

# Legal 101 for Bloggers

Matt Stabile

[TheExpeditioner.com](http://TheExpeditioner.com)

[ExpeditionerHotels.com](http://ExpeditionerHotels.com)

[@TheExpeditioner](https://twitter.com/TheExpeditioner)

[Matt.Stabile@TheExpeditioner.com](mailto:Matt.Stabile@TheExpeditioner.com)

# Overview

**[TheExpeditioner.com/tbex.pdf](http://TheExpeditioner.com/tbex.pdf)**

# Overview

- 1) Copyright and Trademark**
- 2) Fair Use**
- 3) FTC Regulations**

# Overview

- Believe it or not, and despite the wishes of the legal community, I am a practicing attorney.
  - Penn State Law School
  - Member of New York State Bar, S.D.N.Y
  - Associate in litigation practice

# Overview

## Disclaimer

- I am an attorney, but I am not giving you legal advice.
  - I am not an expert in intellectual property or copyright law.
  - This presentation is an introduction as should be used as a helpful guide.
  - If you need legal advice, please do not e-mail, facebook or tweet me. Hire a lawyer who is an expert in this field.

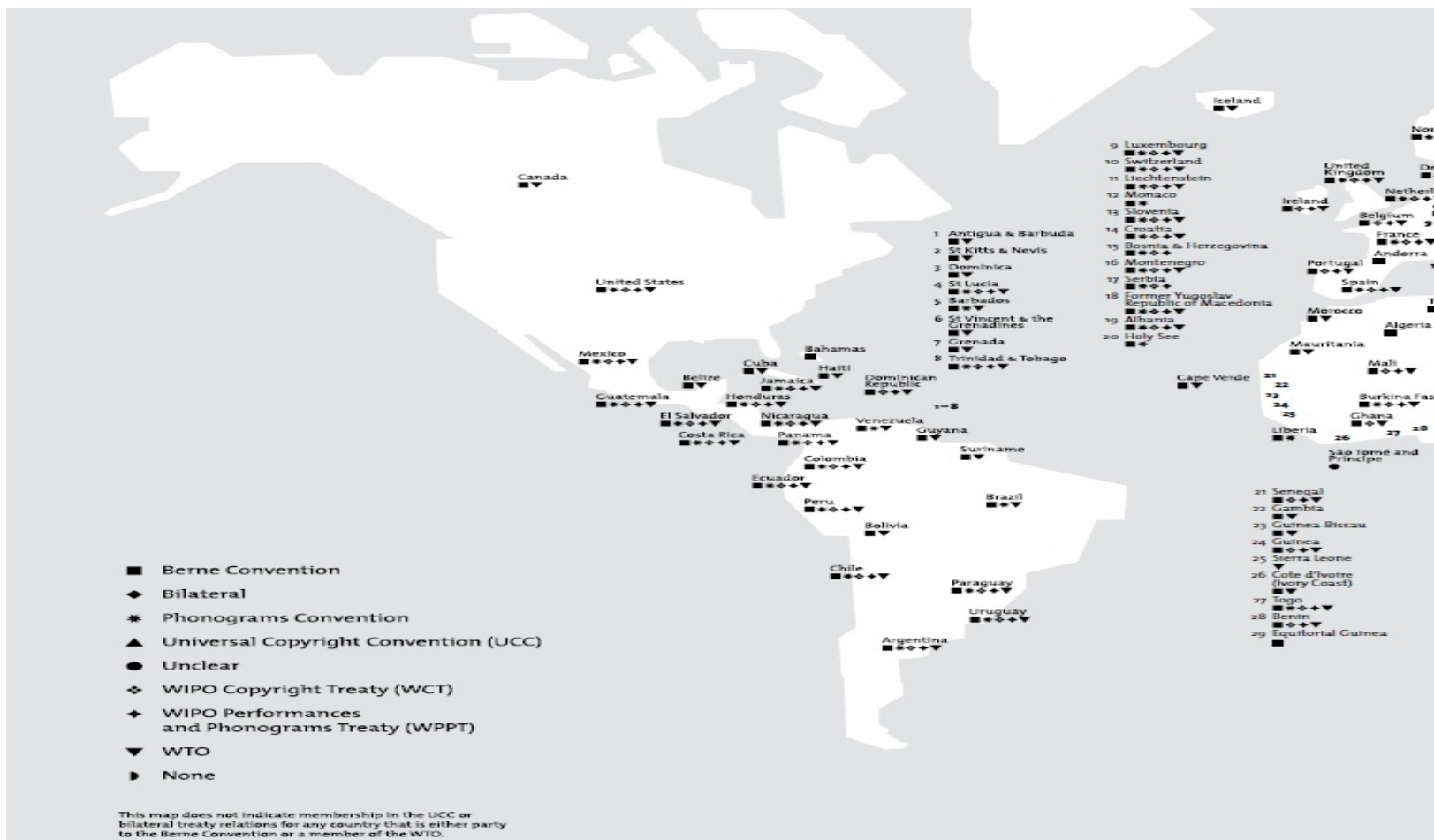
# 1) Copyright v. Trademark

## Why Should I Care About U.S. Copyright Laws?

- No: There is no such thing as an “international copyright” that will automatically protect an author’s writings throughout the entire world.
- Int'l Treaties: <http://www.copyright.gov/circs/circ38a.pdf>
- Protection against unauthorized use in a particular country depends, basically, on the national laws of that country and international treaty.
  - Berne Treaty
  - Universal Copyright Convention (UCC)
  - World Trade Organization (WTO)

# 1) Copyright v. Trademark

- International Treaties: <http://www.copyright.gov/circs/circ38a.pdf>



# 1) Copyright v. Trademark

## ● Canada

- Bilateral (U.S.) Jan. 1, 1924
- Berne (Paris) Apr. 10, 1928
- UCC Geneva Aug. 10, 1962
- WTO Jan. 1, 1995

## ● U.K.

- Berne (Paris) Dec. 5, 1887
- Bilateral July 1, 1891
- UCC Geneva Sept. 27, 1957
- UCC Paris July 10, 1974
- WTO Jan. 1, 1995
- WCT/WIPO Mar. 14, 2010



# 1) Copyright v. Trademark

## Why Should I Care About U.S. Copyright Laws?

- **Bodog.com**
  - Based in Canada; employed people in Canada, Costa Rica; registered in Vancouver; non-U.S. Servers
  - State of Maryland prosecutors were able to obtain a warrant ordering Verisign, the company that manages the dot-com domain name registry, to redirect the website to a warning page advising that it has been seized by the U.S. Department of Homeland Security.
