ASSOCIATION OF CORPORATE COUNSEL

TITLE: **The Ten Most Common Online Legal Pitfalls for Nonprofits…And How to Avoid Them**

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Operator: Welcome to this ACC Web cast. Steve, please go ahead.

Steve Garrett: Thanks, Sandy. Welcome to the Association of Corporate Counsel Nonprofit Organizations Committee Webcast entitled The Ten Most Common Online Legal Pitfalls for Nonprofits How to Avoid Them. My name is Steve Garrett; I will be the moderate for today's presentation. I'm the Associate Vice President and General Counsel for Texas A&M Research Foundation. I also serve as the Chair of the Web cast Subcommittee of the Nonprofit Organizations Committee of ACC.

Our first presenter today is Jeffrey S. Tenenbaum, partner and the head of Nonprofit Organizations Practice at the law firm of Venable LLP. The firm is a 2008 sponsor of the ACC Nonprofit Organizations Committee. Mr. Tenenbaum is located in the firm's Washington, D.C. office, where he counsels his clients on a wide range of legal matters affecting nonprofit organizations.

He is one of the nations leading nonprofit attorneys and he is an accomplished and respected author, lecturer and commentator on nonprofit legal issues. 2006 he was presented with the AVA outstanding nonprofit lawyer of the year award. In 2004, he was an inaugural recipient of the Washington Business Journal's Top Washington Lawyers Award.

He is the author of the book Association Tax Compliance Guide published by ASAE and he has authored numerous articles, book chapters and other publications on nonprofit legal topic. This Webcast is being presented through ACC's updated Webcast page. Indeed you may post questions to Mr. Tenenbaum and our other panelist Ms. Lisa Hix by using the chat function on your screen.

Type in your question and then press send. Your question will not appear on the other attendees screens, but will be visible to the panelist and myself. If your questions, does not get answered during the presentation, answers will be posted by ACC at later date on the Web site. The question occurs to you, after the close of this presentation, you can send it to Mr. Tenenbaum at jstenenbaum@venable.com. This Webcast is being recorded. The audio file for this Webcast will be available for replay on the ACC Web site about three hours after the end of the presentation.

It will be archived on ACC Web site for about a year. During the course of the Webcast, you will see a satisfaction survey on your screen. Please take a moment or two to respond to the survey.

It is very useful tool for ACC to organize and present Webcast that are interesting and informative to ACC members.

And now, let me turn the presentation over to Mr. Tenenbaum, who will introduce Ms. Lisa Hix for today's presentation.

Jeffrey Tenenbaum: Thank you Steve and good afternoon everyone and good morning to those of who in the West Coast. We have my colleague Lisa Hix and myself have a lot of information to chat on ((inaudible)) today in a very short time and I apologize and advance for the speed and in some cases superficiality with which we are going to have to cover this material just to make sure we can get through it in a good amount of time.

But we are going to try to pack a lot of content into the next hour and 10 minutes or so. We are going to cover a wide range of legal and tax issues that implicated when nonprofits engage in activity online everything from intellectual property to toward liability and defamation to tax exemption issues, lobbying activity issues, listservs, privacy issues and a number of other common legal concerns.

Lisa and I are going to share a duty today and kind of alternate back and forth with often number of slides in a number of topics. My co-panelist today Lisa Hix joined our firm Venable several months ago. She joined us from the Pillsbury from previously, where she practiced nonprofit law exclusively for about four years, is a very accomplished nonprofit attorney as well as a frequent author and lecturer on nonprofit legal issues.

Lisa, I am going to turn it over to you to get us started. Thank you very much.

Lisa Hix: Well thank you Jeff and thank you to everyone for taking timeout. What I know is the buy day. We do have a lot of legal issues to talk about today. I wanted to first frame why these legal issues are important. When I'm learning a concept, the application of the concept really helps me absorb it. When I was preparing for this somebody came in and asked what I was preparing for.

I said the presentation on my legal issues and they sort of laughed and said what is this Internet you speak of it. It's certainly not a new technology. But it is I think particularly in the context of this particularly economic environment and because of increased IRS scrutiny something that is extremely important and is becoming more frequently used.

When I was preparing for this one of the things, I want to do is to make sure that our presentation was applicable to both 501 (c6) organizations and 501 (c3) organizations and going through the participant lists, it's apparent that we have both types. These first slides are I think important for both types of organizations and what it was – was in the nonprofit times a study on Internet use.

And what you see is really a spike in individuals going to the Web sites of nonprofit organizations. For organizations that had fewer than 250 e-mail addresses, it grew by 10.8%. For those, who had 250,000 or more Internet e-mail addresses on file, it soared by 34%. Overall there was increase in subscribers of 3% and of course across all clients e-mail files grow 32%.

So, what this gives you a sense of is how people are coming to your sites more and more frequently. And also this next slide, the importance that Web sites can have in generation of income. I will just let you take a look at this. We do have a lot of material to cover. But what it gives you a sense is that, it can be used both for revenue generation and for outreach to your members.

So, today's focus really on a few things, but the overarching concept is, how do you build a sense of community by or with your Web site and then what are the attendant legal issues. So, we will talk about legal rights to Internet material. I am going to talk a little bit about copyright next, talk about building online communities, listservs, chat rooms, how do you control and protect yourself

when you have individuals outside your immediate control typically members that are such as members of the general public on your site.

And then also outreach. The CAN-SPAM and something that a lot of people are familiar with. But I think e-mail marketing may become more and more important as you may see less and less of your members because of concerns with travel costs et cetera.

Let me also state that a couple of other things, which is that I often do due diligence reviews in related to mergers and we also often do IRS reviews related to audit. The first place people go is to your Web site and so it gives a sense of who you are to the public and it gives a sense of what you are doing.

The first topic, Internet Content. The main question is what do you have on your site and who owns it. Now of course, there are many things that are on your site as I went through actually some of your sites in preparation for this.

Things like publications, promotional pieces, even photos, graphics, video. A lot of organizations have become extremely savvy in the ways to – that various ways that they can communicate with their members and in particularly with younger members that are accessing the Internet in various ways.

But the question is always, who owns the aspects – these various aspects that are on your Web site. I think one thing to do is to go to your Web site. I know I often get a little bit of a separation between the presentation of who I am on the site and what I am doing. It's very easy to become disconnected. I think it is a good idea to go through your site, see what's there and try to track who created this.

Of course, typically for a non-profit this falls in the (separate) category. There is a thing that your employees create. There is a thing that your site designers create as well. But a lot of people's intellectual capital also typically comes from volunteers, from contractors, from people outside of your in-house capacity. You have authors and speakers; you have volunteers and in-committee members.

