

This newsletter is published by the law firm of Abrahams Kaslow & Cassman LLP to inform our clients and friends about various legal developments and to provide news about our firm. This newsletter is not intended to provide legal advice on specific matters but rather to provide insight into legal topics and issues of current interest. Please consult with legal counsel before taking action on matters covered in this newsletter. If you would like further information or would like to be added to our mailing list, please contact Debbie Watson at 402-392-1250 or email dwatson@akclaw.com.

The Nebraska Rules of Professional Conduct for attorneys require the following statement on newsletters of law firms:
This is an advertisement.

Attorney Spotlight



Valerie S. Retelsdorf

AK&C is pleased to welcome two new associates to the firm, Valerie S. Retelsdorf and Nathaniel J. Warnock.

Ms. Retelsdorf received her Bachelor of Science degree in Criminal Justice, summa cum laude, from the University of Nebraska-Omaha in 2005. She also completed a minor in Psychology and received an Associate's Degree in Forensic Investigation. Ms. Retelsdorf received her Juris Doctor, with distinction, from the University of Nebraska College of Law in 2009. In law school, Ms. Retelsdorf received the Silver Quill Award from the Nebraska State Bar Foundation, which is awarded to recognize a law student's outstanding legal writing ability. Ms. Retelsdorf also received the McGrath North Excellence in Legal Writing Award for her performance in her first year Legal Research and Writing course. She will focus her practice on litigation.



Nathaniel J. Warnock

Mr. Warnock graduated with his Bachelor of Science in Business Administration, magna cum laude, from the University of Nebraska-Omaha in 2006. Mr. Warnock received a specialization in accounting and business planning while at UNO. He was a Regents and Deans Scholar, a member of the Beta Gamma Sigma International Honors Society, and a member of the National Scholars Honors Society. Mr. Warnock graduated with his Juris Doctor, cum laude, from Creighton University School of Law in 2009.

Mr. Warnock serves on the Board of Directors of Sheltering Tree, Inc. He will focus his practice on business law and estate planning.



Legal *Perspectives*

from Abrahams Kaslow & Cassman LLP

Modern Copyright Issues: Constitutional Protection for your Website

by Nathaniel J. Warnock

Introduction

Our founding fathers considered the ability to receive proprietary rights in original works of art and science such a fundamental right that they included a clause in the Constitution specifically providing such protection. The "Copyright Clause" of the Constitution was written "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Over the last two centuries the application of the Copyright Clause has varied from copyrighting manuscripts and newspapers to copyrighting movies and rock band lyrics. In the last twenty years the emergence and expansion of computer technology and the internet has expanded the application of copyright law into new areas including software programming, digital photography and electronic documents. One specific application of copyright law that is often overlooked is copyright protection for the content found on business websites.

Copyright Law Generally: Why Bother?

Copyright law is designed to protect "original works of authorship" that are fixed in a tangible form of expression. This is simply a fancy way of saying the work of art or science must be a newly created work that can be perceived by

another person, either directly or with the aid of a machine or device, such as a DVD player or computer. Copyrightable works specifically include (i) literary works, (ii) musical works, (iii) dramatic works, (iv) pictorial, graphic, and sculptural works, (v) motion pictures and other audiovisual works, (vi) sound recordings, and (vii) architectural works. These categories are viewed very broadly by the U.S. Copyright Office in order to allow for new technology to fit within copyright protection. For example,



computer programs are often registered as "literary works" and maps are registered as "pictorial, graphic, and sculptural works." There are also several categories that are not eligible for copyright protection. These categories include (i) works that have not yet been fixed in a tangible form of expression, (ii) titles, names, short phrases, and slogans, (iii) ideas, procedures, methods, systems, concepts, and discoveries, and (iv) works consisting entirely of information that is common property.

