

# Compliance Complications

Media liability expert **PATRICIA KOCSONDY** highlights the intricate legal issues inherent in online revenue-generating enterprises.

Dear Expert,

We are in the process of expanding our online presence to help make up for the losses our magazines have experienced due to COVID-19. Are there any compliance issues we need to troubleshoot?

— Concerned in Cleveland

Dear Cleveland,

The short answer to your question is, “Absolutely!” Several complex and evolving regulations confront media organizations and other businesses looking to increase ecommerce and online advertising revenues.

**Copyright Traps** — Become familiar with laws involving the usage of images, video and music. The use of copyrighted material requires a license, but technology has made it so easy to copy and paste images and other content online that companies may feel they aren’t obligated to follow those rules. In most cases, they are.

Moreover, the probability of getting caught is increasing. Copyright holders use algorithms to scour social media and company websites for possible evidence of copyright infringement.

For example, a company might use a recording of a live performance to make a video or a photo montage on a website more entertaining. While the company may have previously purchased “performance rights” to the song, the replay of a live performance on social media or a website may require additional “synchronization rights.”

Although social media and company websites may offer functions that make it easy to create a montage, the terms of use may not extend to commercial advertising. In today’s era of video-sharing social networking services, it’s possible that companies could fall into such copyright traps.

**ADA Stipulations** — An evolving website compliance issue involves the Americans

With Disabilities Act. The law requires businesses that provide public accommodations to make them accessible to persons with disabilities so they can have “full and equal enjoyment” of the goods and services offered. Recent court rulings have expanded the meaning of the term “public accommodations” to include virtual locations like a website.

Federal regulatory standards for website accessibility have been under consideration

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for a number of years but have not yet been adopted.

Absent clear direction from the federal government, media companies must carefully review and consider state trial-court and federal circuit-court rulings, which are inconsistent in interpreting the intent of ADA.

In some jurisdictions, the law has been applied only to brick-and-mortar businesses, like restaurants and retail stores, because they fit one of the categories identified by the ADA as a “public accommodation.” In other jurisdictions, ADA-compliance restrictions have been applied to online businesses.

Websites may need to include technologies making them accessible to people who have disabilities, including hearing and vision impairments. Companies should consult legal counsel to determine their obligations and opportunities in this area.

**Automatic Renewal** — A subscription-based model is a great way for companies to lock in customers and ensure steady revenues, offering a free trial or a gift to entice them

to subscribe. Attaching provisions that renew the subscription automatically or convert it from a free subscription to a paid one, however, is closely regulated in at least 26 states.

In general, these laws may require providers to obtain the consumer’s affirmative consent to the terms before charging for service or converting from a free trial to a paid subscription.

Furthermore, the automatic renewal text must be displayed in a “clear and conspicuous manner,” which may require a specified font size and proximity to the offer. Lastly, the provider must send a confirmation of purchase to the consumer and make it easy for the subscriber to cancel the service.

Free trials of an online service are a minefield of potential litigation. A \$250 million class action lawsuit against Ancestry.com, for instance, alleges the provider of genealogy services automatically renewed

customers without their clear permission.

According to the lawsuit, the plaintiff alleged she accepted a 14-day free trial without knowledge of an automatic enrollment in a monthly \$39.99 subscription plan. Had she known, she wouldn’t have submitted her credit card information. Many other subscribers had a similar complaint, hence the class action.

It is always best to pause and consider the potential legal and reputational ramifications of evolving federal, state and local regulations before undertaking an online commercial venture, despite the need for additional revenue sources in the current environment.



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