

DIGGING YOUR OWN FOXHOLE IN CYBERSPACE — HOW TO DODGE THE LEGAL BULLETS

“Ten years ago,” Jonathan Howe reminded his audience at HSMIAI Affordable Meetings® National in September 2009, “we didn’t check email or go online first thing in the morning.” Some people didn’t do it at all...the day began with faxes and mail.

“The law is behind, and cyberspace is way ahead,” Howe said. He cited a recent court case in New York involving someone posting something derogatory to another person on an Internet bulletin board. The injured party sued not only the person who made the comment but the operator of the bulletin board. The court used an 1890 case to judge this one – a case in which a saloon keeper was found liable because someone had written something about a woman on the wall in the saloon’s men’s room.

In another example, whether something is pornography has always been legally left to “local standards.” But what are local

standards in cyberspace? “Whose law applies?” Howe asks.

What about trademarks? The legal definition is that a trademark is unique, the owner was the first to apply for it, and the owner must pursue anyone who infringes on the mark. If violations are not pursued, the mark can become generic – like aspirin and thermos have become. Coke®, on the other hand, vigorously pursues and “shops” to guard its mark. If someone asks for a Coke in a restaurant, they had better get one or the server must ask if Pepsi® (or whatever) is acceptable.

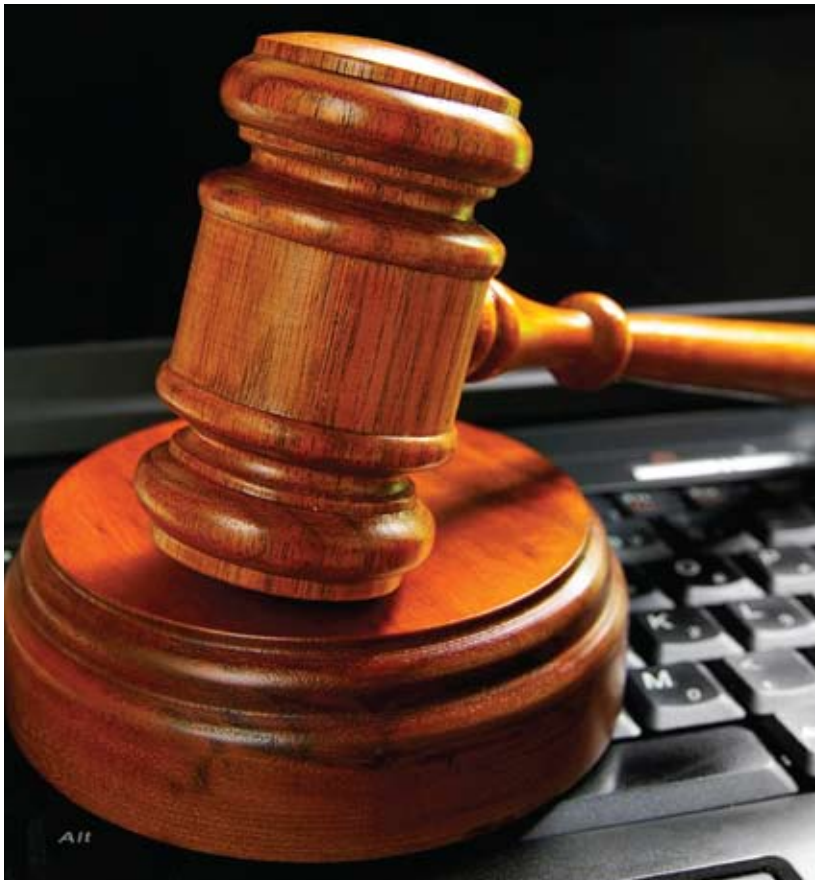
A convention and visitors bureau hired an artist to draw a rendering of the city skyline, which they then used on all their literature. A building owner, whose building appeared in the drawing, sued, saying the building was a trademark and could not be used without permission. (The case was settled out of court.) How are you and your organization monitoring and

protecting your marks in the vast realm of cyberspace? And, how are you ensuring that images you are using in your marketing and conference materials are not trademarked by someone else?

Patents exist for software as a process. There is a patent application for the software involved in a process of conducting a virtual meeting, and there are 158 elements of this software. If any one of those elements were used in another company’s virtual meeting software, it could be a violation.

These and other fascinating examples and cases presented by Jonathan T. Howe, President and Sr. Partner of Howe & Hutton Ltd., are important considerations for anyone doing business today, especially over the Internet.

One cannot escape the power of the Internet, and reputation management is another serious concern. You need to have a plan for responding when your name or your company’s name is involved. There are blogs, communities, Facebook, Twitter, LinkedIn, Plaxo...the list goes on. You should Google yourself regularly or enlist a service to notify you if your name appeared somewhere overnight. Recently a tenant in an apartment building blogged that she had roaches in her apartment, identifying the building, and that her



landlord had not addressed the problem. The landlord sued her.

“Know what you’re saying on the Internet and don’t say it if you don’t want to see it again and again and again,” Howe warns. Don’t write it in an email, even if you don’t send it. Attorneys are always looking for the “smoking gun,” and your word processing system is backed up every night. Your computer is saving bits of information without your even being aware of it.

What about website content, news feeds, and the like? Are you displaying something you have not written? If it’s false or libelous, are you liable? Is the person who views it liable? Howe recommends careful attention to end-user license agreements, disclaimers, and written privacy statements. If you are not the content provider, you’ll want a disclaimer beginning along the lines of “The views that are presented on this website are not necessarily those of the [owner of the website].” Remember the phrases, “we are not responsible for...” and “use at your own risk...”

Everywhere there are land mines. Howe gave an example of a service matching roommates for rental apartments. If you design

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the questions and use the answers from any survey – in this case, by matching potential roommates – you are accountable for the content of the survey. Such a roommate service was sued because its questionnaire was deemed in violation of the Fair Housing Act.

As he spoke at Affordable Meetings in September, the Supreme Court was about to hear a free speech case regarding a derogatory video of Hillary Clinton’s 2008 campaign. Free speech in the cyber age is complicated to say the least.



Howe’s parting advice included: investigate the Red Flag Rules to protect against identify theft, make sure you are PCI Compliant in regard to credit card charges if your website takes them, stay on top of copyright and intellectual property laws, and take a look at whether you need a cyber insurance policy to protect your business.



Jonathan T. Howe, Esq., is the president/senior partner of *Howe & Hutton, Ltd.*, a law firm with offices in Chicago, St. Louis, and Washington, D.C. He has written hundreds of articles, papers and books, and has spoken to organizations all over the world on all manner of legal issues. Howe serves as general counsel for *Meeting Professionals International* and the *International Special Events Society*, among others. He also is general counsel for the prestigious *Association Committee of 100* sponsored by the U.S. Chamber of Commerce. He is a fellow and member of the *International Forum of Travel and Tourism Advocates* and is a founder, president, and board member of the *Academy of Hospitality Industry Attorneys*. Contact: jtb@howehutton.com.