When it comes to securing copyright protection, there is often misunderstanding about both the requirements and the benefits of copyright protection. One of the most

common misunderstandings is that an original work of authorship must be published or registered before it can be protected under U.S. copyright laws. Copyright is actually created automatically when a work is created. The U.S. Copyright Office has defined a work as "created" when it is first fixed into a tangible medium of expression. That means that the moment an author has finished writing a novel, the novel is copyright protected because it is fixed to the paper, a tangible medium of expression. There is no longer a requirement that a work be formally published before it is secured by copyright. Additionally, for works created after March 1, 1989, there is no longer a requirement that notice of copyright be given through the use of the "©" symbol. However, use of the symbol is still good practice because it serves as notice that the work is copyright protected, which may be enough to deter anyone who is considering infringing on the work.

Although not required for copyright protection, there are numerous benefits to registering a copyright with the U.S. Copyright Office. While registration can occur at anytime after fixing a work to a tangible medium of expression, it is critical to register a work as early as possible. The most significant benefits of timely registration of a copyright are the additional rights of protection and enforcement granted to the copyright owner. If copyright registration is made within three months after the initial

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Copyright Issues (Continued from page 1.)

publication of a work or prior to an infringement of the work, statutory damages and attorney's fees are available to the copyright owner in a court action. Statutory damages range anywhere from \$750 up to \$150,000, and all the copyright owner has to prove is that the copyright was infringed by the defendant. If, however, a copyright has not been timely registered, only actual damages and lost profits are available to the copyright owner. Actual damages in copyright infringement cases are extremely difficult and expensive to prove through litigation, and the copyright owner is unable to recover the attorney's fees they incur during the litigation. Copyright registration is also a precondition to a copyright owner's right to sue another party for infringement of a copyright protected work.

Copyright Protection For Your Website

As technology has evolved over the last century, copyright law has been forced to evolve as well. One technological advancement that has led to significant changes in copyright law is

the growing prevalence of the internet. Copyright protection has been extended to works transmitted online, including text, artwork, music, pictures, video and sound recordings. The ease of access to the endless number of websites available on the internet has made it easier than ever before for competing businesses and other users to find information and content developed by others on their websites and copy it for their own use. Whether it is simply the written content that you have developed for your website or a combination of text, pictures and/or video, you have the right to protect the content of your website from misappropriation and use by others, and copyright protection is the most effective way to do so.

Many business owners spend extensive hours and sums of money developing their website in order to attract customers and gain exposure for their business. Websites are often among the most valuable assets of today's businesses, and the U.S. Copyright Office allows for copyright registration of a business's entire website so that it can protect this valuable asset.

By registering its website with the U.S. Copyright Office, a business owner is able to take advantage of the rights, privileges and protections afforded by U.S. copyright laws, including the right to seek a court order requiring a competing business or other infringing party from copying and using the content of the business's website for their own use and, if copyright registration was timely, obtaining statutory damages and attorney's fees from the infringing party. While registering the content of your website with the U.S. Copyright Office may not be the first item on your priority list as a small business owner, it is an inexpensive process that provides you with invaluable security for what's most likely your most important marketing tool.

If you are interested in learning more about the costs, process and timing involved in registering the content of your website or about copyright registration and protection generally, the attorneys at Abrahams Kaslow & Cassman LLP are available to answer any questions that you may have.

Howard Kaslow Named "Omaha Best Lawyers Corporate Lawyer of the Year"

Howard J. Kaslow, senior partner of Abrahams Kaslow & Cassman LLP, has been named "Omaha Best Lawyers Corporate Lawyer of the Year" for 2010 by Best Lawyers, the oldest and most respected peer-review publication in the legal profession.

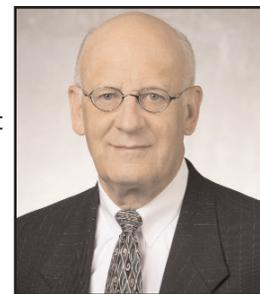
After more than a quarter of a century in publication, Best Lawyers is designating "Lawyers of the Year" in high-profile legal specialties in large legal communities. Only a single lawyer in each specialty in each community is being honored as the

"Lawyer of the Year." Mr. Kaslow is being recognized in the area of Corporate Law.