And one of the key things to keep in mind is that while it's generally assumed that you own the copyright to those IMs that are created by your employees. When you get beyond that, when you get to contractors, when you get to your committee volunteers, even though these individuals are a part of your organization to your committee structure, there you don't automatically own the copyright to the materials that they've created.

So, the basic issue is how do you secure these rights? And again as I stated, it applies to all intellectual property. And there's typically and this is kind of a remarry concept, but it becomes incredibly important one. There are typically two mechanisms by which copyright can be obtained.

The first one and it's really a kind of total mechanism is assignment. The second is a license. Now, as the slide states, assignment is really a complete transfer of all copyright ownership. As you know copyright ownership comes with a bundle of associated rights, the right to copy, the right to distribute, the right to create derivative work.

And so, when you assign copyright or when you obtain assignment from a third party which you really are obtaining is all of those associated right. It can be – you can also obtain rights through a license. Now one of the interesting aspects about a license and what makes it difficult in some respects to make – to really define, is that a license is limited by scope. That said, it can be very broad.

Going onto the next slide, as opposed to an assignment, well we talked our assignment is really an exclusive transfer of right and so you don't need as much detail regarding, well where can I use this, what are the methods by which it can be used, what kind of derivative works can I create, et cetera? But when you have a license, you really do mean to define those items, so a few things to keep in mind.

The first is defined future uses, and this is particularly important for previously published materials. What I often see is organizations have put in a copyright license, from a time either before they are using Internet extensively or from the time before they really had a Internet presence, and they are putting more of these materials on their site because it's one of the ways that members interact with their organization. So it's important to go back and look at your previous license.

Does it say that you can put these materials, for example, both in your periodical magazine, but also on your online version, kind of harking back to law school for some of you that (seen a case)? And when you have a license that says, it's contemplated for this particular use, i.e., for the magazine, that doesn't mean you can take exerts and put it on your Web site, and I see that come up quite a lot.

The next issue is the geographic area, where do you want to use these materials and is that adequately defined? Now typically what people will state is they want them internationally, but you do some time see interesting issues come up where for example book author wants to give you an article from the book to distribute in the United States, but also wants to hold then retain those rights to distribute in say China.

It's important to look at those issues because another aspect of putting things online is that you really have an international distribution scope there as well. So making sure that your geographic rights really match what your ambition are, and again these doesn't have to be what your ambition is today, what is your ambition 20 years down the road as well?

Another issue, whether you have an exclusive or non-exclusive license? Now the issue here is, whether or not you are, for example if you're getting the license from an author to use an article. Are you exclusively allowed to use that article let's say for the next year within the United States? Or do you have a non-exclusive right, that is that you can use it within the context of your periodical, but so can your competitors, or so can other organizations? It's important to define that because you really hate to get down the road and there is a difference and understanding between your author and your organization.

Another item is whether it's perpetual or limited in duration, and it's really gives you a sense that licenses need to be very, very particularly defined. I would typically recommend that you go for perpetual, if you don't know the limit on duration that you want. That said, if you think your author is more likely to give you a license, that's limited in duration for example for the next year, that's great. Then you need to put that in place.

What I always say about contracts though is that they are living documents. So, to the extent that you have a series of restrictions stated in your license, make sure that the people who are a part of your publishing arm are aware of these as well, and that they understand when the sunset is going to come on their use or on the distribution rights, things like that.

Be always sure to define payment terms, or that this is being given for free. I've seen more than one example where a committee member provided content say for a brochure, and it ended up doing very well and it had been distributed throughout, then it ended up being incorporated into something that you sold later on, and that ended up being very, very beneficial to your organization financially. Then the committee member comes back and says, "I think it's right that I get a percentage of what your income was." You don't want to find yourself in that situation. So defining the payment terms, (currently) important.

Also very important to obtain licenses of course from anybody who creates material for you. So, all authors, all speakers, and where I see this come up a lot of times, is where you have your employees working in tandem with outside people. You need it from every single author. If you have it from multiple authors, you need it from all of them.

What to do if you don't have an agreement? Well, let me make one additional point on the slide before. When you're obtaining licenses from your authors, one thing to keep in mind, if you're going to do an assignment or a license, is to think about what your authors are most likely to go for. What I see a lot of organizations do frankly is either go too far or not far enough. They have a very skimpy or no copyright language at all, or they ask for a complete transfer, a complete assignment of all rights.

That can sometimes alienate individuals, who are involved in your organization, not maybe appropriate in a lot of context particularly where you are paying individuals. But just think about whether or not individuals have an incentive to participate in your programs, if they know that they have to transfer all the rights to you.

Maybe your license is enough in that context and you can continue to give them right to use the material in other context as well. But, that said, every organization struggles with the fact that you don't have legal agreements covering everything.

And sometimes you also don't have legal agreements for some practical reasons such as, we've never asked this author or this speaker to give us a license there – high profile person and we just don't know how that reach that subject now. What do we do about the task? Two things, there is – in the same way that there is often an implied contract, there is also an implied license and what that is, as the court will construe, what your rights were in an item based on the course of conduct.

Now, that may give you rights, but it can be very fact intensive and therefore can be quite expensive to define and it will also be narrowly construed and, it's subject to interpretation. So, not an ideal way to go, but if you don't have a license, there maybe some way for you to still use these items and define them.

Another item that you can do, if the material is on your Web site right now and you have concerns about whether or not you have the rights to have it on your Web site, perhaps you can just link with the source on a third party Web site, is possible – is it possible to do that? Go to the linking process and that way you could preserve the contents for your members and for your visitors, but you are no longer in a copyright, infringement, a potential issue.

Practical Tips; I talked about this a little bit before, but coming up with your strategy, what I sometimes see here is that the legal folks and the people who are interacting with potential speakers there is a little bit of a disconnect. The legal folks want you to have the rights; the people who are interacting with the speakers know that they really need to give them an incentive to be part of your program.

So as I was saying before, think about your strategy. What are the scope of rights that you need, is it OK if these items were published somewhere else, understanding that people often particularly see if they are coming to your conferences, if they are speaking for free, now this is separate from contracts or factors who are getting paid. But people who are in a volunteer capacity they may not have an incentive to be part of your organization if you are giving up rights.

The other thing is to really adopt a standard policy and practice for all as your volunteer and committee works. And when you just have your first meeting on the first day, go through the policy, have people sign it, and make it just a routine like anything else if you are used to doing it

every time, if you are used to doing it from the outset of the work, you are just going to have much more broad compliance.

