

Tapping into the Technology Wave

CAPLAW 2010 National Training Conference

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Savannah, GA

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The Social Media Road Map

present by Sherry Heyl



Agenda



- Social Media On-Ramp
- Social Media Check-List
- Social Media Milestones

Trick Question

Who's in the Driver's Seat?



Social Media Nuptials



Social Media is a Team Sport



Social Media Traffic



Social Media



Who Are Your Ambassadors?



What Creative Assets Are Available?



Where are Conversations Already Happening?



Aligning Goals



Social Media Milestones

- Increased number of impressions
- Ability to get information to prospects where they are asking for relevant information
- Increased access to information
- Increased ability for people to share information



The Tool Box



airbrush album apricot apt architecture art australia baby cartoon beach
best of birthday best blue broadcast bus buses busby california
cameraphone camera canada canoe car car cat car chicago china
christmas christmas city club club classic club of club the original european
family family of family flower flowers food france friends for
gender german germany go go go green gutierrez hair hair holiday home
homework home house hula hula hula japan in in in in in in in in in in
london london london london london london london london london london
music nature new new york new york new york new york new york
park park park party people people people people people people
sanfrancisco san francisco san francisco san francisco san francisco
summer the summer the summer the summer the summer the summer
your trip to your trip to your trip to your trip to your trip to your trip to

Thank You

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2010 CAPLAW Annual Training Conference

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Agenda

- Tax Issues
- Fundraising
- Political Activity and Lobbying



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Tax Issues

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For-Profit Activity – Unrelated Business Income Tax

- UBIT: tax on (c)(3)'s income from regularly carried on trade or businesses not substantially related to its exempt purposes
- Report unrelated business income of over \$1,000 per year
 - To report, file IRS Form 990-T
- Tax on gross income, minus allowable deductions
- Too much unrelated business activity can lead to loss of exempt status

UBIT Requirements

- Trade or business
 - Sale of goods/services to produce income
- Regularly carried on
 - For as often and as long as if operated by non-exempt org. and in way non-exempt org. would carry on
 - Annual event exception
- Not substantially related to exempt purposes
 - To be related, must make important non-financial contribution to 501(c)(3)'s exempt programs
 - Not related just because generates funds that support exempt activities

Advertising

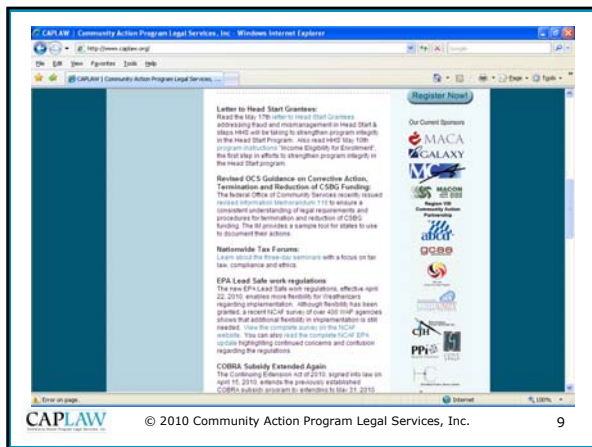
- Payments received for advertising=UBI
- IRS View: As its position on web advertising develops, the IRS anticipates that the position will remain consistent with its position as to advertising in the off-line world. (2000 EO CPE Text)
- Characteristics of advertisements include:
 - Comparative or qualitative language
 - Price, savings or value information
 - Endorsements
 - Inducement to buy

Advertising v. Corporate Sponsorship

- Soliciting and receiving qualified corporate sponsorship ≠ UBI
- A "qualified sponsorship payment" is a payment in exchange for which the corporate sponsor neither gets nor expects any return benefit other than:
 - Goods or services, or other benefits, the total value of which does not exceed two percent of the sponsorship payment; or
 - Recognition, i.e., use or acknowledgment of the sponsor's name, logo, or product lines in connection with the nonprofit's activities

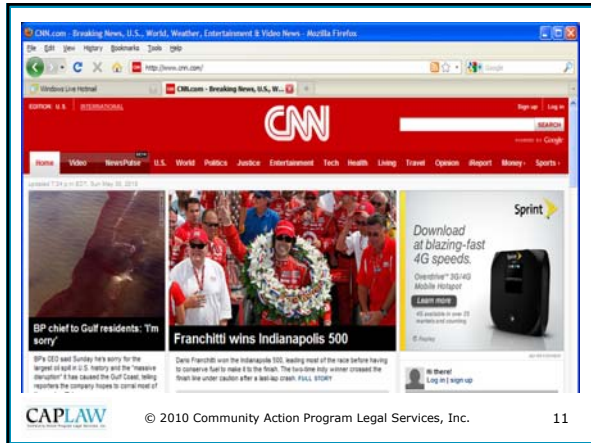
Corporate Sponsorship Website Acknowledgement