  - U.S. Super Jurisdiction
- **SOPA (Stop Online Piracy Act)**
  - It simply defined any domain name with a registrar or registry in the U.S. as domestic for U.S. law purposes.

# 1) Copyright v. Trademark

## Why Should I Care About U.S. Copyright Laws?

- **The Big Boys Of The Internet Are U.S. Based**
  - Google, Amazon, Facebook, Apple, Microsoft, Verisign, Twitter, Pinterest.
  - They implement internal procedures (guess which country they base their rules on?)

# 1) Copyright v. Trademark

- A copyright protects works of authorship, such as writings, music, and works of art that have been tangibly expressed.

# 1) Copyright v. Trademark

**Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:**

- Reproduce the work in copies or phonorecords.
- Prepare derivative works based upon the work.
- Distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending.

# 1) Copyright v. Trademark

- Perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works.
- Display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work.
- Perform the work publicly (in the case of sound recordings\*) by means of a digital audio transmission.

# 1) Copyright v. Trademark

## Audience Question

- When is something considered copyrighted?

# 1) Copyright v. Trademark

## Who Can Claim Copyright?

1) The copyright immediately becomes the property of the author who created the work.

2) Work for Hire: The Employer

# 1) Copyright v. Trademark

## What Can You Copyright?

Copyright protects “original works of authorship” that are fixed in a tangible form of expression. Copyrightable works include the following categories:

- 1) **literary works**
- 2) musical works, including any accompanying words
- 3) dramatic works, including any accompanying music
- 4) pantomimes and choreographic works
- 5) **pictorial, graphic, and sculptural works**
- 6) motion pictures and other audiovisual works
- 7) sound recordings
- 8) architectural works



# 1) Copyright v. Trademark

Video

# 1) Copyright v. Trademark

## What Can't You Copyright?

### 1) Non-Things

- Works that have not been fixed in a tangible form of expression.
- Improvisational speeches or performances that have not been written or recorded.

### 2) Facts

- Works consisting entirely of information that is common property and containing no original authorship.
- Calendars, height and weight charts, lists or tables taken from public documents or other common sources, recipes.