Consider adapting standard agreements. Make sure that your speakers grant rights as I said before to post items online and make sure that your contractors agree to standard assignments. This is particularly true where you have a mix of employees and contractors working on the same thing. And it's very, very simple to come up with your standard intellectual property language and give it to your people who are involved on the committee side or on the publishing side, just make sure they have this tool.

We talked quite a bit in this licensing portion about getting rights from third people – third parties. This also applies when you are giving rights and your intellectual property to third parties. When you allow others to use your articles be sure as we've talked before to define the use, be sure to define the duration.

Also make sure that you have the right to give away, what you are giving away. Always a good idea, if you didn't create the work, if your employee didn't create the work, to just make sure that you have something on file indicating that you have these rights. Typically, what you are going to need there, is an assignment of rights, or if a license where you brought, perhaps you do there as well.

Also, looking at things like hyperlinks by third parties. And it's very possible, a lot of organizations engage contractors or just do it themselves. So – go through, Google every now and then, their name, see where it comes up, and also see, who is linking to their Web site. Sometimes this becomes a legal issue, but lot of times, it becomes a reputational issue. Is your name and brand on a Web site that you are not sure you wanted to be associated with. Or is it being represented in a way, that's not necessarily the case?

Jeff, we are going talk about Listservs and Chat Rooms, next.

Jeffrey Tenenbaum: Thanks, Lisa. OK. And before I forget, I want to mention to everyone two things; first off, we have at Venable a number of extra, quite a few, maybe several hundred actually, model forms, policies and agreements for nonprofit organizations. We are actually in the process of getting the vast majority of those, posted on the ACC members-only Web site, which I think will be very helpful to all of you. And also we are creating a researchable index of all of those documents.

But in the meantime, many of the things, that Lisa talked about already and things that we are going to talk about here, things like model, copyright license and assignment forms between a nonprofit and volunteer speakers between a nonprofit and volunteer authors between a nonprofit and independent contractors that are creating copyrightable work for the association and for the non-profit organization.

We have many forms like that model listserv, terms and conditions which I'm going to talk about here in a second. If any of you would ever like or need copies of any of those samples or models please don't hesitate to e-mail me and we'll be happy to get those to you and like I said check the ACC Web site shortly.

In addition if you want further information on any of the topics that we are speaking about here today in more depth and we are going to have time to go into today. We have on our Web site publicly available Web site probably about 250 to 300 articles on just about every conceivable or non-profit legal topic including all of those we are talking about here today.

There are in-depth articles on all of these topics, and feel free to access those any time at the following Web link at www.venable.com/nonprofits/publications. We are in a process of creating a searchable index to make it easier to find by subject matter, the various articles on that site.

Now with that being said, let me launch into a brief five minutes discussion about non-profit liability for Listservs and Chat Rooms.

Now the first thing to understand in this area of the law is that you have to distinguish between content that is posted on the listserv or chat room or bulletin board by the nonprofit itself, namely through its staff or perhaps through its officers or directors that would be attributed to the nonprofit versus content that is posted by members or donors or other non-employees, non-agents of the non-profit organization, because the liability analysis is very different.

So, basically anything that's posted by the nonprofit is going to be attributable to nonprofit and if something is posted that the same someone that infringes someone's copyright, infringes someone's trademark, invade someone's privacy, discloses trade secrets or breaches a non-disclosure confidentiality agreement, it gages in some anti-competitive conduct that violates any trust laws, constitutes sexual harassment and maybe constitutes some kind of false affiliation, a misrepresentation that would violate Section 43 (a) of Lanham Act; all of these are various types of liabilities that can arise in the Listserv and chat room environment.

If one of these illegal pacts is perpetuated by the non-profit staff or an officer and director acting on behalf of the non-profit organization, then the non-profit may well be liable for it, and the only defense would be that the act didn't constitute in a legal act. Whereas if the act is perpetrated by a volunteer, by a member, by a donor, by a member of the constituency of the non-profit organization that is participating on this Listserv, a bulletin board or chat room that is sponsored by the non-profit organization, then the liability analysis is different.

And in order to figure what that liability analysis is you also further have to distinguish between different types of liabilities that kind of arise. And it's in part because of – but still a lot of people are unaware of that there was a law passed in 1996 called the Communications Decency Act, which largely had to do with child pornography and other illicit content on the Internet. But it also had a section in there called Section 230 of the Communications Decency Act which has a very broad applicability, well beyond that context.

And what it basically does you know it was designed to provide – there was a – back in the mid-90s, early in mid-90s, the ((inaudible)) development with companies like AOL and back then Prodigy and CompuServe was leading to the kind of general rule that if a third-party Internet service provider was at all monitoring the screening content and it was being held to be more like a publisher and liable for that content, even if the content was being posted by its subscribers, not by its employees.

And the Congress was very concerned about the disincentive from monitoring that was being created by that line of cases. And so they passed this Section 230 of the Communications Decency Act as part of that law, which says that if a sponsor or a provider of an Internet service, including say a non-profit organization that's sponsoring a Listserv or a bulletin board, if that organization wants to monitor or screen or edit before the fact or after the fact content that it posted by non-employees of that organization, then the non-profit organization or the other sponsor of that Listserv will not be held liable as a result of that screening or editing or monitoring.

However, there are certain carve-outs in Section 230, the areas of the law where this does not apply. The principle areas of the law where it does apply is defamation. And that is certainly one of the most common, if not the most common, form of liability that arises in a Listserv or chat room. So the bottom line is that it is virtually impossible under Section 230 for a non-profit organization to be held liable for defamatory contents that are posted by non-employees or other you know non-representatives of the non-profit organization.

But other forms of liability are expressly carved out because of the various definitions in Section 230. So, things like copyright infringement and trademark infringement – in this case, we are

probably talking about contributory copyright infringement or contributory trademark infringement and also any trust liability. These forms of liability are not protected by section 230.

And so what does that mean? Does that mean that if a member posts content on your Listserv, then he infringes someone's copyright, the Listserv sponsor is automatically liable for that content? No, it does not mean that. But what it does mean is that if you know if the non-profit learns of some content that infringes someone else's copyright or infringes someone's trademark or constitutes illegal price fixing or a group boycott, the market allocation under the anti-trust laws.

And it does nothing about it, then it could ultimately be held liable for contributory copyright infringement or contributory trademark infringement or some form of anti-trust liability. So, the bottom line outside the defamation area is that while you don't have to screen or monitor content hosted by a non-employee, if you become aware that illegal content that is posted, then you have an obligation to do something about it. You can't just let it sit up there.

You need to take some proactive step to remove the content, to discipline the violator; if repeated violations occur, to perhaps remove that person from the ability to participate in the Listserv. And in addition, even before you get to that point, you want to have all participants be aware of certain rules that your organization promulgates, rules that say you shall not post any defamatory content, any abusive, harassing or other illegal material. You shall not post any content that infringes anyone's trademarks or copyrights.