- Mere presence of a banner or web link to a corporate sponsor's website does not constitute taxable advertising as long as the restrictions for sponsorship acknowledgment are followed
 - Must not contain language or link to a webpage that endorses or induces site visitors to purchase, sell or use product services
- 26 C.F.R. 1.509(a)-3(f) (1), (3)



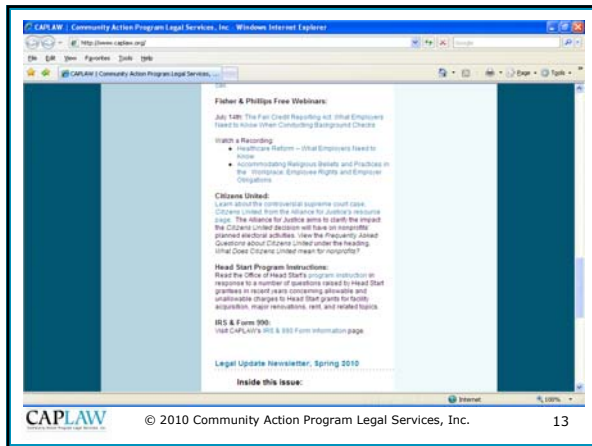
Banners

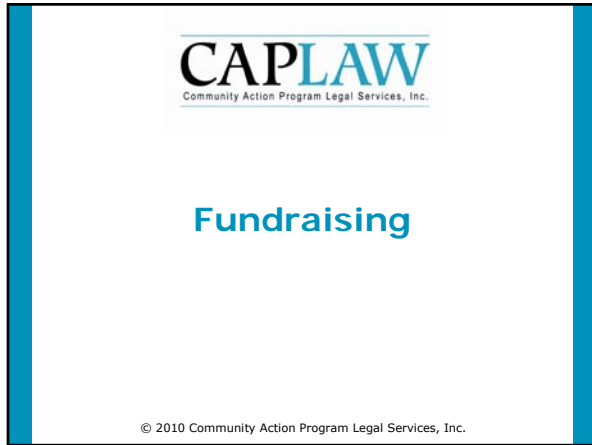
- A name for a graphic advertisement, usually a moving image measured in pixels
- IRS View: A moving banner is probably more likely to be classified as an advertisement (2000 EO CPE Text)
- Fees based on "pay-per-view" or "pay-per-click" measures are also likely to be characterized as advertisements



Links

- Chain of information:
 - Usually underlined and in a distinctive color
 - If clicked on, takes user to another place in same document, another page in same website or another site somewhere else on the Internet
- Affiliation through links
 - "When an organization establishes a link to another web site, the organization is responsible for the consequences of establishing and maintaining that link, even if the organization does not have control over the content of the linked site." IRS Rev. Rul. 2007-41
 - To avoid risks of UBI, organizations must monitor links





Internet Fundraising: PROS

- Increased and diversified access
- Cost-effective
- Possibly reach those with higher disposable incomes
- Establishes organization’s progressiveness

Internet Fundraising: CONS

- The Internet is a crowded place
- Need to be sufficiently technically savvy
- Legal complexities exist
- Reliable success always requires understanding and effort
- May have to register as a charitable organization in multiple states

Some Internet Fundraising Options

- "Donate Now" webpage
- On-line auction
- Cause marketing
- Email solicitations

"Donate Now" Webpage

- Make sure you have a secure site
- Implement a privacy policy
- What does the CAA do with the information received?
- Be aware of data security issues
 - Check state laws
 - Keep data collected secure

Email Solicitations

- Maybe regulated by CAN-SPAM Act
 - Does not include a nonprofit's request for donations, unless the nonprofit offers significant incentives to donate
- CAN-SPAM Act applies to nonprofits when sending e-mails with commercial content including
 - Advertising or promoting a commercial product or service
 - Promoting events such as conferences where admission is charged
- Check state laws regarding fundraising registration

