



200 FORUM BUILDING  
777 High Street  
Eugene, OR 97401-2782

PHONE: 541/686-9160  
FAX: 541/343-8693

Attorneys and  
Counselors at Law

James K. Coons  
John G. Cox  
Douglas M. DuPriest  
Frank C. Gibson  
Stephen A. Hutchinson  
E. Bradley Litchfield  
Thomas M. Orr  
William H. Sherlock

Zack P. Mittge  
Patrick L. Stevens  
Mark M. Williams

*The authors of this article are principals in the Eugene law firm of Hutchinson, Cox, Coons, DuPriest Orr & Sherlock, P.C. Both John Cox and James Coons handle copyright and trademark issues for businesses and entrepreneurs.*

## The Wild and Woolly Web — Protecting Yourself with Copyrights and Trademarks

by John Cox and James Coons  
Attorneys At Law

So, you want to have your own Web page to sell your service or product. You have seen other Web pages and wonder if you can use those ideas on your page. How do you know if something is copyrighted or trademarked and what exactly does that mean? Or, you think someone has taken an idea or a logo from your page and is using it on their Web page. What can you do?

Copyright and trademark are two different legal concepts and their use on the Web is no different than when used in printed publications. Copyrights are governed solely by federal law. Trademarks are governed both by state and federal law. Copyright protection applies to "original works of authorship (*you are the first person*) fixed (*to express*) in a tangible medium of expression (*others can see what you wrote*) . . .". Trademarks or service marks are used to identify the source of goods (who made them or who is providing the service) and assure the purchaser of the standard of quality associated with the source of the goods (the provider's good reputation). Let's discuss copyrights first.

Because of changes in recent years there is some confusion surrounding what can be copyrighted and when it becomes copyrighted. You cannot copyright an idea. You can only copyright the expression of an idea. Thus, the idea for a Web page or site cannot be copyrighted but how the Web site idea is actually expressed can be copyrighted. For example, two persons, unknown to each other, might take the same idea for a business Web site, but express it entirely differently. Each would be protected by copyright and neither would be infringing on the other's copyright.

The expression of the Web page or site is copyrighted when it is first placed in readable form; you cannot claim you expressed an idea in your head and thus claim a copyright for it. It is no longer necessary to display the copyright symbol in order to claim something was copyrighted, but it is a good idea to use the symbol to put anyone on notice that you claim a copyright whether you have registered it or not. The symbol is ©, followed by the year and your name, as we have done at the end of this article.

If the expression of an idea is copyrighted when it is first put in readable form and it is not necessary to register a copyright, you may wonder why there is a federal law regulating copyrights. Registering a copyright with the Patent and Trademark Office gives you certain advantages. If someone is infringing on your copyright and you feel it is necessary to sue them, having registered your copyright makes it easier to prove the damages from the infringement, recover attorney fees and have the court prevent the infringer from keeping the materials.

Trademarks and their use on the Web are often closely tied to a domain name. Domain names have become one of the Web's hottest issues. A domain name is an internet address that identifies a computer system connected to the Internet. It can be a valuable asset and add credibility to businesses of all types and sizes. If a business owns its domain name it can switch its Internet Service Provider without changing its Internet address.

But the registration of domain names and protection of names can involve tricky legal questions on the Wild and Woolly Web. The traditional principles of trademark law can help but technological advances happen so quickly that the legal system must work hard to keep on top of the latest issues.

Some enterprising companies have already snapped up hundreds or even thousands of domain names hoping to sell them for a profit. The existing domain name system is largely a "first come-first served" approach. If you request a domain name that is not absolutely identical to one already registered, you get it upon payment of a fee. For example, if your business name is Isis Co., someone who has never done business under that name and never intends to could pay \$100 to register the domain name *isis.com*. Then when you want to get on the Web using your own name as your domain name, someone is there ahead of you. You are then in the unenviable position of buying that domain name from its owner — and the price will be much more than \$100! There are cases of individuals and companies who have deliberately registered the names of well-known national companies with the intent of reaping a profit by selling the domain name rights to the national company.

The best way to protect yourself from this unpleasant situation is to have a trademark that has been properly registered with the federal (not the state) government. If you have a federally registered trademark which is identical to a domain name and if you acquired that trademark before the domain name went on-line, you are in a strong legal position and have legal remedies. Without a federally registered trademark your business can be in a difficult position when you are ready to go on-line with your own name.

However, not all business names can be trademarked. A business name identifies a business entity. A trademark or service mark is used to identify the goods or services that the business produces. Sometimes a business name and trademark may be identical (such as Xerox®) but in many cases the business name and the trademark are different (Band-Aid® is a registered trademark of Johnson & Johnson).

If you are considering using a domain name on the Web it is a good idea to first get appropriate advice as to whether your proposed domain name can be trademarked and whether that protection would be worthwhile and cost effective.

We hope we have answered some of your questions about copyrights and trademarks on the Web. As with all decisions you make regarding your business operations, be sure you are familiar with any potential issues that could arise and take steps to minimize your risk. Most of all enjoy the challenge of growing your business!