

FOR THE MONTH OF  
January 2007  
total run time: 59:25

# Outline

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## Tip of the Month

CD Track: #9

**Savell: Businesses running own blog sites need to limit their liability.** The explosive growth of business and even employee-run blogs have highlighted a threshold issue of whether these websites are any different than more traditional means of communication. Attorney Lawrence Savell of the New York office of Chadbourne & Parke highlights the questions that the courts have yet to fully answer.

Savell, who specializes in media and products liability law, says that the increased immediacy of blogging must be considered by business blog operators in order to limit their liability. Businesses also have to consider how much latitude to give employees to make posts because companies are generally held responsible for actions by employees that are performed within the scope of employment. "You have to make sure they are not saying things that are contrary to the company's guidelines," he warns. "Companies have to set rules."

Savell explains that another key decision for blog operators is whether they should allow posts or comments by third parties or consumers. But, Savell advises, limiting third party postings can have downsides, such as trading legal protections for business image.

A less severe alternative, he says, is to provide an e-mail address instead of allowing third parties to directly post messages. This way the blog operator can select which messages to post. The selection element, however, can increase the risk of liability because the operator has more active involvement in publicizing the content. "When the company starts becoming an editor, it's much more likely the company will be found responsible," Savell says.

A major legal issue for blog sites to be aware of, Savell adds, is defamation. He points out that blog operators must police their sites to for derogatory statements. According to Savell, defenses to a defamation claim include truth, the "fair reporting privilege" and the fact that the statement was one of opinion or rhetorical hyperbole. "There needs to be a level of oversight," Savell cautions, "to show whether a possible cause of action is being created by a third party."

Copyright infringement also remains a serious concern for blog operators, both for the unauthorized use of copyrighted materials on your site, as well as the blog site's materials being used elsewhere. One way to limit liability, Savell says, is to make sure the blog operator actually owns all posted materials, or has clearance to post them. For example, he warns that if the site uses podcasts, make sure that they are "podsafes," in that there is no unlicensed background music.

Another solution, Savell advises, is to have an express agreement with posters which states that they have the right to post the content. There may be a "safe harbor" exception from offending user posts under the Digital Millennium Copyright Act if the blog can be considered an Internet Service Provider. Savell says that would require the blog operator to remove infringing content immediately after being notified.

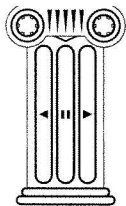
Blog sites must also avoid uses of others trademarks without permission, Savell says. And, the blog operators should protect their own marks as well. Toward that end, Savell suggests that blog sites register their names as trademarks and search the Internet on a regular basis for illegal uses of your domain name, blog name, trademark or similar names.

Another way to limit liability, he says, is to simply remove all questionable materials from you blog site. Attempting to edit it may expose you to potential liability.

One precaution that can be taken is the appropriate use of disclaimers. One example, Savell says, is to say, "The information on the blog may be changed without notice and is not guaranteed to be complete, correct or up to date." Another disclaimer could say, "The opinions expressed on the blog are the opinions of the individual author, and may not reflect the opinions of the firm or any individual employee or client."

Savell says that sites also would do well to post a notice saying that they are not responsible, or endorse, any links to other websites. He concludes by noting that blog operators need to use common sense and the appropriate disclaimers. In addition, Savell cautions checking your insurance policies to determine if your risks are covered, especially when it comes to defamation.

Lawrence Savell, "Is Your Blog Exposing You to Legal Liability?" [law.com](http://law.com) (Dec. 22, 2006).



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