# 1) Copyright v. Trademark

## What Can't You Copyright?

### 3) Ideas, Principles, and Concepts

- A travel blog, specialized travel guide, social network.

# 1) Copyright v. Trademark

## Do You Need To File For A Copyright?

- No publication or registration or other action in the Copyright Office is required to secure copyright.
- Let me repeat: Registration is not a condition of copyright protection.
- Your work is under copyright protection the moment it is created and fixed in a tangible form that it is perceptible either directly or with the aid of a machine or device.

<http://www.copyright.gov/eco/>

# 1) Copyright v. Trademark

## Do You Need To File For A Copyright?

- No, but there are some advantages:
  - 1) Registration establishes a public record of the copyright claim.
  - 2) Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin.

# 1) Copyright v. Trademark

- 3) If made before or within five years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate (Should the certificate have been issued).
- 4) If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.

# 1) Copyright v. Trademark

## Trademark

- A **trademark** is a word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others.



# 1) Copyright v. Trademark

## **What are the benefits of federal trademark registration?**

- Public notice of your claim of ownership of the mark.
- A legal presumption of your ownership of the mark and your exclusive right to use the mark nationwide on or in connection with the goods/services listed in the registration.
- The ability to bring an action concerning the mark in federal court.
- The use of the U.S. registration as a basis to obtain registration in foreign countries.
- The right to use the federal registration symbol "®".
- Listing in the United States Patent and Trademark Office's online databases.



## 2) Fair Use

### Fair Use

- The doctrine of fair use has developed through a substantial number of court decisions over the years and has been codified in section 107 of the copyright law.
- Section 107 contains a list of the various purposes for which the reproduction of a particular work may be considered fair, such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair.

# 2) Fair Use

## Four Factors In Determining Fair Use

- 1) The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
- 2) The nature of the copyrighted work
- 3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
- 4) The effect of the use upon the potential market for, or value of, the copyrighted work.

## 2) Fair Use

1) The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes.

- **3 Sub-Factors**

1. Commercial nature or non-profit educational purposes.

2. Preamble Purposes

- Criticism
- Comment
- News reporting
- Teaching
- Scholarship
- Research

## 2) Fair Use

### 3. Degree of Transformation

- Has the material you have taken from the original work been transformed by adding new expression or meaning?
  - Parody
  - Art

## 2) Fair Use



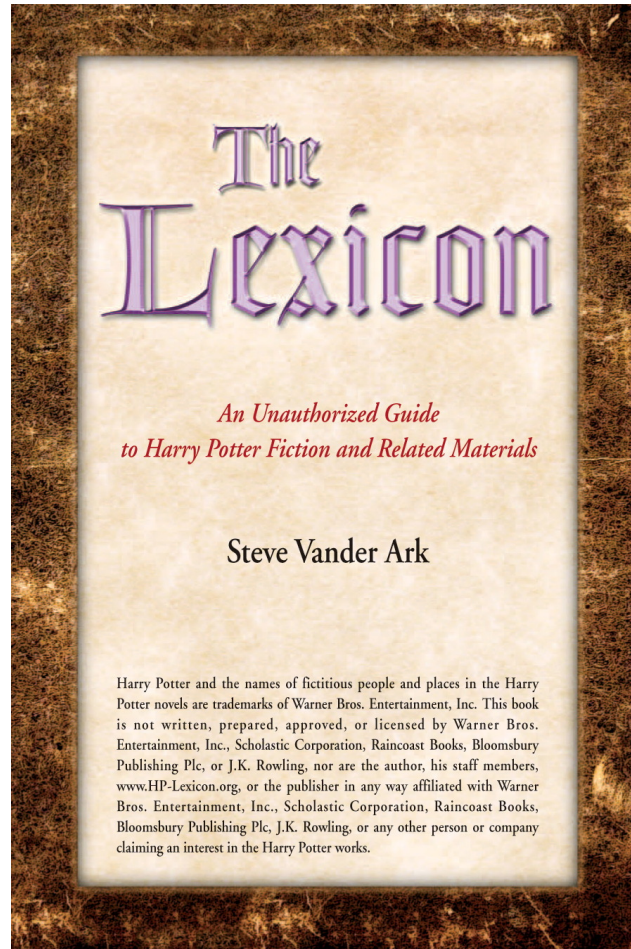
## 2) Fair Use

- Shepard Fairey was sued by the AP in 2009 for 2006 image.
- Settled out of court in (February 2012)

## 2) Fair Use



## 2) Fair Use





## 2) Fair Use

- Warner Brothers Sued RDR Books
  - *Warner Bros. Entertainment, Inc. v. RDR Books*
  - The court found that the encyclopedia was transformative in its purpose for some areas, where they added incite and other things not included in the original, but that the use was not consistently transformative, where there was simple descriptions taken from the books.