By posting content, you represented one that you have the rights to post that content. You shall not post any content there and invade anyone's privacy that violates the anti-trust laws. Perhaps other things even beyond the legal realm, things like don't post any advertisements, any self-promotion, any business solicitation, don't sell your products and services, things like that.

These are all things that you should put in your kind of terms and conditions, terms of use, whatever you want to call it, and have your participants click and accept that they agree to those terms of use before they are able to participate in the Listserv or chat room or bulletin board. And then send them out on a regular basis maybe once or twice a year by e-mail to all of your participants.

OK, Lisa. You want to take it from here?

Lisa Hix: We talked a little bit about what your organization is potentially responsible for and what it's not responsible for. And as attorneys know all too well and we sort of love these devices, disclaimers; disclaimers are very kind of elegant, simple mechanisms by which you can state what you are responsible for, the content that you put on, and what you simply cannot take responsibility for.

So, as a general matter – and I think one of the ways to do this is take a look at disclaimers that are on permanent Web sites. Take a look at the scope of those disclaimers and see if your scope matches those. A couple of things to keep in mind; one is when you have model forms and policies.

I belong to an organization that has a legal group subsection. And this legal group subsection often has members go back and forth and ask legal related questions. And one of the questions for the organization has always been what responsibility do we have if someone obtains core legal advice through our mechanism.

It's important to – in addition, this organization also gives out model documents. So it's important to kind of give a disclaimer and exclusion liability statement. We all understand that you want to provide these tools to your members or to people who are coming to your Web site, but it's also important to give them a context in which they are to view these documents so that is something

simple, that it is not tailored to their particular factual circumstances, and that is always in an organization, an individual should ask – seek out specific legal advice.

Another issue that comes up is links to third-party Web site. It's always very important to state that you do not endorse the products of third parties. I often see this issue come up with sort of the more technical trade organizations. For example architects or something along that those lines that have sponsors, who have particular products important to say that you are not endorsing those particular products.

And it's also important to say and this is particularly true because the Web's – is dynamic environment that you can't validate the accuracy of third party content. And that you also frankly, if you provide links to that third party content it may change in the future.

So, both with regard to model documents and to links to third party Web sites just making sure that people understand that you are providing this as an information as educational gathering point or as a link to your sponsors et cetera, but that you cannot ((inaudible)) of the information on this third party Web sites.

In addition to the copyright issues – in addition to the potential liability issue, there is also a lot of Internet tax exemption issues that come up. Now where this ends up being particularly important is, where you have multiple tax exempt entities and this is a common thing.

You have a 501 (c6) trade association, but it also has an affiliated 501 (c3) charitable organization. And then it has some subsidiary four profit organizations that may even have a pack. It has a very complex organizational chart.

One of the things that are very important is that I talked about previously, when you go through – when the IRS is looking at a Web site does it have a fair sense of who is the author of what. What is the 501 (c3) voice. What is the 501 (c6) voice. There is a lot of ways to do this and I certainly don't mean to state that this is the only way that you can have some legal compliance.

But I think it's important to have some differentiation. When you have multiple sites you might consider having different entry points. For example, a tab for the 501 (c3) entity, a tab for any PACs. Now the reason is that if you were for example, tab an organization that has the name of both organizations, both the (c6) and the (c3) for example on every single Web page.

It may be unclear as to whether or not the (c3) is engaged in activity that's really for the (c6). And then it becomes even more important and Jeff is going to talk a little bit when you have political activities, because it is such a sensitive area for 501 (c3). So just making sure that your Web site clearly differentiates that these are separate organizations.

As I state on the next board, it's a possible to attribute activity and so this is important for a lot of different reasons. That said it's not necessarily the case that your Web sites going to raise absolute legal liability on its own.

But what it can do is raise questions, which organization is doing which of these things? And when you have particular things like tax, where 501 (c3) doesn't have to engage and then is a substantial amount or there is not a substantiality test. It's really, did you do this? Then it becomes an even greater issue.

Another issue related to this of course, not only to have organizational separation within the Web site, but true allocation of the cost, a reasonable apportionment of site costs. Now this is – I've done submitting on this and there is not a lot of clarity on how this can be done. As all things, a good face effort to do it is usually sufficient.

Perhaps one of the ways to go about it, there has been discussion of, do you base it on the number of Web pages that are dedicated to the (c3) or to the PAC or to the (c6) or do you do it as a (res) approximation of the percentage of each site on that total Web site.

There is a lot of ways to do it. Some organizations have even broken it down by can we get a (dull fridge) aspect. I'll leave that to you all to think about, but making sure that you do have some reasonable allocation method isn't particularly important. And it's particularly important to when tracking lobbying costs and Jeff is going to talk about that in a little bit.

Sorry, I just making sure, I hadn't get this slide. People who do this type of presentation, one of the things, they will go into and you will see, what does the IRS said on this topic. And almost all of them will go and find IRS Announcements 2000-84. And this announcement was of course in 2000, it outlined several questions regarding online activity.

Unfortunately a lot of these questions remained unanswered. What this document gives you is a sense of what are some of these items with – that the IRS may look at in viewing your Web site activity. So, that you can also keep in mind whether or not you are also keeping these lines of inquiry within your organization.

For example, political and lobbying activities for (c3)s, is it clear from your Web site that there is a differentiation between the political and lobbying activities and your (c3) content.

What is the advertising and business activity of the Web site and for (c3) organization, what are the solicitations of contribution practices for the Web site. We will talk about each of these issues going forward.

First, Jeff is going to talk about political activity and lobbying.

Jeffrey Tenenbaum: Thanks, Lisa. Those of you who work for 501 (c6) organizations are pretty well aware that you are – basically unlimited in the amount of lobbying trying to influence federal and state legislative and regulatory public policies. You are pretty much unlimited in the amount of lobbying that you can do.

501 (c3) organizations which constitute the bulk of your organizations are of course limited in how much lobbying that you can do, but are not prohibited in engaging and lobbying activity. Certain types of lobbying, is more limited than other types of lobbying.

For instance, generally speaking, executive branch and regulatory lobbying is not limited at all whereas legislative lobbying is limited. How much it is limited? It depending upon whether the organization has made what's called the 501 (h) election, where you elect to be governed by a special set of rules put into tax code in 1976 that are essentially much more favorable in both the definitions and calculations of what's lobbying, the exceptions and exclusions from what is considered to be lobbying.

