

Internet Waves – November 2000

By

Shirley Duglin Kennedy

Like so many crisis situations, this one started out innocently enough. An e-mail arrived in the Webmaster's inbox from a local Net entrepreneur who was in the process of setting up a site that would feature – as I understood it – classified ads for vehicles in streaming video format. In an effort to add content – and perhaps, legitimacy – to his venture, he was including a page of links to local government agencies. He had, he said, already "swiped" the City logos from two nearby municipalities' Web sites to use on his pages, but he couldn't find a Clearwater logo on our site, and could I please send him one via e-mail.

Can. Worms.

Since we have pretty clear-cut guidelines in our City Charter about use of the City seal and logo which basically nix any sort of commercial display, I send back a reply to this fellow telling him that he could not use our logo. In response, I received an insult-laden e-mail filled with all sorts of dire, empty threats. I forwarded this digital hot potato to the City Attorney's office. Interestingly, this person had already spammed them with his complaints, exaggerating his ire by ranting that I had told him he could not link to our site...an obvious fiction, which even a quick read of my initial reply to him made perfectly clear. No, you cannot use our logo but you are free to link to our Web site. This does not, however, obligate us to link to you.

At any rate, the City Attorney's paralegal wrote back to this individual, telling him more or less the same things I'd already told him. Blessedly, we did not hear from him again. End of story?

Uh, no.

The Webmaster -- having done a bit of research, seeing that the can was half open and realizing the worms were beginning to slither out -- sent an e-mail to the City Attorney, suggesting that perhaps it was time to develop some written guidelines about links on the City Web site. The court case that sounded this particular wake-up call was:

The Putnam Pit, Inc.; Geoffrey Davidian,
Plaintiffs-Appellants,

v.

City of Cookeville, Tennessee; Jim Shipley,
Defendants-Appellees.

ELECTRONIC CITATION: 2000 FED App. 0235P (6th Cir.)
File Name: 00a0235p.06
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

<http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=6th&navby=case&no=00a0235p>

The Putnam Pit (<http://www.putnampit.com/>) is an alternative newspaper which proclaims itself to be "Putnam County's watchdog press." Its editor, Geoffrey Davidian, has a long history of bedeviling local public officials; in the appellate court opinion, he is described as is described in the appellate court opinion as a "self-appointed eye on government corruption for the City of Cookeville" who makes frequent and numerous document requests of the city and has repeatedly sued the city.

This particular case hinged on two issues: Davidian's request for a copy of computer files containing information about outstanding parking tickets, and his request for a link from the city's Web site to his own. The city provided Davidian with the info about the parking tickets in hard copy rather than electronic format, and it denied him a link on its Web site. He sued, according to a summary provided by the Georgia Municipal Association (<http://www.gmanet.com/>), "for violations of the First Amendment, his Fourteenth Amendment rights of due process and equal protection, and a variety of state law claims."

Whereupon, the GMA summary continues, "The city removed the action to federal court and the district court granted the city's motion for summary judgment on the federal claims and dismissed the state law claims without prejudice." Davidian appealed.

The Sixth Circuit affirmed the district court's judgment regarding the parking ticket information, opining that the First Amendment doesn't guarantee access to information in a particular specified format. In other words, the hard copy was good enough and Davidian's rights were not violated because he was not provided the information in digital format. However, the GMA summary explains, the appeals court "reversed and remanded with respect to the First Amendment claim concerning the city's web site."

The court determined that the city's website was a nonpublic forum for the purpose of First Amendment analysis but found that the city's policy on allowing links from the city's website was not viewpoint neutral. Prior to Davidian's request for link from the city site to his own, the city had allowed several for-profit and non-profit entities to have a link, including a local technical college, two Internet service providers, a law firm, a local computer club, a truck product manufacturer and a site with information about the city. After Davidian's request, the city changed its policy to limit links from the city's web page to non-profit organizations. The city admitted, however, that even if The Putnam Pit was a non-profit, Davidian still would not get a link. The city then changed its policy to allow only links from the city web site to sites that would promote the economic welfare, tourism, and industry of the city. While the court found that the city had rational and legitimate reasons for limiting the number of links from the city web pages, the court found that the city's implementation of this policy suggested impermissible viewpoint discrimination. For this reason, the court remanded to the district court for further proceedings to determine if Davidian's First Amendment rights were violated by the city's denial of a hypertext link.

-- Georgia Municipal Association
(<http://209.213.106.40/gma/legal/details.cfm/1281>)

Folks, IANAL (I Am Not A Lawyer), but if you run a Web site for a public entity — a government agency, a city or county library system or even maybe a public school or university — you need to pay attention to this case and think about developing a written policy for linking if you don't already have one. The initial reaction of our City Attorney's

Office was, "Well, can't we just say something like 'We don't link to any commercial sites...just non-profits?'"

Uh, no.

For one thing, the Clearwater Public Library System maintains a local Internet directory (<http://www.clearwater-fl.com/cpl/locint.html>) that links to local media outlets and tourist attractions that are very definitely commercial entities. The library also provides an extensive Internet reference directory (<http://www.clearwater-fl.com/cpl/refdesk.html>) that links to all sorts of sites that the reference staff has judged to have worthwhile content, and some of these are, indeed, commercial sites.

In addition, I keep a page of "recommended links" – sites suggested by various city departments – to which I add virtually anything a particular department thinks is useful (<http://www.clearwater-fl.com/links.html>). Just about all of these links are to government agencies, professional associations and the like, but there are a few commercial sites mixed in there.