# 2) Fair Use

## 2) The nature of the copyrighted work

1. Factual Work (Biography, History, Scholarly, Technical, Scientific)?
  2. Fiction (Play, Movie)
- Courts have found that certain work is simply more deserving of copyright protection (2 over 1).

## 2) Fair Use

### 3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole

- The third factor looks at the amount and substantiality of the copying in relation to the work as a whole. Under this factor, three sub-factors are generally considered: Amount Taken, Quality of Utilized Work, Ratio of Amount Taken to Utilizing Work.
- Some Justices have looked to see that "**no more was taken than was necessary**" to achieve the purpose for which the materials were copied.

## 2) Fair Use

**4) The effect of the use upon the potential market for, or value of, the copyrighted work.**

- Whether your use deprives the copyright owner of income or undermines a new or potential market for the copyrighted work.

## 2) Fair Use

### EXAMPLE

- **Righthaven LLC v. Realty One Group, Inc. (U.S. District Court of Nevada, 10-cv-1036-LRH-PAL, October 19, 2010)**
- Michael J. Nelson (MichaelJNelson.Featuredblog.com)
  - Commercial and educational blog where he reproduced first 8 sentences of a 30 sentence news article from the Las Vegas Review Journal
    - 1) Purpose and character of Use
      - In favor of the Journal (purpose was essentially commercial)
    - 2) Nature of Work
      - In favor of Nelson (News and commentary)

## 2) Fair Use

### 3) Amount of Copyright Work Used

- In favor of Nelson (" . . . copying only as much as necessary in a greater work to provide relevant factual information . . .")

### 4) Effect on Potential Market for Copyrighted Work

- In favor of Nelson (It did not include the original author's commentary and Nelson directed readers to full text of article)

- Nelson Prevails

## 2) Fair Use

### EXAMPLE

- **HarperCollins Publishers L.L.C. v. Gawker Media LLC (U.S. District Court of New York, Southern District, 721 F. Supp. 2d 303, November 22, 2010)**
- Gawker published 21 full pages from *America By Heart*
  - 1) Purpose and Character of the Use
    - Gawker did not help create something new but merely reproduced material (No commentary or discussion, and commercial purpose)
    - In favor of Palin
  - 2) Nature of Work
    - In favor of Palin (Work by author, not factual work )

## 2) Fair Use

### 3) Amount of Copyright Work Used

- In favor of Palin (21 pages of book)

### 4) Effect on Potential Market for Copyrighted Work

- Who knows? It's unpublished. It's a wash.

- Palin Prevails





## 2) Fair Use

### Audience Question

- **Who would have won: Fairey or AP? (Slide 25)**

## 2) Fair Use

### **Is a Citation Sufficient?**

- Some people mistakenly believe it's permissible to use a work (or portion of it) if an acknowledgment is provided (name of photographer).
- This is not true. Acknowledgment of the source material may be a consideration in a fair use determination, but it will not protect against a claim of infringement.

## 2) Fair Use

### **Digital Millennium Copyright Act**

- The Digital Millennium Copyright Act (1998) makes ISPs liable if they don't take down infringing work.
- They will likely err on the side of safety and take work down more often than not.

# 2) Fair Use

## Removing Content From Google

This tool will guide you through the process of reporting content that you believe warrants removal from Google's services based on applicable laws. Completing this form will help ensure that we have all of the information necessary to investigate your specific inquiry and resolve it as quickly as possible.

If you have a specific legal issue concerning YouTube, please visit [this link](#) for further information. Please do not use this tool to report issues that relate to YouTube.

What Google product does your request relate to?

- AdSense
- AdWords
- Google Play
- Blogger/Blogspot
- Google+
- Gmail
- Google Music
- Image Search
- Orkut
- Picasa
- Web Search
- YouTube
- See more products

# 2) Fair Use

facebook



Search



## Report Unauthorized Content

All fields are required in order for us to process your report. Please be aware that we reserve the right to reject reports that are incomplete or incorrect. Please submit an instance of unauthorized content that you would like us to review.