Best Lawyers compiles its lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. The lawyers being honored as "Lawyers of the Year" have received particularly high ratings in their surveys by earning a high level of respect among their peers for their abilities, professionalism, and integrity.

Mr. Kaslow has been recognized annually by Best Lawyers for 20 consecutive years.

Four other attorneys with Abrahams Kaslow & Cassman LLP also are recognized in Best Lawyers for 2010: Randall C. Hanson for Energy Law, John W. Herdzina for Corporate Law and Franchise Law, Timothy M. Kenny for Municipal Law and Thomas J. Malicki for Trusts and Estates.



Howard J. Kaslow

Employment Law Update

Employer New Hire Reports Required to Include Independent Contractors Effective January 1, 2010

In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act as part of Welfare Reform. This legislation created the requirement for employers in all 50 states to report their new hires and re-hires to a state directory in an effort to speed up the child support income withholding order process, collect child support from parents who change jobs frequently, and locate non-custodial parents to help establish paternity and child support orders.

Effective January 1, 2010, Nebraska Revised Statute § 48-2302 requires that Independent Contractors be reported as new hires. An Independent Contractor is an individual who provides services to an employer for compensation that is reported as income other than wages and who is an individual, the sole

shareholder of a corporation, or the sole member of a limited liability company.

Under the law, an employer must report all new employees, re-hires or re-called employees (now to include Independent Contractors) who reside or work in the State of Nebraska to whom the employer anticipates paying earnings. If an employer has employees in multiple states the employer may elect one of two options on how to report all of its new hires. Employees should be reported even if they work only one day and are terminated (prior to the employer fulfilling the new hire reporting requirement).

Federal and State laws contain strict guidelines for the use of new hire reporting information. Nebraska's child support computer system matches new

hire information against open child support cases to locate alleged fathers/non-custodial parents to establish paternity and child support orders, and enforce existing orders. Once these matches are done, the new hire information is sent to the National Directory of New Hires and is utilized by Child Support Agencies nationwide. New hire information can also be used by states to help detect and prevent fraudulent payments to recipients of unemployment insurance, workers compensation, and welfare benefits.

If you require additional information, please contact one of our employment law attorneys at 392-1250.

News About the Firm

Randall C. Hanson and Nicholas T. Dafney, have represented Tenaska Trailblazer Partners, LLC in connection with their selection of Fluor Corporation as the engineering, procurement and construction contractor for Trailblazer Energy Center, a next-generation advanced-technology power plant. Tenaska has signed a memorandum of understanding with Fluor that will be the basis of a joint Tenaska-Fluor limited engineering phase of work.

The proposed Tenaska Trailblazer Energy Center is expected to be among the first conventional commercial coal-fueled power plants in the United States, and possibly worldwide, to

produce electricity while designed to capture 85 to 90 percent of the carbon dioxide (CO₂) emissions and provide for its use in enhanced oil recovery (EOR) and geologic storage. The plant's advanced air quality control system will also minimize release of other emissions. The CO₂ captured by Trailblazer's groundbreaking technology will be delivered via pipeline to the Permian Basin, where it will be used to increase oil production. The CO₂ that Trailblazer would provide to the Permian Basin oil fields would increase annual production by more than 10 million barrels, enhancing the West Texas economy and helping reduce dependence on foreign oil.

Board Appointments

[Eric H. Lindquist](#) has joined the Westside Athletic Club Board

[Harvey B. Cooper](#) has joined the boards of Project Harmony and the Nebraska-Iowa Wireless Association

[Sandra L. Maass](#) has become the Secretary/Treasurer of the Omaha Executive Club and was elected to the Executive Committee of the Omaha Community Playhouse