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## Spring Cleaning Your Website

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As we start to see the first hints that winter is retreating, it's time for spring cleaning! In light of recent decisions and government agency rules, it's time to review your Terms of Use, Privacy Policies and general strategy with the following three issues in mind.

### ***Make sure you're DMCA ready!***

Have you ever watched your online comment section? Even when content isn't an angry ALL CAPS shouting match, there can be risk to your organization if posters share copyright protected photos or content. Staying out of trouble can be easy, but as of December 2016, the rules of safe harbor changed!

The Digital Millennium Copyright Act (the "DMCA") creates a safe harbor, potentially protecting a paper from copyright infringement liability when third parties post content that may be infringing. This safe harbor isn't free, however. In order to invoke the safe harbor, each online service provider or website operator must designate an agent to receive notices relating to claims of infringement and register online with the U.S. Copyright Office.

The change, created under the final rule found in 37 CFR Part 201, updates what is required to maintain a DMCA agent with the U.S. Copyright Office. To meet these requirements, an organization must register online. If a company failed to do so, the previously existing DMCA agent filings with the Copyright Office expired on December 31, 2017. Those who are not registered cannot claim the safe harbor protection. The new online registration is valid for three years and costs \$6. For more information, go to <https://www.copyright.gov/dmca-directory/help.html>.

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### ***Scrub your website of any non-licensed, non-owned photographs while embedding social media images!***

Almost everyone has heard of the cost of infringing a Getty Images photograph, yet many still turn to Google Images for general content photography. When social media comes into play, the topic becomes even more challenging!

If you're going to use images from third party sources and you do not have permission, keep in mind that you may be infringing someone's copyright. The same is true when posting images from social media, but there are ways to include relevant posts in online articles. This issue arose in an article posted about the Celtics attempting to recruit Kevin Durant where a paper embedded a photograph that was taken from Snapchat and posted to Twitter. Under *Perfect 10 v. Amazon*, a paper can avoid liability if it treats the social media post properly. But in light of *Goldman v. Breitbart News Network*, the old protections may no longer stand. To minimize the risk:

- Understand the content you hope to link to the website. It is important to know whether the poster is likely the owner of the copyright. If you are obtaining it from the source, it is more likely that the content owner would be able to directly grant permission.
- Seek permission. Once you have identified the poster of the content, seek permission to repost or retweet.

Request a Fair Use Opinion if the material is high risk or controversial. The Goldman opinion left open the door that infringing content might be "fair use" under the four-factor analysis. Engage counsel to assess

### ***Clean up those cross-device tracking issues!***

Being able to follow content on your phone, computer and tablet may be great for your readers, but are you prepared to handle the data protection requirements?

In January 2017, the Federal Trade Commission (FTC) released a report on cross-device tracking focusing on transparency, choice and security. In their report, the FTC concluded that consumers were often unaware of the scope of sharing that occurs between devices, especially when sensitive information, like address and credit card information, was included. The agency issued several recommendations as a part of their findings to bolster consumers' understanding of the information shared with the apps and platforms they use.

If your platform collects reader data on more than one device, you need to assure that you: (1) truthfully disclose any tracking to your reader; (2) offer choices on how the activity is tracked; (3) obtain affirmative express consent to track cross-device geolocation data; and (4) maintain appropriate security to avoid unauthorized uses of data.

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