And perhaps most notably in the Internet and online context, the fact that if you make a 501 (h) election, your lobbying is extended – your lobbying is limited by expenditures. So, it's only how much money you spend on lobbying, whether it's fees spend on outside lobbying firms, money spent on staff times or mailing cost or online cost, it's solely measured by expenditures.

And so as a result, if your organization makes a 501 (h) election and if you are able to engage in a lot of lobbying activity through the Internet you are generally going to be able to keep your cost down in a way that you might not be able to do if you were not engaging in a lot of online lobbying activity.

So that's an important point to keep in mind that if you are a 501 (c3) and you have made a 501 (h) election, then by all means try to utilize the Internet in a way that could keep your cost down

and thus keep your lobbying expenditures limited. But there is another thing to keep in mind, that has unique applications in the Internet context and that is that, for those of you that are 501 (c3s) that lobby, that your lobbying is divided into two categories, direct lobbying and grassroots lobbying, and why you have a limit on overall lobbying, how much you can do, there is also a 25% sub-limit in grassroots lobbying.

So out of your total lobbying limit, as you cannot spend more than 25% on grassroots lobbying. And for instance to the extent, you have something on a publicly available Web site, that expresses your organization's view on a particular piece of legislation and urges all viewers and readers of that Web site to contact their member of Congress for instance and are opposition too in support of that legislation, because you are reaching out to the general public, that is going to be considered grassroots lobbying.

Now granted, while the amount of costs inherit in that may not be high, so it's going to be considered grassroots lobbying because it's available to the general public. Whereas, if you are membership organization, and if you have a members-only section of your Web site like many do, then if you have information, that says contact your member of Congress in a position to H.R. 764 that is built that we are very much opposed to, that is going to be considered direct lobbying because it's limited to your members-only. So it's something to keep very much in line in this context.

In addition, 501 (c3) organizations are strictly prohibited in engaging in any political campaign activity or as 501 (c6) organizations are allowed to engage in certain types of political campaign activity, where, of course, some important limits imposed by Federal and State Election Law.

But in the Federal Tax Law context 501 (c3) is strictly prohibited in engaging in any political campaign activity. And while of course that means that you cannot post information on your Web site that says please vote against candidate John Dow in the upcoming election, it also mean that you have to pay attention to other things, such as links to political related Web sites, whether it's an unrelated site or perhaps even a related site, a few organization has related 501 (c4) organization.

You want to be very careful not to provide any kind of a direct link from the 501 (c3) site to that related 501 (c4) site. You don't want to link to candidates that campaign Web sites or an unrelated organization's Web site that has political content because that could be attributed to the 501 (c3).

Now the IRS has never been completely clear in the rules on particularly in the affiliated context, how you can link from one to the other and it's not necessarily problematic or detrimental to an organizations exempt status to have a link from a (c3) to see the home page affiliated 501 (c4) organizations Web site, but you certainly want to make sure you don't go beyond that in terms of linkage.

You also want to make sure that whatever you – if say you have your principal organization is a 501 (c3) organization, then you have an affiliated 501 (c4), may be the (c4) has pack as well, that's connected to it. If say the 501 (c3) organization is the one that has the contract with the Internet service provider with the host to your Internet site, with the content provider for the Internet site or the Web developer for the Internet site. You want to make sure that if the (c3) and (c4) are in fact sharing those – sharing those services, sharing that site that the (c4), the related (c4) is paying for its fair share of everything.

You want to make sure that the (c3) is not at all subsidizing anything that the (c3) does because the basic tax rule is that if (c3) provides something less than fair market value to another tax exempt organization, a non-501 (c3) that engages in lobbying or political campaign activity and it is going to be presumed that that amount went for that lobbying or political campaign activity and that will be attributed back to 501 (c3) organization. So it can be very dangerous. You need to

be very careful that if the (c3) is paying for something, that the (c4) is going to use, that the (c4) reimburses to (c3) and pays its fair share or pays that third party directly for its share of the cost.

We have several other slides here on these topics. I don't think I'm going to get too far in depth in these issues because I want to make sure we have time to cover a bunch of other important issues and that we have time to answer questions. Later if you have questions on any of these lobbying or political campaign activity issues, please let us now.

Lisa, I'm going to turn it over to you to pick up with the Internet Tax Issues on slide 29.

Lisa Hix: OK. Internet Tax Issues. We talked a little about tax exemption, which of course goes to whether or not your organization is engaged in tax-exempt activity for (c3)s, whether it's substantially engaged in those et cetera. Now there's also of course, tax issues with the understanding that tax-exempts of course are not exempt from all taxes. And that the Internet is often a very good mechanism for generating some unrelated business income, understanding that unrelated business income subjects you to tax.

So, just a basic concept here that income from sale of advertising is almost always taxable, with the caveat that income may be offset by directly-connected expenses. There are many mechanisms by which corporations can have a presence on your Web site and some of these are banner advertisements.

I'm going to talk a little bit about corporate sponsorships because this is really the crux of one of the issues of, is it tax-exempt or is it taxed, links to third party Web sites of course through advertisements on online periodicals and merchant affiliation agreements, online charity malls. There is a number of them and they are all very important tools for non-profit.

One of the big areas in this is qualified sponsorship payments. Now you are all familiar with qualified sponsorship payments. The basic concept here is that you – the IRS allows you to recognize sponsorship contributions to your organization. Sometimes they are in the form of contributions to support a particular endeavor, a particular conference et cetera. Sometimes that general support of the organization and a very nice thing that's an incentive to organizations to give to you is that you are allowed to give certain kind of appreciation or recognition back.

Of course, the question is always, does that recognition constitute advertising, or is it simply recognition and giving of things? So the general concept was qualified sponsorship payments, is that the payment is in exchange for something and there is no expectation of return benefit. Now this goes kind of outside of the scope of online activity, but to remind you, you can give something back if the value of it does not exceed 2% of the sponsorship payment, and of course you can give very valuable recognition.

You can give acknowledgment of the sponsor's name, logo, product line et cetera and these are very, very valuable to the corporate sponsor. Question always is what is the line between advertisement and links? And keeping these general items in mind, items that are comparative or qualitative language. Price, savings or value information, endorsement information, inducements to buy. All of this kind of language goes beyond simple, we would like to watch – to think X Corporation. Here is their logo, here is a link to their Web site and here is their – their sort of slogan. All of that is fine.

But if you were to say, for example, why their. They are better than (Tylenol). That would be a comparative or qualitative language. If you're to say, please thank our sponsor who has now has a sale at a $1.99, again, a problem. And of course, if you're providing an endorsement or inducement to buy, those become problems as well.

