



Lawyers since 1897

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## Licensing & Technology: Frequently Asked Questions

### As Featured in the *Puget Sound Business Journal's* Monthly "Ask A Legal Professional" Section

#### **Q: I have heard that people can create usernames in Facebook. What if they use my trademark in their username?**

A: Facebook®, the #1 social networking site based in the U.S., recently allowed users to create personalized URLs for their Facebook pages, i.e. facebook.com/insert.anything. While Facebook® has taken steps to stop username "name squatting," we recommend creating a username with your name or trademark. You should note that you are only permitted to have one username and it cannot be changed. If someone uses your registered trademark as a username, general trademark infringement rules should apply. (Facebook® is a registered trademark of Facebook, Inc.)

#### **Q: Avatars are abound, living in the Virtual World, creating and selling goods with others' brands and contents. What legal recourse do I have for virtual infringement of my brand?**

A: The Virtual World has real disputes. The Virtual World is like a second Internet and it is estimated that over \$1.5 billion are spent each year on "virtual goods." If someone's Virtual Life includes selling or trading goods with your logo, or with your content, you may be able to provide them a reality check for "real" infringement against your "real" brand. While the law is unsettled, you can take measures to protect yourself and deliver some reality to the Virtual World infringers.

#### **Q: Am I liable for posting comments on social networking sites?**

A: Art Linkletter used to say: "kids say the darndest things." Well, today: "people post the darndest things." Social networking sites enable people to post content triggering legal issues such as defamation, insider trading, employment actions, evidence, and copyright/IP infringement. Site vendors are protected by safe harbors so they are generally not liable for user-supplied content unless the vendor fails to remove the content after "notification." However, users may be liable. So before you post that quip or download that photo, remember that you can be liable for the darndest things.

#### **Q: What is a Creative Commons license?**

A: Creative Commons licenses allow copyright owners to grant specified rights to the public to use copyrighted works. The licenses are non-exclusive and the owner can retain all commercial rights. Creative Commons licenses can be used as a promotional tool, such as allowing free sharing of a work with credit to the owner. The licenses were created by Creative Commons, a nonprofit organization that works to "increase the amount of creativity (cultural, educational, and scientific content)" available to the public. Creative Commons licenses can be applied to any copyrightable work, such as websites, photographs, books, songs, and films (software is also possible, but is not recommended due to special licensing issues). An owner can stop distribution of a work under a Creative Commons license at any time, but existing users will have the right to continue their use (i.e., the license is irrevocable).



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**Q: Financing Emerging Growth Technology Companies: What's Changed?**

A: Financing of information technology and biomedical companies has changed drastically in the last couple of years. VCs and high net worth individuals are more conservative, terms harder, money scarcer and diligence deeper. They're still looking for experienced management, protectable intellectual property, solid business plan and financial model, and reasonable acquisition scenario. So what's changed? More private technology companies are looking to strategic licensing arrangements to finance growth. Here are some observations: expect more tiering and "structure" in royalties, and exclusivity demands. Think about licensees that already touch your potential users, but have no product like yours. Beware transfer pricing traps in bundled product. Co-development leads to complex IP ownership issues. Remember – strategic licenses can foreclose or enhance later opportunities. So conduct your partner search on an international level, and get the help you need to license your valuable IP.

**Q: Our company hired an individual to write proprietary software. The individual may be using the software for other companies' projects. Is this allowed?**

Under the U.S. Copyright Act, the general rule is that the individual who creates the software possesses the copyright and has the right to exploit the work. However, the Act has an exception for works made for hire. If your company hired the individual as an employee and the software was created within the scope of his employment, the software is likely a work made for hire and your company owns the copyright. If the individual was hired as an independent contractor, the software will only be a work made for hire if this was agreed to in a written contract; your company specially ordered the work; and the work falls into a specific category (e.g., a collective work or compilation, etc.) identified in the Act.

**Q: Does our distribution of open source software, which we have enhanced and linked to our own software, require us to disclose our modifications and proprietary software?**

A: "Open source" software is a major player and may provide you increased product reliability but you need to review and understand the license. Generally, companies may use open source software internally without disclosure but if the software is distributed, many licenses require disclosure of the source code. "Open source" is a term of art for source code that is made freely available by license for anyone to use, modify, or redistribute. "Closed source" usually means proprietary code which is protected by the licensor. We recommend that companies adopt policies to control the use of open source software so that inadvertent disclosures of the company code can be avoided. Care must be taken to understand the licenses to avoid unanticipated requirements to disclose derived works and the company's other software.