Email Solicitations

- If you think an e-mail may be subject to CAN-SPAM, do the following:
 - Accurately identify the person or business who initiated the message in the "From" line
 - Use accurate subject lines
 - Give clear and conspicuous notice that the e-mail is an advertisement or solicitation
 - Provide sender's valid physical postal address
 - Provide a clear and conspicuous explanation of how recipients can opt out of future e-mails
 - Honor opt-out requests within 10 business days

Registration for Online Solicitation

- Guidelines set out by National Association of State Charity Officials (NASCO)
 - 2001 Charleston Principles are not controlling law, must check your state laws, <http://www.nasconet.org/Charleston%20Principles%2C%20Final.pdf>,
 - NASCO, www.nasconet.org
- Distinction between charities domiciled within a state and domiciled outside a state
 - Domiciled = principal place of business is in that state

Online Solicitation: Advisory Guidelines

- If domiciled within state, an org is advised to register if it uses the Internet to conduct charitable solicitations
 - Applies regardless of the online solicitation methods being passive or interactive



Online Solicitation: Advisory Guidelines

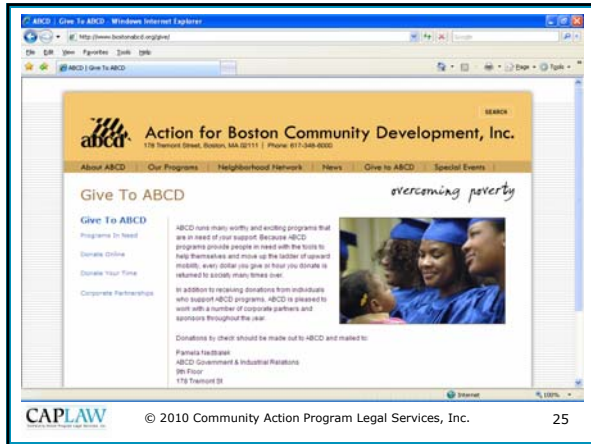
- If not domiciled in state, advised to register if:
 - Non-Internet activities sufficient
 - Ex: Letters, phone calls, etc.
 - Donors can make contributions entirely online, and the org either:
 - Targets people located in the state, or
 - Receives contributions from state on repeated and ongoing basis or substantial basis through website
 - Org invites offline activity or establishes other contacts when contributions solicited on a non-interactive site
 - Ex: e-mail messages promoting site



Registration for Online Solicitation

- Every org soliciting donations online need not register in multiple states
 - Often, purely local orgs focusing on local fundraising are not required to register in other states even if receive contributions from those states
- Check state laws:
 - May have volume and \$ amount benchmarks
- www.multistatefiling.org offers information on registration laws in every state







On-line Auctions

- Many organizations use outside service providers
 - Larger auction audiences
 - Avoid credit card fraud problems
- To avoid UBIT implications:
 - Regularly carried on?
 - Donations exception?
 - Is auction continually controlled by organization if using outside vendor to conduct it?
 - State UBIT issues?
- Check state sales tax issues
- Check state auctioneer laws – may need to be licensed

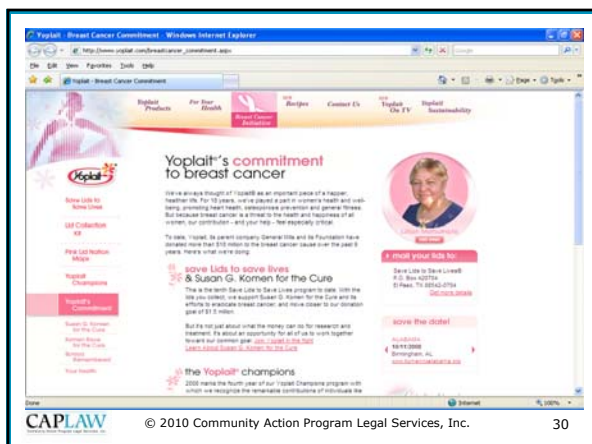
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Cause Marketing

- Generally, a commercial business uses a nonprofit's name or logo for the benefit of both organizations
 - Nonprofit receives proceeds from sales in exchange for the business receiving increased goodwill in the community
 - A nonprofit's biggest concern will be avoiding UBIT on income received
 - Sometimes referred to as "commercial co-ventures"