One of the interesting affects about corporate sponsorship rule is that there are certain media in which you're allowed to acknowledge a sponsor. And as many of you know one of this is through

online presents, but also through publications that only come out in relation to, for example the sponsored event.

It is not allowed and related to regularly scheduled and printed material. I think, the thought here was that if you have a trade magazine, for example, which is full of advertisements. If you also sort of tuck in there, a sponsorship acknowledgement, it's difficult to tell the difference between the two. And organizations would then have an incentive to accept contributions and then give this kind of nebulous line between what's an advertisement and what's a sponsorship, by putting it in the regular trade publication.

What are important here, is two things. One is that if its special edition and it only comes out – for example, sponsoring your annual conference and you have a special edition of your magazine covering the annual conference and there is an acknowledgement, which would likely be fine. But keep in mind that for purposes of printed material this would presumably include material that's published electronically as well.

So if you have, for example, an online magazine, make sure that there is differentiation of whether its going to be a special edition, if its related to a particular event or if its truly is a regular publication, albeit online. If it is, then you are probably revving up against the prohibition and the income would then for – therefore be possibly taxed for.

Another context is it comes up in not only online publications, but also hyperlinks. We talked a little bit about you can give thanks to your sponsor, you can name, you can give their address, you can give their phone number and even give its online equivalent, their Internet address. But you must be vigilant in what is included in the hyperlink and properly incorporated hyperlink to convert an acknowledgment to advertising even if what's on your Web site is fully compliant with the corporate sponsorship rules.

So a couple of things, the link should really if possible go to the sponsorships homepage – sponsors homepage, it can't (weed) and this has been, the IRS has specifically said, if it can't lead to a Web site that features your nonprofit endorsements of the sponsor's product. It also, but likely should not go to the Web site that is very much a kind of – a specific sale advertisement something like that. If it goes to the general Web site of the sponsor then it makes less, less apparent that your, you are simply finding another way to advertise the sponsors to have items.

Also make sure and this is true of anything that you have a written agreement both for taxation reasons and for general liability reasons related to hyperlink. If you were to get in a situation where you have included a hyperlink on your Web site and ((inaudible)) at a future date that is changed to link to materials that are not appropriate.

If you have backup documentation, an agreement that states we will have a hyperlink, it will lead to a Web site that contains only this kind of information that could at least mitigate and it could be a sign that your organization was unaware of this. So, always important to you that in case of these – these understandings and a written agreement.

Also be sure to exercise over site on the location of the hyperlink both on your Web page and on the link to page. And it's always a good idea just to have somebody, monthly whatever go and make sure that your hyperlinks are still alive and they are still going to appropriate places.

I will just skip through these kind of quickly. Banner advertisements; very important to monitor the content and also where it goes to. Periodical advertising; also.

Jeffrey Tenenbaum: Actually Lisa I want to take over.

Lisa Hix: Yes sure.

Jeffrey Tenenbaum: Sorry we kind have interspersed couple of sides and we are bouncing around a little bit to try to group things in a way that makes sense. And probably, I guess this is a kind of complicated area of tax law where there is a bunch of different tax rules that come into play and where we wanted to try to lay it out in the context that makes sense for everyone.

Let us first explain, that there is probably three or four kind of core sets of tax rules that come into play here now, after explaining what they are I am going to explain how the kind of various examples and how they apply on the online context for nonprofit organizations.

First of, we have the corporate sponsorship rules, which Lisa explained, which provide a pretty generous exclusion from unrelated business income for mere acknowledgement of our contribution, as opposed to and in contrast to a payment for advertising. I mean, they are very specific rules that Lisa explained about what can constitutive acknowledgement and what can turn into advertising.

But as Lisa also pointed out, those rules do not apply in the context of a periodical – a printed periodical which could be either in traditional in print periodical like a magazine or newsletter, or an online periodical, like an electronic version of a magazine or newsletter, which so many nonprofit organizations publish these days.

In addition, the corporate tranches approvals do not apply in the context of qualified convention and tradeshow activity, although there is a long-standing preexisting exclusion in the tax code for qualified convention and tradeshow revenue.

There's also an exclusion from unrelated business income for royalty income, as many or all of you know. The royalty exclusion applies where the nonprofit – with tax-exempt organizations getting paid for the right to use the nonprofit's intellectual property, its name, its logo, its membership list, its mailing list, copyrighted material.

If the nonprofit is simply getting paid for the right to utilize that intellectual property regardless of how that payment is calculated, even if it is calculated as a percentage of sales, then the payment to the nonprofit organization will be treated as tax-free royalty income. Of course, if the non-profit also provides services in connection with that license of its intellectual properties, such as marketing services and/or administrative services, then that has a potential to treat – to convert some of that income into taxable income.

And one point to keep in mind, really anything – Internet specific, but just because an exclusion doesn't apply, for instance a corporate sponsorship exclusion, doesn't mean that the income automatically becomes taxable, it does mean that you then apply the standard three part unrelated business income tax test; is it a trade or business that's regularly carried on that's not substantially relevant to tax exempt purposes, and if so then it may well be converted to unrelated business income. But just because the exclusion doesn't apply, it doesn't automatically mean that it's taxable. A lot of people forget that.

And then one more set of rules to keep in mind, the IRS regulations, Treasury regulations exists with respect to – and they have for decades now with respect to how you calculate taxable advertising income from periodicals. And really these rules apply any time you have what's called exploited exempt activity. We have an exempt activity like a magazine or a newsletter where the content of the magazine and newsletter is clearly related to your tax exempt purposes, but then you have an unrelated activity within that related activity, your advertising within a periodical.

There is a special set of rules for how you calculate taxable advertising income from the periodical. Basically, you compare your growth advertising income to your direct expenses incurred to generate that advertising income. And if you're – if that income exceeds the advertising cost, then you compare your editorial cost to your editorial income like subscription income, whatever share of membership dues is allocable to the magazine or newsletter, to see

whether or not there is a loss there on the editorial side. And if there is, then you can use that loss to help offset the taxable advertising income. But unlike with all other unrelated business income, you don't get to kind of aggregate it with all of your other gross unrelated business income and all of your gross expense that are directly connected to generating that unrelated business income.

So, it's a special set of rules that applies only for periodicals. Now having said all this, the reason that comes into play, as you can probably see, is that it very much matters for instance whether the online content – say you have sponsorship online. We know that the corporate sponsorships can exist online into the qualified corporate sponsorship exception.

You can provide a link to a sponsor, and it doesn't convert in otherwise qualified corporate sponsorship payment to taxable advertising income. But we also know that if it's an online periodical, then the sponsorship exception does not apply. However, if it is an online periodical, the sponsorship exception doesn't apply, but then the special set of rules come in for how you calculate the advertising income from that online periodical. So, it's very, very important to determine whether you are talking about a periodical online or whether you are talking about just the rest of your Web site.

