner takes legal action against this²³.

Trade Secrets

Any confidential business information that gives a business a competitive advantage such as sales methods, consumer profiles, lists of suppliers, manufacturing processes, marketing plans, etc. can be protected by trade secret law or laws on unfair competition. If a trade secret is disclosed even accidentally, it will no longer be protected. Imagine the disaster that would follow if inadvertently photographs of a secret manufacturing process are posted on the company's website. Before a website goes live, every page of it should be scrutinised to avoid display of any valuable confidential business information.

Patent-Related Information

In order to obtain a patent, an invention must be 'new' or 'novel'. This means

that the invention must not have been disclosed to the public prior to the filing of a patent application. If a company has conceived a valuable invention for which it wishes to obtain a patent, then it should abstain from any marketing efforts or disclosures of information relating to the invention prior to filing a patent application. Offering the products for sale on the website will destroy the novelty of the invention and render it not patentable. Equally, when products are marketed on the company's website and the description of the product discloses its innovative qualities, such a disclosure will most likely bar the company from obtaining patent protection.

Respect for Personal Data

If a website receives consumer information, all the applicable data protection or privacy laws should be complied with. It may be necessary to take certain steps to assure consumers that personally identifiable information is protected, and to display a clear privacy policy on the site.

Infringing Material

If someone complains about an unauthorised use related to the website, that material should be removed (or the link to that material should be disabled) pending resolution of the dispute. Continuing to use infringing material after being notified may aggravate the claim and increase the chances of being found liable (and increase the amount of damages to be paid).

Online Agreements

If the company sells products or services on its website, or allows users to download software, it may have specific

agreements posted on its website that contain warranty information or disclaimers, limits on liability and other significant terms. For enforcing the terms such online licences and other agreements, the website must be structured so that the agreement terms are reasonably apparent and users have the opportunity to review and agree to the terms, or to disagree and opt out, before proceeding through the site. Additionally, there should be a mechanism for users to indicate their assent. The best practice is to have the agreement appear on the screen as the first step of the ordering or downloading process. The user should be required to scroll through to the bottom of the agreement and click an 'I accept' button before he can access the site. This scrolling through and clicking assent process will help ensure that the agreement is an enforceable 'clickwrap' agreement.

Notices and Disclaimers

Notices and disclaimers²⁴ are rarely a cure-all for legal claims, but if a notice or disclaimer is prominently displayed and clearly written, it may limit or even prevent the company's liability. These notices and disclaimers should be tailored to fit the specifics of the website. For instance, if the website posts reviews of tennis rackets and offers links to resellers, a disclaimer may be posted in a visible place on company's site stating "If this site provides links to other sites, the owner of this site is not liable for any information on or practices of the linked sites, nor does a link indicate any association with or endorsement by the linked site to this site."

Other Legal Issues

It would be prudent to consult an Internet lawyer to make sure that the website complies with the applicable laws. Issues to be discussed include:

- What is the liability of the proprietor of a website for its content? What are the points to which attention should be paid when entering into agreements with persons who provide contents for the website? Is there a need for online liability insurance?
- If people post contents or comments to the site, is there a need for a policy to deal with these postings?
- If advertisements are to be placed on the site, what issues should be covered in the online advertising agreement? Are there any specific laws and regulations that should be complied with?
- Are the marketing practices legal? For example, comparative advertising, unsolicited e-mails and bonus or discount schemes are forbidden in some countries.
- In case of online trade, what tax regulations are applicable to e-commerce?
- In case of online selling to consumers, is there a need to comply with any distance selling regulations?
- If the website contains statements about, or links to, other persons, companies or organisations, are there potential liabilities for defamation?
- If the website is directed towards children, are there any specific legal requirements to be complied with?
- In case of an online education site, are there any specific issues regarding

rights, licensing and free use of copyright material?

- What activities is the company engaged in that could give a foreign court jurisdiction over disputes involving the company's business and website, and what is the applicable law?²⁵ How can one reduce the risk of being sued abroad?
- Is it advisable to use alternative methods of dispute resolution, such as arbitration or mediation?²⁶

Conclusion

Websites are common targets for infringement lawsuits. If the owners of the site are not cautious, they are likely to lose their IP rights or be liable for infringement of the IP rights of others. This article has tried to provide some tips that can help companies better protect their website and its content, as well as avoid legal trouble. As with any undertaking, prevention is better than cure. Before going online, companies should consult a specialised Internet attorney on IP and other legal concerns involved with the creation and management of a website.