Your full name

Your postal address

(Address, City,  
State/Province)

Your country of residence

Your telephone number

Your email address

Where does the  
unauthorized content  
appear on Facebook?

(Include the exact URL (ex:  
<https://www.facebook.com/>))

Please cite the law that  
the posting of this  
content is in violation of

By submitting this notice, you declare that all of the information contained in this notice is accurate and that the posting of the content described above, in the manner you have complained of, is not authorized by this law.

Select one

Agree

Disagree

Send

## 2) Fair Use

### **"Facebook Closes Pages Because Of False Copyright Infringement Claims" (April, 2011)**

Tech site, Redmond Pie, has been plagued by repeated takedowns where its page would be replaced by a fake page. This fake page offered free iPads, damaging the real Redmond Pie's credibility, and causing it to lose its 70,000 fans. Though the site sent Facebook legal documentation of its intellectual property, Facebook replied with the following:

## 2) Fair Use

While we appreciate your concerns, unfortunately, as we hope you can understand, we are not in a position to adjudicate disputes between third parties. When we receive an allegation of trademark infringement, or a suitable report of a violation of our Statement of Rights and Responsibilities, our procedures require that we take action appropriate to the report. If you believe these reports are not being made in good faith or are inaccurate, we suggest you or your legal counsel contact the complaining party to discuss this further. If the reporting party withdraws their complaint or you prevail in court, we would be happy to follow up about restoring the removed material.

[http://www.huffingtonpost.com/2011/04/28/facebook-pages-copyright-infringement-claims\\_n\\_855029.html](http://www.huffingtonpost.com/2011/04/28/facebook-pages-copyright-infringement-claims_n_855029.html)

# 2) Fair Use

## Who Reports The Most?

### Copyright Owners ?

Past Week | Past Month | Past Year | All Available

Copyright Owner	Reporting Organizations	Specified Domains	URLs
Microsoft Corporation	5	24,395	2,794,166
NBCUNIVERSAL	1	15,994	1,123,590
RIAA member companies (EMI Music North America, Sony Mu...	1	6,882	468,727
BPI (British Recorded Music Industry) Ltd	1	88	418,892
Froytal Services Ltd	1	865	372,460
Marketly llc	1	5,137	258,545
Universal Music Ltd	2	239	200,527
SONY MUSIC ENTERTAINMENT	2	153	186,883
RK NetMedia Inc.	1	2,067	179,239
BangBros.com Inc.	1	2,171	178,945
Summit	1	6,239	148,470
Warner Music Group	3	160	101,618
Evil Angel	1	422	90,024
Universal Music Group	1	102	84,607
Lionsgate	2	4,633	84,453
TheEsa	1	4,153	78,084
XFC Inc.	2	1,159	77,046
Elegant Angel	1	154	67,487
Lynda.com	1	903	66,540
Proxy Media Limited	1	494	63,420



# 2) Fair Use

## Best Practices for Photos

- 1) **Create an original image if/when possible.**
- 2) **Permission**
  - Explicit
    - Contact via WHOIS (<http://www.networksolutions.com/whois/index.jsp>)
  - Implicit
    - Creative Commons?

# 2) Fair Use

## Best Practices

- 3) Sign up for a quality image service

## 2) Fair Use



## 2) Fair Use

### Free and/or Licensed Image Sites

- 1) <http://www.publicdomainpictures.net/>
- 2) <http://www.freefoto.com/index.jsp>
- 3) <http://www.gettyimages.com/creativeimages/royaltyfree>
- 4) <http://www.morguefile.com/>
- 5) [http://en.wikipedia.org/wiki/Wikipedia:Public\\_domain\\_image\\_resources](http://en.wikipedia.org/wiki/Wikipedia:Public_domain_image_resources)
- 6) <http://sxc.hu/>
- 7) <http://www.freedigitalphotos.net/>
- 8) <http://www.bigfoto.com/>

# 2) Fair Use

**Real World Examples for Photo Attributions**

## 2) Fair Use

### Gawker

(Update: Hourihan's resignation from Blogger was separate from the company's layoff of all staff; we originally said they were connected and have updated our wording. We also corrected the size of Twitter's September investment to \$100 million from \$50 million as news accounts had initially reported.)

