A WORDPRESS LEGAL PRIMER

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I am not a lawyer, and I am not your lawyer. This communication is not intended as legal advice, and no attorney client relationship results. I cannot answer questions about your specific legal issues. Please consult your own attorney for legal advice.
TODAY’S HIGHLIGHTS

• Freedom of speech
• Online behavior vs. offline behavior
• Contracts, terms of use, and who owns what
I am not a lawyer, and I am not your lawyer.

THE FIRST LAW OF ONLINE BEHAVIOR
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Godwin's Law: As an online discussion grows longer, the probability of a comparison involving Nazis or Hitler approaches one.

Corollary: Whoever mentions Hitler first loses.
THE (INTERNET COMMENTER’S) FIRST AMENDMENT

“The First Amendment means that I can say whatever I want and you can’t stop me.”
THE (REAL) FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
THE (INTERNET COMMENTER’S) FIRST AMENDMENT

“The First Amendment means that I can say whatever I want and you can’t stop me.”
SURE, BUT THAT’S NOT ABSOLUTE

- Defamatory statements
- Unprotected speech
- Intentional infliction of emotional distress
- Breach of contract
- Content in violation of standards re indecent or obscene material
- Copyright infringement

- Invasion of privacy
- Disclosure of trade secrets
- Disclosure of state secrets
- Disclosure of unauthorized statements related to publicly traded companies
- False advertising and unfair trade practices
- Statements that violate employment agreements

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Thank you, Prof. Jon M. Garon!
WHAT LAWS MIGHT APPLY?

- Common law torts
- Federal Trade Commission Act
- National Labor Relations Act
- Digital Millennium Copyright Act
- Lanham Act ®
- Securities Exchange Act
- Communications Decency Act
- Anticybersquatting Consumer Protection Act
- Online Copyright Infringement Liability Limitation Act
- State and local statutes

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Cyberbully Mom Guilty Of Lesser Charge

A Missouri mother on trial in a landmark cyberbullying case was convicted Wednesday of misdemeanor computer charges instead of felonies in a cruel Internet hoax played on a 13-year-old girl who later committed suicide.

The federal jury could not reach a verdict on a conspiracy charge against 49-year-old Lori Drew and rejected three other felony counts of accessing computers without authorization to inflict emotional harm on the girl.

Instead, the panel convicted her of three lesser offenses of just accessing computers without authorization. Each of those counts is punishable by up to one year in prison and a $100,000 fine. Drew faced up to 20 years in prison if convicted of the four original counts.

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Attorney Andrew Shirvell Ordered to Pay 4.5 Million for Attacks on Gay Student

By KEVIN DOLAK (@kcolak)
Aug. 17, 2012

A former assistant attorney general who refused to apologize to a gay student leader at the University of Michigan whom he defamed and harassed online and on campus must now pay him $4.5 million, a jury decided.
CONTENT + CONTRACTS + ©

• Who owns what?
• Can I use that?
• Can they use that?
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HOW WAS IT PRODUCED?

• Generated by self
• Generated by commenter
• Generated by collaborator
• Guest post

Note: Phonedog v. Kravitz (2012)
TAKEDOWN

• Online Copyright Infringement Liability Limitation Act

• False endorsement (cuts both ways)

• Copyright infringement
  – Fair Use
FAIR USE 17 U.S.C. § 107

Notwithstanding the provisions of sections 17 U.S.C. § 106 and 17 U.S.C. § 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.
In determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include:

• the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

• the nature of the copyrighted work;

• the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

• the effect of the use upon the potential market for or value of the copyrighted work.
HOW CAN I GET SOME PROFESSIONAL LEGAL HELP?

State Bar of New Mexico

http://www.nmbar.org/findattorney/attorneyfinder.aspx
THANK YOU!