

## THE INTERNET

# Web site archive could raise copyright concerns

BY RYAN MCBRIDE  
MCBRIDE@PBN.COM

Remember what your company's Web site looked like in 1996? Do you recall what information was posted? Or the images that appeared? These answers are available to you, and the rest of the world, at **Internet Archive**.

The San Francisco-based nonprofit says it has records of just about every Web site that has existed as far back as 1996, using software that takes "snapshots" of sites and storing them in a permanent data bank.

Ralph N. Gaboury, an attorney at Providence's **Duffy Sweeney & Scott Ltd.**, harbors concerns about what could be at stake for businesses who, for one reason or another, don't want an old version of their Web site to be preserved for all to see.

While Internet search engines such as Google and Yahoo cache images of Web sites for limited periods of time, Gaboury said, the Internet Archive keeps them forever and allows the public free access to its archives with its own search engine that it calls the Wayback Machine.

Gaboury fielded questions about this relatively new feature of the Internet, and its impact on intellectual property law.

**PBN:** Why do you think Web site managers from large or small corporations should safeguard their sites from the Internet Archive?

**GABOURY:** It's really about the business's desire to control the content on the Web site, and it will vary from business to business. Some businesses might not have an issue at all. In fact, some businesses might encourage their Web sites to be archived. Other businesses might have certain information that they want removed from the Web site – and permanently. (The Internet Archive) is a potential problem for that, because it may never be permanently removed because it's been archived in perpetuity. And that's why Web managers should be concerned about this, and should talk to the business management to see if this is something they should be concerned about. I would say that businesses may want to consider requesting Internet Archive to remove copies of their Web site from their server, if they don't want the public to access them. But prior to any action, whether it's sending a letter to Internet Archive or using a computer code to block the archive, they should consult an attorney.

In addition, even if a business wants to opt out, the onus is on the business itself to employ this technological method of blocking Internet Archive. And that's problematic, and properly doing it is not exactly easy either. There is very specific code you have to have to properly block them as opposed to blocking other Internet search engines. And if you don't do it properly, you might end up blocking Google and other Internet search engines that you want to have find your Web site.

**PBN:** A July 14 report in The Legal Intelligencer says a Pennsylvania law firm was able to hack through the Internet Archive's block system. Should that be a concern for businesses?

**GABOURY:** That should be a concern because if the Web site manager is told to initiate the block, the current means of doing that may not be adequate to prevent access to whatever sensitive information that the company wants to block.

**PBN:** If I'm a photographer who posts a photo on my Web site, is that now public property because it's been posted on the Internet?

**GABOURY:** Absolutely not. It remains your property and you still hold the copyright. Simply posting something on the Web does not obliterate someone's copyrights. An author's copyright is created immediately upon the fixation of a piece of work, whether that's writing it down on a piece of paper or whether that is taking a photograph. As the owner of the copyright, you have the exclusive right to display that work. If you choose to display that through the Internet, that does not take away any of the rights under the copyright law.

**PBN:** How does the law apply to this issue?

**GABOURY:** That's very much undecided at this point. Under the Copyright Act there would be sections 107 and 108 that pertain to this particular issue. Section

107 covers traditional notions of fair use. Section 108 deals with copies of works made by libraries and archives in the course of their services. I would be very interested to know what the Internet Archive's reasoning is as to how what they are doing would fall under either of those. I don't think there is settled law on this either way.

**PBN:** Could this archiving system be of great benefit to researchers and historians?

**GABOURY:** Yes, it can. Just like any archive can be of great benefit to researchers. The question is how those archives go about getting that information that they are disseminating to the public. At your traditional library archive, they have by and large purchased those rights or have entered into agreements to get the physical copies of those materials. With Internet Archive, what concerns me is that's not happening. This area of the law, as I said before, is very unsettled. The current state of the copyrights does not address this question as to whether and how this type of thing can be done.

An employee of Internet Archive said a spokesman would not be able to reply to a message before the deadline for this article. ■



## Expand your business with below-market-rate loans from Sovereign.

Sovereign Bank recognizes that job creation is vital to communities, and business expansion is a key to job creation. So, we're making \$75 million in Job Foundation Loans available to businesses at below-market borrowing rates over a three-year period. If your borrowing need will create jobs in Rhode Island, you could receive a Job Foundation loan or line of credit from Sovereign at a very attractive rate.

- Commercial loans and lines of between \$250,000 and \$2.5 million
- Interest rates below Sovereign's current market rates
- Flexible terms available
- Open to Rhode Island businesses with annual revenues up to \$10 million

To learn more, call Frank Casale at 401-752-1820 or visit [sovereignbank.com/jflri](http://sovereignbank.com/jflri).



1.877.768.1145  
[sovereignbank.com/jflri](http://sovereignbank.com/jflri)