The only disclaimer we've been carrying on our Web site till now is this one (<http://www.clearwater-fl.com/about.html#3>):

The appearance of a link on this web site to a business or commercial site does not constitute an endorsement by the City of Clearwater.

Well, the City Attorney's Office has agreed that we need something more comprehensive, and one of the paralegals has been prowling the Web sites of other municipalities to see what's out there. She found one at City of Camarillo, California's site that she thinks looks pretty good (<http://www.ci.camarillo.ca.us/govt/legal.html>) – particularly the paragraph about linking to "third party sites:"

The links included within the City of Camarillo's web pages may let you leave the City of Camarillo's web site (linked sites). Links are limited to those that meet our governmental purpose. The linked sites are not under the control of the City of Camarillo and the City of Camarillo is not responsible for the contents of any linked site or any link contained in a linked site, or any changes or updates to such sites. The City of Camarillo is not responsible for webcasting or any other form of transmission received from any linked site. The City of Camarillo is providing these links only as a convenience, and the inclusion of any link does not imply endorsement by the City of Camarillo or any association with their operators.

I also explored this issue on the Web4Lib discussion list (<http://sunsite.berkeley.edu/Web4Lib/>), asking if anyone had written policies about linking that they would be willing to share. Shelley Voie, Document Management Services Librarian at Boeing replied that she had been collecting linking policies and shared the relevant URLs (<http://sunsite.berkeley.edu/Web4Lib/archive/0008/0194.html>).

Meanwhile, linking issues are also hot news in the wider world beyond libraries and the public sector. Brad Templeton, who founded the ClariNet news service in 1989 -- essentially the first "dotcom" company on the Internet, writes:

I, and many other people initially had the intuitive feeling that it could never be a violation of copyright to make a link to a web page. Of late, I've come to think that this might be wrong in some cases, when you've been ordered not to.

-- Linking Rights (<http://www.templetons.com/brad/linkright.html>)

In a September 7 New York Times column, *Assessing Linking Liability* (<http://www.nytimes.com/2000/09/07/technology/08CYBERLAW.html>), Times legal analyst Carl S. Kaplan discussed the implications of the previous month's court case forbidding not only Web publication of a controversial piece of software that facilitates the decoding of DVDs, but also disallowing links to remote sites where the software could be found. According to the district court judge behind the ruling, Kaplan said, "a link can be bad or good. It mainly turns on whether the linker's intent is laudable or not."

And in August, ZDNet's *Inter@ctive Week* reported on a case in which "A small California company has run afoul of evolving securities regulations because a Web site posted a notice of its initial public offering...without telling the company or any of its underwriters." (<http://www4.zdnet.com/intweek/stories/news/0,4164,2609687,00.html>).

On and on it goes, in our notoriously litigious society. Obviously if you're responsible for a Web site or any portion thereof, you need to have more than a passing familiarity with this stuff. May I recommend:

- BitLaw: *Linking and Liability* (<http://www.bitlaw.com/internet/linking.html>) -- "Links between content on the Internet are ubiquitous, and no doubt will remain so. Nevertheless, there are questions about the legality... This portion of BitLaw explains the mechanics of linking and situations in which links may cause legal problems..."
- Libel Defense Resource Center: *Link Law: The Emerging Law of Internet Hyperlinks* (<http://www.ldrc.com/cyber2.html>) -- Comprehensive overview of legal issues related to Internet linking by the Libel Defense Resource Center, a non-profit information clearinghouse that monitors and promotes First Amendment rights in libel, privacy and related fields of law.
- LLRX.com: *Thinking About Linking* (<http://www.llrx.com/features/weblink1.htm>) -- "This article examines the relationship of linking to copyright law, and argues that rules of law governing the practice should recognize that Internet technology provides an unprecedented ability to share information."
- Perkins Coie: *Internet Case Digest: Linking* (http://www.perkinscoie.com/casedigest/icd_results.cfm?search=linking) -- Summaries, with pointers to relevant articles, of court cases dealing with Internet linking issues.
- The Link Controversy Page (<http://www.jura.uni-tuebingen.de/~s-bes1/lcp.html>) -- Intended to provide an overview of the legal problems of using hyperlinks, inline images and frames in the WWW. Right now, this page covers problems in the area of copyright, trademark, trespass law as well as unfair competition law.

Sign o' the times... The 4th edition of O'Reilly and Associates HTML book by Chuck Musciano and Bill Kennedy just came out, and it has a new name. The three previous editions were called *HTML: The Definitive Guide*. This one is called *HTML & XHTML: The Definitive Guide* (\$34.95; ISBN 0-596-00026-X). Okay...so what the heck is XHTML? According to the authors, "XHTML is HTML 4.0 rewritten in XML; it provides the precision of XML while retaining the flexibility of HTML." Musciano explains this further in "XHTML: Bridging HTML & XML," an article on O'Reilly's Web site (http://web.oreilly.com/news/xhtml_0700.html).

Also just out from O'Reilly, for you open source fans, the 3rd edition of *Linux in a Nutshell* by Ellen Siever, Stephen Spainhour, Stephen Figgins and Jessica P. Hekman (\$34.95; ISBN

0-596-00025-1). See Siever's "Top Ten Tips for Linux Users" at http://linux.oreilly.com/news/linuxnut_0800.html.

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*Shirl Kennedy, a librarian by training, is by trade Webmaster for the City of Clearwater, Florida. Her e-mail address is **sdk@reporters.net**.*