*[Top photo of Williams and Costolo at an advertising panel in San Francisco via Getty Images; image of Costolo alone by Jolie O'Dell/Flickr; photo of Williams at SXSW by Steve Hall/Flickr; Williams in the living room of Pyra/Blogger co-founder Meg Hourihan in the early days, by Meg Hourihan]*

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Contact Ryan Tate:

 [EMAIL THE AUTHOR](#)  [COMMENT](#)  [TWITTER](#)

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## 2) Fair Use

### Mashable

In the Associated Press/ MTV study, about half of those involved in sexting said they felt pressured to do so. And another study by the Education Development Center found that high school students who sext are more likely to be depressed.

But so far the only correlations to be established for adult sexting are risks of unfavorable publicity, embarrassment and unintended recipients.

Lookout, the mobile security company that commissioned the survey, offered these tips for avoiding all of these situations: turn off text message push notifications, set a passcode on your phone and download an app (conveniently, one like theirs) that allows you to remotely wipe your photos and contacts.

*Image courtesy of Flickr, JPott*

 Print Story  Email Story  Reprints

## 2) Fair Use

### Matador

# Does your writing suck: Plight writing and travel 'porn'

by DAVID MILLER on JUNE 7, 2012 · 13 COMMENTS



'Tropical environment' + girl's ass - any real context = another formula for travel porn. Image by [Justin Ornellas](#)



## 2) Fair Use

### Best Practices for Text

- 1) Consider how much of original text you are using, and avoid over-quoting.
- 2) Make it clear you're quoting (block quote, coloring, quotation marks, preface in text, link in text, follow-up link after post).
- 3) Consider context: Only quoting source material as a whole or for the purpose of commentary/reporting?

# 2) Fair Use

## Takeways

- 1) Ignorance of the Law does not make one exempt from compliance.
- 2) Understand Fair Use and use it conservatively (limit quotation, consider transformative use, consider economic impact)
- 3) Give Credit Where Credit is Due.
- 4) Make it easy for others to do the same.

Contact information readily available.

- Dictate what copyright protection you want on Flickr, Picasa, YouTube and your site.

## 3) FTC

### **"Guidelines Concerning The Use of Endorsements and Testimonials in Advertising"**

#### **§ 255.5 Disclosure of material connections.**

- December 1, 2009 (The Guides were last updated in 1980 - 16 CFR Part 255 (Code of Fed Regulations))
- The revised Guides specify that when there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience), such connection must be fully disclosed.

## 3) FTC

- Penalties for noncompliance can range from a written warning and request to provide full disclosure to the maximum of an \$11,000 civil fine (per incident).

# 3) FTC

## Guidelines Concerning The Use of Endorsements and Testimonials in Advertising

- 1) If you receive money or any sort of exchange, ***including a free product, even if unsolicited***, you must disclose this in the endorsement somewhere.
- 2) You can't disclose it after the fact. It needs to live with the endorsement.
- 3) Writing about it, positively or negatively, does not matter. You are effectively an endorser and need to disclose this "quid pro quo".

## 3) FTC

**4)** If you are endorsing something, you must be a bona fide user of the product at the time the endorsement is given.

**5)** What about a page on one's blog with bulk disclosures of all clients and potential interests? The rules are fairly clear and best practices require that the disclosure live along with the content.

# 3) FTC

## FTC Published Example

- A college student who has earned a reputation as a video game expert maintains a personal weblog or “blog” where he posts entries about his gaming experiences.
- The manufacturer of a newly released video game system sends the student a free copy of the system and asks him to write about it on his blog.

## 3) FTC

### What Should The Blogger Do?

- The blogger should clearly and conspicuously disclose that he received the gaming system free of charge.
- The manufacturer should advise him at the time it provides the gaming system that this connection should be disclosed, and it should have procedures in place to try to monitor his postings for compliance.





# 3) FTC

## THE BLOG OF **TIM FERRISS**

EXPERIMENTS IN LIFESTYLE DESIGN

Search  Search




Home | Bio | The Book | Resources | Gear | Disclosures | Contact

[7 Reasons to Subscribe](#) | Subscribe via: ( [Email](#) / [RSS](#) )

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### Disclosure – The Full Monty

 Like 105

This blog is not primarily financially driven. I put it up in 2007 to build a community and learn from all you smart people.

