

CS 523: Social, Economic, and Legal Aspects of Security

Linking

We'll discuss 3 cases

- Standard linking
 - Takes the visitor to the home page of another site
- Inline linking and framing
 - Web page shows content from other sources
- Deep linking
 - Skips the home page of another site, instead takes visitors directly to specific information deep within the site

Standard links

- Link to the home page of another site
 - Instructs visitor's browser to go to that page (user is aware of leaving the linking page)
 - Linked page contains copyrighted material whose viewing is thereby facilitated
- Implied consent by owner of the linked site
 - Why else would that site's owner put their copyrighted material on their home page, if not for others to view it?

Standard links (cont'd)

- Potential for legal trouble if the linked site explicitly negates the implied consent
 - E.g., with a “do not link without permission” statement on the linked page
 - Linker would have to rely on a “fair use” argument, or one based on not having reviewed and agreed to the terms of the linked site
- Potential for legal trouble if the linked site contains infringing material

Inline links

- Such links place on a web page material (often an image) from someone else's web site
 - Instructs visitor's browser to get the (e.g.) image from the remote site's server
 - No copy of the image is made on the local server, nor does the image transit through it, therefore no direct infringement
 - Contributory infringement? Courts have generally (but not always) ruled otherwise

Inline links (cont'd)

- Some lawsuits argued that inline links infringe because their net effect on visitors is *as if a local copy had been made*
 - Users cannot tell the difference between inline linking and making/displaying a local copy
 - Courts rejected the argument (“copyright law, unlike trademark law, does not protect copyright holders against acts that cause consumer confusion”)

Frames

- Used to subdivide web pages, present data from different sources as part of one display
- Similar issues and lawsuits to inline links (and generally similar legal outcomes)
- Can run into other legal problems
 - E.g., arising from the juxtaposition of different pieces of content (X might find it offensive, or suffer reputational damage, to be associated with Y)

Deep linking

- Linking directly to underlying web pages (not the home page) of a site
 - Deep linking bypasses the paid advertisements appearing on the home page
 - This can significantly diminish the value of a web site to advertisers
 - It can increase advertisers' interest in the web site that deep-links (such a site would then be getting a free ride at the expense of the linked site)

Deep linking (cont'd)

- Many lawsuits: Newspapers v. search engines, Ticketmaster v. Microsoft, ...

Some lawsuits went the plaintiff's way, others went the defendant's way – still a gray legal area

- Particularities of the cases mattered, e.g.,
 - In a newspaper case, actual copying of long headlines was occurring (a copyright violation)
 - Defendant's gaining a commercial advantage against plaintiff worked against the defendant

Deep linking (cont'd)

- Arguments based on trademark infringement
 - “My customer gets a less valuable experience by jumping straight to an embedded page, rather than following the normal path through the home page. This causes my trademark to become associated with an inferior type of service.”
 - “Deep-linking to my stories can confuse readers about the origin of these stories” (can work if name of linked site is not prominently displayed)

Linking and trademarks

- Infringement if a link creates confusion about the web page creator being associated or approved by a trademark owner
 - For example, a link that places another party's trademark on the linker's web page, can create in the visitor such a false conclusion of an association or approval

Linking to infringing material

- Linking to pages that contain pirated material
 - With knowledge of infringing nature of material
- In most such lawsuits the defendant
 - not only knew, but encouraged the infringing activity to which its links were pointing
 - benefited financially from it
- Sanoma v. GeenStijl
 - Infringing material was at FileFactory (a third party)

Linking and derivative works

- Derivative = based on the copyrighted original
 - Only copyright owner can create derivatives
 - Examples of derivative works include translation of a book to another language, making a movie based on a book, creating new version of software
- A page could be viewed as derivative work
 - E.g., creating a themed web page that uses links to multiple people's images pertaining to theme

Linking and passing off

- Passing off = misrepresenting one's own work as being someone else's
 - Making the look-and-feel of one's product similar to someone else's product (diluting its goodwill)
- Reverse passing off = misrepresenting someone else's work as being one's own
 - In the themed web page example, failing to attribute the images (so that visitor thinks they're the work of the web page's creator)

Linking and defamation

- Even if the statements made on the web page do not constitute defamation, adding a link can make them defamatory
 - The negative statements made are general, but the link can indicate who their real target is
 - E.g., text complains in general terms about “unethical and dishonest people”, with a link pointing to a specific person

Linking and defamation (cont'd)

- What if the link on your page leads to a site that contains defamatory statements?
 - Repeating or republishing defamatory statements *is* defamatory, but the courts have ruled that linking is not republishing
 - Courts have also disallowed using new links as a justification for resetting the clock on the 1-year statute of limitations for filing a defamation suit