

PITFALLS IN WEB LINKING

Money makes the world go `round, at least according to some. On the World Wide Web, linking makes the Web go `round. *Linking* is the term used to describe the various interconnections between Web sites. With the click of a mouse button, Web surfers activate links and travel through cyberspace or pull information from one Web site to another. It sounds wonderful, and it is. However, as discussed below, linking your Web site with another site can lead to unforeseen and expensive legal entanglements.

Three general types of Web links exist: hypertext reference links, inline links, and framing. It is useful to know how they differ.

Hypertext reference links are usually created by conspicuous text (differently colored or stylized) or by icons (such as a picture or logo) appearing on a Web page. Clicking on the icon connects the viewer with another page on the Web site or with another Web site altogether.

Inline links are generally created by computer codes that function by retrieving content (such as text or pictures) from one Web site and installing it onto another site. For example, Web site A might incorporate text and pictures onto its site that are actually installed on Web site B.

Framing, is similar to inline linking. Framing also incorporates content from one Web site (site A) onto another (site B). However, the content from site A appears within a window (called a frame) on site B. In other words, the viewer is able to see (or hear) the framed information from Web site A while remaining on Web site B. For example, Web site B might frame a photograph that is actually installed on Web site A. Because the viewer never leaves Web site B, valuable items on Web site B, such as third-party banner ads and Web site B's name and address, remain visible to the viewer along with the framed content.

As you might expect, using linking techniques without the permission of the owner of the linked content has generated lawsuits. Below are some examples.

A company known as Total News framed articles published by major news organizations, such as the *Washington Post*. This enabled Total News to publish news stories on its Web site that were created by others while displaying its banner ads and hiding the banner ads of the original publishers. The news organizations sued Total News, which settled the lawsuit and stopped framing the articles. An outfit called Ft-Wayne.Com did

the same thing with the content of two newspapers in Fort Wayne, Indiana, and met with a similar lawsuit.

As the lawsuit between Futredontics and Applied Anagramics (AA) shows, not all framing is necessarily unlawful. In that case, AA licensed the phone number and trademark 1-800-DENTIST to Futredontics. Both AA and Futredontics have Web sites. Futredontics sued AA after AA framed pages from Futredontics's Web site. In its defense, AA claimed that its frame merely enabled Internet users to view the information that Futredontics had itself placed on the Web. At least in the initial phase of the lawsuit, the court declined to determine whether AA had unlawfully misused Futredontics's information.

Microsoft operates a popular Web service in many large cities called Sidewalk. Microsoft's Seattle Sidewalk had a link into Ticketmaster's Web site, at which patrons could purchase tickets for various local events, such as concerts. (This process is known as *deep linking*.) Ticketmaster objected to the link (and sued Microsoft) because Microsoft's link bypassed the initial page (called the *home page*) of Ticketmaster's Web site. Like many commercial sites, Ticketmaster values its home page because it contains third-party advertising and information about other Ticketmaster products and services.

As J. C. Penny learned, legal issues regarding linking can even arise unintentionally and unexpectedly. J. C. Penny, as part of a perfume promotion on its Web site, linked to a movie database that had been compiled by a third party. Gary Bernstein, a professional photographer, discovered that the movie link on J. C. Penny's site in turn linked to a site containing a database of photographs. One of those photographs had originally been shot by Bernstein and was posted on the photograph site without his permission. Bernstein sued J. C. Penny, which removed the movie link from its Web site.

The above cases show that you should be careful before creating links on your Web site, and you should consider doing so only under a written agreement with the owner of the linked site. Depending on the circumstances, your agreement might contain the following provisions: State the purpose of the link, such as promotional or informational.

- Specify all the pertinent details of the arrangement, such as the specific pages that will be linked and the information about the other site that you will include on your site.
- Describe any icons that may be used for the link and specify their size and location on your site.

- Make sure that you obtain permission to use third-party trademarks and copyrighted information. Such permission should specify all financial arrangements; the scope, content, and duration of your use; the right to modify the content, if any; the grounds for early termination; and damages for wrongful use.
- Obtain an agreement from the party who is linking to your site whereby that party will defend you and pay all damages (called *indemnification*) if that party's site itself contains any information that breaches a third party's intellectual property rights (such as trademark, copyright, and trade secrets) or links, directly or indirectly, to another site that contains such information.

The technology that is driving the World Wide Web is racing ahead of the legal framework that might underpin orderly commerce. Even so, as the old saying goes, an ounce of prevention may be worth a pound of cure.