And there are very helpful, actually extremely helpful IRS Private Letter Rule. If anyone wants a copy of it later, then please tell me. The (2003) private letter rules in there that weigh in on a number of issues of that Web site, listings and advertising and links, and it stands for certain propositions, one that merely providing a link to a sponsor, to an endorsed provider, et cetera, does not turn in otherwise passive activity into an active activity. And it's generally not going to turn in otherwise related activity or excluded activity into a taxable unrelated business activity.

And it also says that it stands for the proposition that you can have an allocation. You can have – and this happens quite a bit in the non-profit world. You have many things going on at the same time. You might have an arrangement within the non-profit and a corporation, where the corporation has some corporate sponsorship. They have some advertising. They might exhibit at your trade show. They might just make some general contributions. There might be a lot of different things going on.

And what the IRS said in that ruling is basically, if you allocated all and if you either have separate agreements or at least you break it up in the same agreement into different sections and you have a fair market allocation between the different types of things that the corporation is providing and/or getting from your non-profit organization, then it is reasonable unacceptable to divide it up like that, and for instance, it's not going to turn is not taking all of that income into taxable advertising income.

So you're going to have a corporate sponsorship and advertising kind of co-existing side by side as long as it's a fair market allocation and you can have royalties co-existing side by side. What you really want to do there from a practical perspective is break all it up.

So if you have an agreement and you are going to get $100,000 from this corporation and you want to break it up section-by-section, this section is – the corporation is going to give $25,000 for this corporate sponsorship. They're going to have a link that's going to appear on the homepage of our Web site. It's going to go to the sponsors' homepage. And they are to going get this other acknowledgment as well. And in exchange for that, they get $25,000. Separately, they're going to get the right to four quarter page ads in our monthly online newsletter. We're going to treat that as taxable advertising income.

Third, the corporation is going to license from a non-profit organization the right to use its name and logo and put it on its Web site and do whatever else it's going to do with it. In exchange, we get a royalty of $25,000 a year or 'X'% of sales of the company's product or services to our members or donors, et cetera. And then maybe fourth, there is going to be an amount paid to

exhibit it at our non-profit trade show each year, and that's going to be exempt under the qualified convention and trade show exception.

So that's how you want to divide things up. It is certainly acceptable to have royalty income from an online link. So if the corporation is licensing your non-profit name and logo, putting on its Web site and then having people link back to your site, that's OK.

There have also been some helpful IRS rulings in the last few years about online contribution, saying that if a member of the public brings an online contribution from a corporation's Web site and it comes directly to you, it's donated directly to you that they can take a chartable tax deduction for that amount.

And then finally, if your non-profit organization has some sort of online store where it's selling products and services either directly or perhaps by linking to amazon.com or something like that; generally speaking, selling products or services is not going to be covered by any of the usual or any of the inclusions or exemptions that I talked about. It's really going to come down to, is it a related activity or not.

For instance, are you selling just books that go to the core of your taxes and purposes, in which case sale of those books, whether it's by your non-profit or via amazon.com, it should be related income. Whereas if you're selling unrelated activities, unrelated products, even the things like hats and T-shirts and other token items, if you are selling those items and that are not related to your exempt purposes, then just having your name on doesn't make them related. And that's probably going to be an unrelated business activity.

Finally, one other thing and it may not be as relevant to many of you on the line, but there is also a very helpful IRS ruling regarding virtual trade shows. For those of you that have the trade shows, the basic rule is that – from that ruling is that if you have a virtual trade show, an online trade show that is connected to and done at the same time as an in-person trade show and it only runs on your Web site at the same time as the in-person trade show, that's going to be considered on extension of the in-person trade show and the income from that will be able to be excluded under the qualified convention and trade show exception.

But if you have an online-only trade show and/or if the trade show runs beyond the time of the in-person trade show, then it's not going to be covered by the exception, and the general unrelated business income tax test is going to need to be applied.

OK. Moving on e-mail marketing and spam. Very quickly here, those of you who use e-mail at all to communicate with your members, with your donors, with perspective donors, et cetera, should be well aware of the CAN-SPAM Act law that Congress enacted several years ago, which imposed a certain requirements on commercial e-mail and these e-mails generally – e-mails tend to ((inaudible)) towards the contributions of the organization are not going to be considered commercial e-mails. But an e-mail that is promoting the sale of a product or service is going to be considered a commercial e-mail. If it's considered a commercial e-mail then three specific requirements apply to that e-mail, if it's not necessarily it does not apply.

And generally speaking it's a little more complex than this. But generally speaking e-mails to members-only are going to be excluded as what are called transactional or relationship messages. So, generally speaking these rules are not going to apply to members-only e-mails.

But if it's not a members-only e-mail and if it's selling a product to service than the three basic requirements are the e-mail A, has to be identified clear and conspicuously as a solicitation or an advertisement. Second, it has to have the address of the sender of the e-mail. Third, they have to have an electronic opt-out mechanism or either by replying to the e-mail by clicking on a link someone can opt-out from receiving future commercial e-mails from your nonprofit organization.

And if someone does opt-out, if they select that opt-out option then you are prohibited from sharing that e-mail address with any other entity or person for any reason. Those are the basic rules. There was a pretty comprehensive article on The CAN-SPAM Act and how it applies to nonprofit organizations on a Web site if you're interested.

With that, I'm going to turn it back over to Lisa to wrap up on the privacy issue and then we're going to open it up for questions.

Lisa Hix: OK. This slide becomes in handy when we are at the end of a presentation; we are running out of time. The basic rules here are just to be aware of the information that you are gathering and to be aware of Federal and State rules regarding that information

Of course, couple of big ones, are HIPAA related to health information, the GLBA, The Gramm-Leach Act and related to financial information and California also has a state privacy. A lot of Web sites also just have a standard practice of notifying individuals as to the information that's gathered, how it will be used, what third parties it will be shared with.

Remember that this would include affiliates of your organization such as state chapters and also other organizations within your general corporate structure that are – who are subsidiaries and provides the option for information not to be shared with third parties, provides information generally on the security safeguarding and provides the individuals particularly in regard to donor information, the right to review and correct.

Now one of the most important things here is if you adopt a privacy standard for your Web site. If you promulgate certain standards regarding what you will collect and how it will be used, be sure to follow it. You can create liability by indicating to the public that you have certain practices in place and then not being consistent with those practices.

So, we talked about it in the copyright context to make sure that you are meeting people know, when the sunset is on the license, make sure that your marketing people also know the mechanisms, what information can be used and where it can be used and what you have told the public on your Web site. So, with that we go to questions.

