



This article presents general guidelines for Georgia nonprofit organizations as of 8/12/2010 and should not be construed as legal advice. Always consult an attorney to address your particular situation.

KEY CONSIDERATIONS IN A LEGAL AUDIT OF A WEBSITE

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For many nonprofit organizations a website is a critical tool used to raise awareness about the organization and the purposes it serves, collect donations to fund the organization, and provide information to the public at large about various causes and concerns. However, a website must be managed and periodically reviewed to ensure that it is in compliance with various laws and regulations and to ensure that it is not inadvertently subjecting the nonprofit organization to liability. Set forth below is a high level list of key points commonly raised in the legal audit of a website. Please note, however, that each website is unique and may raise different issues, and, thus, we recommend a thorough audit of each site, taking into consideration the specific content and use.

- **Ownership of Website.** An organization should ensure that its agreement with a website developer reflects that the website is a work made for hire and that all rights in the website are owned by the organization. Further, the agreement should provide that, if any work is not within the scope of a work made for hire, all rights in such work are assigned to the organization. In addition, if the developer hosts the website for the organization, the developer should be required to regularly transfer end user data to the organization.
- **Protection of Intellectual Property Rights.** An organization should take steps to protect any intellectual property rights the organization has in the content of its website. Such steps include indicating a copyright in material posted on the page and identifying trademarks or service marks in names, logos, slogans, or other marks of the organization. Further, the terms of use (see below) should assert the organization's ownership of any intellectual property it has published on or made available to visitors of the website.
- **Infringement of Third Party Intellectual Property Rights.** An organization should ensure that it has sufficient ownership rights of or license rights to any content published on its website, including any artwork, photographs, logos, drawings, music, text, and video included on the website. The failure to obtain such rights may lead to a claim from a third party that the content infringes the third party's intellectual property rights.
- **Rights of Publicity and Privacy.** An organization which publishes a person's name, voice, picture, likeness, signature phrase, or other identifying characteristic on its website must ensure that it has not infringed the individual's right of publicity. A right of publicity gives a person the right to commercially exploit (or prevent someone else from commercially exploiting) their identity. Similarly, statements about a person which disclose private facts or place the person in a false and defamatory light and use of a person's likeness or image may violate the person's right of privacy. Thus, before using the likeness, image, or any identifying characteristic of a person or making statements

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about a person on its website, an organization should ensure that it has obtained sufficient rights from the person for such use.

- **Terms of Use.** An organization should provide terms of use for its website which constitute the agreement between the organization and visitors to the website regarding the use of the website. Such terms should be tailored to the expected uses and content of the website, including whether visitors will be submitting information to the organization via the website, whether visitors will be posting comments which may be publicly seen, whether donations or purchases will be made via the website, whether the content provides medical or legal advice, whether the website is or may be construed to be targeted to children, whether the website contains any online games or sweepstakes, whether the website contains advertising by third parties, and whether the agreement links to other websites.
- **Privacy Policy.** An organization should ensure that it has a privacy policy, or a link to its privacy policy, posted on its website. Further, the organization should strictly comply with the posted or linked policy. The privacy policy should address what information is collected from a visitor to the website when the visitor accesses the website, how the information is treated, what uses are made of the information, and whether the information is shared with third parties. The privacy policy should cover both information submitted by the visitor (e.g., the visitor's name, email address, telephone number, product preferences, etc.) and information collected passively from the visitor (e.g., information collected using cookies).
- **Alternative Domain Names.** In connection with the registration of a domain name, or the transfer of the domain name registration from a third party, a organization should consider whether it should register alternative domains (e.g., .net, .org., .info, .biz, etc.) or similar domain names to the website address (e.g., common misspellings, nicknames, portions of a name, etc.). If an organization does not register such alternative domain names, it runs the risk that a third party will register such names and visitors attempting to reach the organization's website will reach such third party's website instead.
- **Content Accuracy.** An organization should ensure that any statements on its website about third parties and about itself are accurate. A false statement about a third party, regardless of whether such third party is an individual or business, which injures the reputation of the third party may be considered defamatory. Inaccurate statements by an organization about itself or inaccurate statements about a third party raise concerns of false advertising.
- **Linking and Framing.** Generally, a mere link to a website is not an infringement of copyrighted material on such site. However, deep-linking and framing have led to claims of infringement of intellectual property rights by the owners of the linked or framed website. Further, links to other organizations' websites creates the possibility of claims of vicarious liability or contributory infringement for the content of such other organizations' websites.
- **Comments and Postings.** Allowing visitors to post comments or other content on a website creates the possibility of additional liability, particularly if such comments or content are visible by other visitors to the website. If an organization elects to have a user-interactive website, the organization should carefully monitor all posted comments

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or content to ensure that such comments and content do not further expose the organization to additional liability (e.g., defamatory statements or intellectual property infringement). Further, as a practical consideration, an organization may want to monitor such comments and content to ensure that they are consistent with the organization's purpose, goals, and messaging. The website's terms of use should clearly articulate the organization's policies regarding user-provided comments and content, including, without limitation, the organization's rights to remove certain content and a disclaimer of liability for any user-provided content.

- **Online Donations and Payment Mechanisms.** If an organization collects donations, or receives some other form of payment, from visitors through its website, the organization must ensure that the website has comprehensive terms and conditions relating to such donations and payment. An organization should also ensure that it has sufficient security procedures in place to satisfy requirements regarding the security of information in connection with the collection of online donations and payments, including, without limitation, requirements regarding credit card information.

Depending upon the content, expected use, and expected visitors to the website, other issues may arise. An organization should carefully consult with counsel to ensure that its website is in full compliance with all legal requirements.

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