That said, beginning December 1, 2009, the [FTC requires bloggers](#) to provide disclosures whenever there could be hidden interests or unspoken biases related to recommendations.

**First, the obvious:** I am a tech investor and advisor. Here are [some of the start-ups](#) I work with.

**Second, the less obvious:** Per the FTC rules, if I interview someone and they grab the bill for lunch, I would need to specify this. Ditto if I use an Amazon link that gets me 8 cents instead of an Amazon link that gets me 0 cents. If someone gives me a comfy t-shirt with a logo and I wear it in a photo, same deal. Disclaimers all over the place.

This would be tedious for me and a continual eye sore for readers. But rules is rules.

To cover my ass and preserve your reading experience, please assume that, for every recommendation, link, and product I use, the following all hold true:

#### DOUBLE YOUR FAT LOSS & Increase Energy!

Discover how to feel SUPERHUMAN in just 30 days!

[YES! SHOW ME HOW >](#)

#### Most Popular

[Current Hits](#) | [All Time](#) | [Tim's Faves](#) | [Lifestyle 101](#)

[Cold Remedy: 18 Real-World Lifestyle Design Case Studies \(Now It's Your Turn\)](#)

<http://www.fourhourworkweek.com/blog/ftc-disclosure-blog/>

# 3) FTC

## Audience Question

- Is Tim Ferris in Compliance?

## 3) FTC

### **Actual Actions**

#### **Ann Taylor**

- In January, 2010, Ann Taylor Loft invited 31 bloggers to see the new summer clothing line. The bloggers were encouraged to write about the new clothing, then submit their content to a public relations person in order to win a gift card. The value of the gift card was not revealed until after the submission. The note said:

# 3) FTC

"Come take a sneak peak at LOFT's summer 2010 collection before anyone else! ... Bloggers who attend will receive a special gift, and those who post coverage from the event will be entered in a mystery gift card drawing where you can win up to \$500 at LOFT!"



save the date

LOFT SUMMER 2010  
EXCLUSIVE BLOGGER PREVIEW!

TUESDAY  
JANUARY 26, 2010  
4pm TO 5pm

INDUSTRIA SUPER STUDIO  
356 WEST 12<sup>TH</sup> STREET  
AT WASHINGTON STREET

COME TAKE A SNEAK PEAK AT LOFT'S  
SUMMER 2010 COLLECTION BEFORE  
ANYONE ELSE! BLOGGERS WHO  
ATTEND WILL RECEIVE A SPECIAL GIFT  
AND THOSE WHO POST COVERAGE  
FROM THE EVENT WILL BE ENTERED IN  
A MYSTERY GIFT CARD DRAWING WHERE  
YOU CAN WIN UP TO \$500 AT LOFT!

RSVP  
@LOFTONLINE.COM

LOFT

PLEASE NOTE ALL BLOGGERS MUST POST COVERAGE FROM OUR EVENT TO THEIR BLOG WITHIN 24 HOURS IN ORDER TO BE ELIGIBLE. LINKS TO POSTS MUST BE SENT TO MEDIA@LOFTONLINE.COM ALONG WITH THE CODE ON THE BACK OF YOUR GIFT CARD. DISTRIBUTED TO YOU AT THE EVENT. YOU WILL BE NOTIFIED OF YOUR GIFT CARD AMOUNT BY FEBRUARY 2ND, 2010. GIFT CARD AMOUNTS WILL VARY FROM \$50 TO \$500.

# 3) FTC



Division of Advertising Practices

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

April 20, 2010

**VIA ELECTRONIC MAIL AND FEDERAL EXPRESS**

Kenneth A. Plevan, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036-6522

Re: *AnnTaylor Stores Corp.*, File No. 102-3147

Dear Mr. Plevan:

As you know, the staff of the Federal Trade Commission's Division of Advertising Practices has conducted an investigation into whether your client, AnnTaylor Stores Corporation, violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, in connection with providing gifts to bloggers who the company expected would post blog content about the company's LOFT division. Our inquiry focused particularly on LOFT's provision of gifts to bloggers who attended previews of LOFT's Summer 2010 collection. We were concerned that bloggers who attended a preview on January 26, 2010 failed to disclose that they received gifts for posting blog content about that event. Section 5 of the FTC Act requires the disclosure of a material connection between an advertiser and an endorser when such a relationship is not otherwise apparent from the context of the communication that contains the endorsement. Depending on the circumstances, an advertiser's provision of a gift to a blogger for posting blog content about an event could constitute a material connection that is not reasonably expected by readers of the blog.