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Cause Marketing Tips

- Obtain a contract in writing which includes:
 - Accurate description of offer made to public
 - Charity's right to an accounting of program results
 - Financial benefit to charity
 - Timing and manner of payments to charity
 - Recordkeeping and reporting to charity
 - Other party responsible for relevant filings on timely basis (copy to charity)
 - Protection of donor lists
 - Termination rights
 - Citation to state laws
- Describe relationship as "collaborators" and "alliance" in contract, not "joint venture" and "partnership"

Cause Marketing Tips

- Avoid UBI:
 - Don't promote the other party's products or services
 - Don't indicate that payment by the company is in exchange for services or anything other than use of name and logo
 - Refer to contract as a "royalty agreement" or "license agreement"
- Company and charity must comply with laws prohibiting false advertising

Cause Marketing Laws and Guidance

- Federal tax law - UBI
- State fundraising laws:
 - Commercial co-venturer
 - Professional fundraiser
- Better Business Bureau Standard #19, <http://www.bbb.org/us/Charity-Standards/>
- Proposed multistate guidance for cause marketing <http://ag.ca.gov/publications/nonprofit/index.html>

Other Fundraising Issues

- Fundraising Acknowledgements, see IRS Publication 1771 at www.irs.gov
- Truthful solicitations
- State rules regarding disclosures for solicitations
- Restricted funds
- Using appropriate funds to pay for fundraising
- Allocation of expenses on Form 990

Political Activity and Lobbying

Political Activity

- IRS issued Rev. Rul. 2007-41: "If an organization posts something on its web site that favors or opposes a candidate for political office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate."

IRS Ruling on Website Content

- 501(c)(3) organization found to have intervened in a political campaign when it shared a website with a related 501(c)(4) organization that endorsed political candidates on the site
 - 501(c)(3) kept its banner, logo and links on 501(c)(4)'s web pages, making the web pages "virtually indistinguishable"
 - IRS deemed fact that 501(c)(4) reimbursed 501(c)(3) for costs of web pages irrelevant
 - Relied on IRS Rev. Rul. 2007-41
- *Technical Advice Memorandum 200908050, 2/20/2009, IRC Sec(s). 501*

Political Activity Rules

- 501(c)(3)s prohibited from engaging in political activity in support of or in opposition to candidate for office
- CSBG Act and Head Start prohibit use of funds **supporting** a "political activity"
- CSBG Act also prohibits use of funds, staff, services in way that **identified with** any "political activity"
- Employees working in connection with any activity funded by CSBG and Head Start subject to Hatch Act
- Use of federal funds for political activity is not an allowable expense under OMB Circular A-122
- Federal and state election laws impose additional rules on campaign activities of individuals

Political Activity Internet DON'TS

- Use organization resources for campaign activities on the website
- Link from CAA website to websites supporting a candidate in a political campaign
- Promote voter education, registration, or get-out-the vote on CAA website or social media site
- Use CSBG or Head Start \$ for political activities on website or social media site
- Speak on behalf of, or identify yourself with, CAA in campaign activity on personal websites such as Facebook, Twitter, MySpace, etc.

What Is Lobbying?

- Traditionally, it is attempt to influence introduction, enactment, or modification of legislation, referenda and ballot initiatives
- Some lobbying rules also apply in much broader context, such as all contacts with government officials to influence any government action or policy, including grants and contracts

So How Do You Lobby Using The Internet?

- Set aside unrestricted non-federal funds to pay or reimburse lobbying costs, including:
 - Webpages and social media sites used for lobbying
 - Appropriate share of both direct and indirect salary and expenses
- Use board members and volunteers to:
 - Send emails
 - Update section of website used for lobbying
- Employees conduct lobbying on own personal websites without use of CAA resources
- Keep records of lobbying activities, costs, and either source of funding or fact that no funding was used

Lobbying by Employees

- Employees may engage in any type of lobbying on their own time using their personal websites but must NOT use federally-funded facilities
 - CAN NOT ask non-exempt employees to volunteer or even accept volunteer time of such employees if similar to paid duties
 - If employee engages in a lobbying activity on website or via email during work time that is not permissible with federal funds, agency should reimburse federal funds for time, expenses out of non-federal funds

Lobbying by Board Members

- Non-employee board members may conduct any type of lobbying, so long as federal funds are not used to support effort
- If board member lobbies on behalf of CAA, it is counted toward IRS lobbying limitation, unless CAA elects under 26 USC 501(h)



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SAVE THE DATE

We hope you will join us for CAPLAW's
2011 National Training Conference!

Minneapolis Marriott City Center
Minneapolis, Minnesota

June 15-17, 2011



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