Jeffrey Tenenbaum: And just one more comment on the privacy is – just to make sure everyone understand kind of a two basic rules on privacy – the two basic sets of rules are number one, restrictions on sharing information that you gather from visitors to your Web site.

And as Lisa indicated there are some specific laws like HIPAA, which governs personal health information and The Gramm-Leach-Bliley Act, which governs the personal financial information, where there are very specific restrictions on your ability to share that information either with or without consent from the user.

And then secondly, those laws and others impose restrictions on the safeguarding of information and what kind of protection you have to put in place to safeguard information. Well, I should point out – point out something else, actually it's an article that we just wrote on this subject that's been published in the November issue of American Society of Association Executives, Association Law & Policy newsletter regarding the Federal Trade Commission's new identity Red Flag Rules. And these are a set of rules that come into play for any organization that is extending credit to anyone.

And this can certainly apply in the non-profit context if you are allowing people, members, donors, users, purchasers, others, advertisers, sponsors, exhibitors to pay for something kind of after the fact. That can be and will be considered an extension of credit, which will kick into play the FTC's Red Flag Rules which would then apply to your organization and impose certain restrictions on what you need to do if certain things happen that suggests that the credit cardholder maybe the victim of identity theft.

And even that the Federal Trade Commission generally does not have jurisdiction over 501 (c3) organizations. If you are considered a creditor under the Red Flag Rules, then the FTC will have jurisdiction over your organization and you need to be aware of these rules and what they – the burdens that they impose on your organization.

With that we're going to open it up for questions. We have about five minutes to cover questions. I see that we have a number of questions that have been e-mailed and for those of you who didn't hear Steve at the outset, there's the (trap box), question box at the left hand corner of your screen. And if you have not already posted a question, feel free to post a question and we will try to cover as many as we can.

Let's see here. First question. Is there an issue when an organization obtains an assignment or a license that is unsupported by consideration other than perhaps publishing the office article on the organization's publication?

I think the general answer to that is, generally that's not going to be an issue. The consideration requirement, like in any contractual relationship doesn't have to be much, and certainly the right to have an article published in a magazine or newsletter or on a Web site where the ability to give a speech or the presentation, generally going to be more than sufficient consideration for providing the license for the assignment. Certainly that you want to spell out in the document, the model wise into assignment form with that consideration is. But that certainly doesn't have to be a payment involved to be valid consideration.

Second question used to be the conventional wisdom that one should not deep link into another site without their permission. But the broad revolution, however deep, links have they become much more common, even done by the great newspaper organization or deep links are problem.

Generally, and I'm speaking from a legal perspective of course, there may be other political or public relations, other reasons why you don't want a deep link into someone's site. There are a string of cases out there that suggests that if you are going to link to someone else's Web site like Lisa indicated earlier, it's generally not going to be an issue of copyright infringement. You will have to link to someone's site without a constituting copyright infringement, but you don't want to misrepresent anything about that site, you don't want to endorse – you don't want to imply an endorsement of that site, if you are not endorsing that site, you don't want to imply that it's part of your site.

It's generally very good idea to make it clear to users when they are leaving your site and that other site that they are linking to is not endorsed by or affiliated with your organization with the way you don't intend to be. In addition, you certainly don't want to link into a portion of someone else's site that they would otherwise have to pay some kind of fee or membership or subscription to get in to.

And there certainly are some cases on that that talk about how that can be a big problem for an organization. And certainly we talked earlier for instance in the political activity context about how careful you need to be in terms of where you link and on the organization site. On the corporate sponsorship context we talked about how you don't want to link for instance to the page on a sponsored site where a product or a service can be purchased but you for instance only want to link to the homepage of that site.

OK. Let's try to cover a few other questions here. I can't ((inaudible)) many associations offer an opt out procedure for members. Does this remove the e-mail to the member from the transactional category and in other words if one ignores the member opt out, because they can't stand liability exposure.

As I indicated early generally speaking if it's an e-mail to a member where the member reasonably expects to receive that e-mail as part of his or her membership and generally

speaking that's going to be considered a transactional or relationship message and those three requirements including the opt out requirement will not apply.

If you want to learn more about this I would encourage you to read our article on our Web site on the CAN-SPAM Act.

Steve Garrett: Jeff I think we got time for maybe one more question real quick and then …

Jeffrey Tenenbaum: OK. One more question this is regarding the Section 230 of the Communications Decency Act, its actual knowledge that is required to have liability or is constructive knowledge sufficient. And this is issue of if the nonprofit organization sponsors a listserv or bulletin board and is content posted by say members or volunteers or donors. When can the nonprofit be alive for that content.

Generally speaking if its not the non-profits employees or say officers, directors or committee members acting on behalf of the organization, if its simply a volunteer clearly a non-agent of the nonprofit organization. Then even if the nonprofit organization becomes aware of some of the defamatory content the nonprofit will not be held liable for it.

There is still an open question though if the nonprofit becomes aware of say, some defamatory content that's posted and makes a deliberate decision not to remove that content, or take any other action. There is a potential that that could then be deemed to be – to almost become content posted by the nonprofit organization and be attributed in a way where the Section 230 exception would not apply.

And of course, if we're not talking about defamation liability, if we're talking about things like copyright infringement or antitrust liability, then section 230 does not apply, and so it's going to be the general, kind of new or should have known standard. Where if the nonprofit organization knows about the illegal content and does nothing about it, or if it should have known about it and does nothing about it, then there certainly is a very real potential that it could be held contributorily liable.

If however, it becomes aware of the illegal content and then does something about it, it takes it down and disciplines the poster, then generally speaking, the nonprofit will be able to avoid liability.

Steve Garrett: All right. Well, I think that concludes today's Webcast and I'd like to thank our panelists for their time and their excellent presentation. I also want to thank the Venable law firm for sponsoring our Webcast. Once again, let me remind our audience that the audio file for the Webcast will be available on the ACC Web site, that's www.acc.com for about three hours from now. It will be archived there for about a year.

I also want to thank our audience for attending our Webcast. Remember, if you have any questions related to today's topic, you can send an e-mail to Mr. Tenenbaum at jstenenbaum@venable.com. It's also in his bio information on the Web page. And don't forget to complete your survey, it's very important for ACC to be able to keep – continue offering Webcast of interest to our members.

And as a reminder, for our NPOs committee members, the next teleconference is scheduled for December the 9 of 2008 at 3:00 PM Eastern Time. The calling number and further information could be on the ACC nonprofit committee Web site. Thank you for joining us today, you may now logoff.

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