## 3) FTC

"Upon careful review of this matter, we have determined not to recommend enforcement action at this time. We considered a number of factors in reaching this decision.

First, according to LOFT, the January 26,2010 preview was the first (and, to date, only) such preview event.

Second, only a very small number of bloggers posted content about the preview, and several of those bloggers disclosed that LOFT had provided them gifts at the preview."

# 3) FTC

## Reverb Communications

- Reverb had several clients who published games in Apple's App Store. Reverb employees were found to have written positive reviews by the FTC.

# 3) FTC

0923199

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**     **Jon Leibowitz, Chairman**  
                              **William E. Kovacic**  
                              **J. Thomas Rosch**  
                              **Edith Ramirez**  
                              **Julie Brill**

\_\_\_\_\_) )  
**In the Matter of** ) )  
                              ) )     **DOCKET NO. C- \_\_\_\_**  
**REVERB COMMUNICATIONS, INC.,** ) )  
          **a corporation, and** ) )  
                              ) )  
**TRACIE SNITKER,** ) )  
          **individually and** ) )  
          **as an officer and director** ) )  
          **of the corporation.** ) )  
\_\_\_\_\_) )

**COMPLAINT**

The Federal Trade Commission, having reason to believe that Reverb Communications Inc., a corporation, and Tracie Snitker, an officer and director of the corporation (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Reverb Communications, Inc. (“Reverb”) is a California corporation with its principal office or place of business at 18711 Tiffeni Drive, Twain Harte, CA 95383.
2. Respondent Tracie Snitker is the 100% owner and the only officer and director of Reverb. At all times relevant to this complaint, Tracie Snitker, individually or in concert with others, formulated, directed, controlled, or participated in the acts or practices of the corporation, including the acts or practices alleged in this complaint.
3. The acts and practices of respondents, as alleged herein, have been in or affecting



## 3) FTC

- Under the proposed settlement order, Reverb were required to remove any previously posted endorsements.

# 3) FTC

## Best Practices

- 1) If you can seamlessly disclose within the text (e.g., “Company A sent me this widget to try,” “I received a complimentary or reduced-cost stay at Hotel XYZ”).
- 2) Do not just use a bulk disclosure page.
- 3) Apply these rules to social media.
  - #sp, #spon, #ad

# 3) FTC



# 3) FTC

## Takeaways

- There is nothing wrong with being compensated to endorse, promote, advertise or share information about a brand, service or product.
- If you're forthright and honest with your readers and viewers, they're more likely to continue the relationship.
- Be up-front, clear and straightforward, and anticipate defenses if you were cited by the FTC.
- Advise bloggers to disclose and monitor compliance.

# Questions

## **Dustin Main (TooManyAdapters.com)**

- Do Canadian bloggers (and all of those from outside the USA) have to worry about the American laws at all? If so which circumstances?

## **Leslie Koch (DowntownTraveler.com)**

- Do I need to worry about copywriting the name of my site? :)

# Questions

## Helpful Links

1. U.S. Copyright Office  
<http://www.copyright.gov/>
2. International Treaties Regarding Copyright  
<http://www.copyright.gov/circs/circ38a.pdf>
3. Stanford University Copyright Overview  
[http://fairuse.stanford.edu/Copyright\\_and\\_Fair\\_Use\\_Overview/chapter9/index.html](http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/index.html)
4. How to Send a DMCA Takedown Notice  
<http://rising.blackstar.com/how-to-send-a-dmca-takedown-notice.html>
5. Google Transparency Report  
<http://www.google.com/transparencyreport/>
6. FTC Press Release Regarding Rule Changes  
<http://www.ftc.gov/opa/2009/10/endortest.shtm>

# Questions

## Helpful Links

7. Federal Registrar: Guides Concerning the Use of Endorsements and Testimonials in Advertising

<http://www.ftc.gov/os/2009/10/091005endorsementguidesfnnotice.pdf>)

8. Sweepstakes & Contest Rules for Bloggers (and Brands)

<http://www.stephanieschwab.com/2012/01/24/sweepstakes-contest-rules-for-bloggers/>