

## E-commerce Issues – Linking to other sites

One of the more common questions asked by companies and individuals about their web site is if they can link to other people's web sites. This paper briefly examines some of the issues that arise from linking to external resources.

### 1. *Can we link to other people's Internet articles?*

Generally, yes, you may link to an article or page put up on the Internet. There is an assumption that the placing of a page on the Internet is, in the absence of anything to the contrary, an implied licence to view and link to that page. There are, of course, exceptions.

- a. First, normally you will want to link to a specific page or article relevant to your business rather than a site's home page. This is termed "deep-linking" in that the link will bypass a site's opening page and go straight to the item of interest. In other words you would link to a specific story on the BBC, not to homepage which would be of no use to you since the specific story of interest would not be apparent.

There are two circumstances when deep-linking may not be done. The first is where the service is a paid or subscription service since the deep link may be a way for others to bypass the subscription/payment process. This is rarely achieved these days as sites have become more sophisticated, but you should not even try. The other clear situation where deep-linking should not take place is if the site's terms of use forbid deep-linking. Whilst a general rule of thumb is that if someone puts something on the Internet free of charge they are inviting others to view that material and link to it, the owner of the site/content is always able to say in relation to their site or content that they forbid deep-linking. They may choose to do this because they want visitors sent to the launch page to boost page hits/advertising revenues, or merely because they choose to do so. It should be noted, however, that there is no presumption that merely because a site hosts advertising that deep-linking which bypasses some of that advertising is forbidden in the absence of a statement to the contrary.

In summary, you should be able to link unless i) it's a way of bypassing a subscription/pay mechanism or ii) it is forbidden by the site itself (and this requires a review of any terms and conditions, something that should take only a few moments).

- b. Occasionally companies or individuals choose to link to content belonging to another and to "frame" it. This means that they link to the content, but surround it or badge it in such a way that it seems to the viewer that they have stayed on the linking party's site when they look at the URL and the page bears the look and feel of the linking party, possibly including any advertising that they host. This should not be

done. If it is then you are very likely to face legal action. Some parties have tried to justify this by claiming that they need to keep the viewer on their site and ensure the viewer is able to use their site's buttons and links that they would otherwise lose if the page were not framed. If this is a problem then the legally acceptable solution would be to have the linked site open as a separate window.

- c. On a final cautionary note, some countries have held individuals liable for linking to content that was subsequently altered to become illegal (in these cases libellous or seditious). There is no suggestion that this would be the case in the UK in the absence of knowledge on the part of the linking party or at least a warning. If, however you are aware or become aware that you are linking to a site that contains inappropriate material (e.g. libellous material or material that infringes the rights of another) then that link should be removed promptly.

2. *May we copy or cache other party's pages to protect ourselves against their links going out of date or to enable quick linking to content?*

Generally, no. It is irritating that links go out of date, but that is the choice of those making the material available. There are some exceptions that may be of use, but they are likely to be limited in application.

- a. First, read the terms and conditions. The site, especially if it is an academic one, may allow copying for internal/non-commercial purposes e.g. for knowledge management, but not for selling on.
- b. Secondly, ask. You never know, the owner may be happy for their page to be copied provided an acknowledgement of the source is included.
- c. Thirdly, if you wish to copy content alone, rather than branding or look and feel, it will be protected by copyright in all likelihood. Copyright infringement (requires substantial copying, if you copy an insubstantial part of a work there is no infringement, but this analysis is qualitative, not quantitative, so if it was worth copying in the first place it is probably substantial). It is possible that an insubstantial part of a page is all that is required e.g. a quote or plaudit without other intrinsic value that you wish to mention. In those circumstances copying the content may be acceptable

If you have questions on this or other e-commerce or Intellectual Property issues then please contact us.