References

- 1 Trademarks are typically words, numerals and/or logos. However, technological developments are enabling trademark owners to formulate new and more creative marks. Animated/moving image marks and sounds, for example, are particularly suitable and ideal for the Internet environment. Some countries allow to register such non-traditional trademarks
- 2 Registration is not necessary to obtain copyright protection, but in countries with a copyright office, it may give you advantages to enforce your rights. A directory of national

- copyright administrations is available at: http://www.wipo.int/news/en/links/cr_web.htm
- 3 The ® symbol is used once the trademark has been registered, whereas TM (trademark) and SM (service mark) denote that a given sign is a trademark or service mark
 - 4 If the company website is regularly updated and contains items dating from many different years, the company may put a range of years. For example, "© Copyright 2001-2004, ABC Ltd"
 - 5 The WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) require countries to provide adequate legal protection and effective remedies against the circumvention of technological protection measures, <http://www.wipo.int/treaties/en/index.html>
 - 6 Tethering is coding a file so that it can be viewed or heard only on a particular playback or access device
 - 7 See Lien Verbauwhede, IP Ownership: Avoiding disputes, http://www.wipo.int/sme/en/document/wipo_magazine/11_2002.pdf
 - 8 Under the copyright laws of some countries, a modified site may be considered a 'derivative work' of the original site. Derivative works can only be made with prior permission of the copyright owner of the original work. In most countries, it is also obligatory to respect the moral rights of an author. A web designer has the right to have his/her name on the work (where the site is changed, the attribution should state that the site has been changed, unless the designer has given his/her consent), and it is not permitted to change the site in a way that would prejudice the designer's honour or reputation
 - 9 It is advisable also to include a warranty from the developer that the site will operate in accordance with certain specifications that have been agreed upon by the company and the developer
 - 10 An assignment is an agreement whereby the ownership of IP rights is transferred from one person to another. A licence is an agreement whereby the person who owns the IP (licensor) authorises another person (licensee) to make certain uses of the IP under certain conditions and usually in exchange for payment
 - 11 Permission is needed to reproduce the material in digital form and to make it available online (communicate it). However, most copyright laws include some exceptions to the exclusive rights of copyright (often referred to as 'free uses') which allow free use of portions of copyrighted works for special purposes. Examples include: publishing a picture from a book, periodical, or newspaper on a website for educational purposes; imitating a work for the purpose of parody or social commentary; and making quotations from a published work. However, such exceptions are very limited and even if a company uses other people's work in free use, it may still need to indicate the name of the author (moral right)
 - 12 There is no general rule on how much of a work can be used without infringing copyright. In every case it is a question of whether an important, rather than a large, part is used
 - 13 In most cases, copyright lasts for the lifetime of the author plus 50 or 70 years. After that, the work enters the 'public domain' and may be used without authorisation of the copyright owner. Some works are in the public domain because the owner has indicated a desire to give them to the public without copyright protection
 - 14 Collective Management Organisations (CMOs) monitor uses of works on behalf of creators and are in charge of negotiating licences and collecting remuneration. There is often one CMO per type of work (such as publishing, music, screen writing, film, television and video, visual arts) and per country. Details of the relevant CMOs operating in a given country can generally be obtained from the national copyright office, or from industry associations
 - 15 See <http://www.epictura.com>
 - 16 Creative commons (<http://creativecommons.org>) has a website that allows artists to offer, for free, some of their rights to any taker, and only on certain conditions. The licence may not allow any change in the images; may require that some type of credit is given to the author; may allow the use of the work for non-commercial purposes only, etc

- 17 Do not think that there is no need to get licences if you indicate who the author is. This is a common misunderstanding. Attribution is not a defence to copyright infringement
- 18 In many countries, 'famous' trademarks are provided enhanced protection. A website owner could be forced to stop using a famous trademark on his website if such use causes dilution of the distinctive quality of the mark. Dilution differs from normal trademark infringement in that there is no need to prove a likelihood of confusion to protect the mark
- 19 A hyperlink takes a user from one website page to another simply by clicking on a word or image
- 20 Linking can raise concerns of trademark infringement if it suggests an unwarranted association between the linking and linked sites, and leads a user to believe that an unassociated web page is affiliated, approved or sponsored by the trademark owner
- 21 Sites can lose income because their advertising revenues are often tied to the number of users who pass through their home page. Some enterprises also dislike deep linking because it may falsely create the impression that the two linked sites are associated or endorse each other
- 22 The laws are complex in this area. Usually, the courts regard the practice of metatagging as potential trademark infringement or unfair competition, if the use might suggest sponsorship or authorisation of the trademark owner, or if consumers looking for the products of the trademark owner might be misdirected and diverted to a competitor's website and be at least initially confused in their search for the trademarked goods. Conversely, where the use of trademarks as metatags is not unfair or misleading, such practice may be allowed
- 23 WIPO offers a list of free online trademark search portals at <http://arbitr.wipo.int/trademark/index.html>
- 24 A disclaimer is a statement waiving liability for a potentially unauthorised activity or denying an endorsement for or from another site
- 25 Jurisdiction refers to the country the courts of which would take jurisdiction in a lawsuit involving the company. Applicable law refers to the law that the court is likely to apply to determine the outcome of the lawsuit.
- 26 Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. In a mediation procedure, a neutral intermediary, the mediator, helps the parties to reach a mutually satisfactory settlement of their dispute. Mediation is a non-binding procedure. However, once an agreement has been reached and documented, it is binding on the parties and can be enforced. See <http://arbitr.wipo.int/center/index.html>