



**Council on
the Arts**

**Simpson
Thacher**

Moving your Content into the Digital World: Legal Guide for Individual Artists and Arts Organizations

June 3, 2020

1:00-2:30

SPEAKERS

- Lori Lesser, Esq., Simpson Thacher & Bartlett LLP
- Chris Sprigman, Esq., Simpson Thacher & Bartlett LLP
- Maura Whelan, Esq., Simpson Thacher & Bartlett LLP

AGENDA

1. VLA introduction (Amy Lehman) (3 minutes)
2. NYSCA introduction (Mara Manus)(7 minutes).
 - a. Speaker introductions name, title and background (Mara Manus).
3. Moving content/even more content online (Chris Sprigman) (15 minutes)
 - a. Types of copyright licenses needed — sync, ASCAP, etc., union permissions, residuals
 - b. Caution in posting things taken off Internet — Creative Commons, copyright trolls, US government not owning copyright, publicity rights of people
 - c. Consider TM registration, proactive domain names registration to avoid squatting
 - d. User-posted content — DMCA registration at USCO, posting notice and takedown language in terms of use
 - e. Terms of use — Expand as relevant (dos and don'ts with our content, website meant only for US, choice of law and venue)

- f. Q&A (10 minutes)
- 4. Privacy/Security (Lori Lesser) (15 minutes)
 - a. CCPA (if applies) and GDPR, general privacy and privacy policy framework (need a privacy policy and don't violate it; may need CA-based disclosures "shine the light," etc.).
 - b. Need reasonable data security — technical and admin measures
 - c. Need to due diligence your data hosts and vendors
 - d. Need to comply with PCI if you take credit card data
 - e. COPPA if kid-oriented programming
 - f. Q & A (10 minutes)
- 5. Specific Considerations for Not-for-Profits (Maura Whelan) (15 minutes)
 - a. Fiduciary Duties
 - i. Duty of Obedience
 - 1. Adhering to corporate purposes/mission
 - ii. Duty of Care
 - 1. Exercising informed judgment
 - 2. Special meetings/approvals considerations
 - iii. Duty of Loyalty
 - 1. Acting in the best interest of the corporation
 - b. Managing Conflicts of Interest
 - i. Adhering to procedures included in the conflicts policy
 - ii. Approving related party transactions
 - c. Q & A (10 minutes)
- 6. Mara Manus Concluding Remarks.

SPEAKERS

Lori Lesser

Partner

Lori Lesser is a Partner in Simpson Thacher's Litigation Department and is Head of the Intellectual Property Transactions Practice and Co-Chair of the Privacy and Cybersecurity Practice. She advises on all aspects of intellectual property, technology and privacy law, including corporate transactions, litigation, licensing, outsourcing, strategic agreements and counseling. She counsels clients in a variety of fields, including media and entertainment, software and technology, financial information, apparel, retail and consumer products, pharmaceuticals and life sciences, internet, mobile and social media services and nonprofits.

Chris Sprigman

Counsel

Counsel in Simpson Thacher's Intellectual Property Group and Litigation Department, Professor Christopher Jon Sprigman has substantial experience in complex intellectual property matters, and particularly in the areas of copyright and trademark law. Chris is a tenured faculty member and Co-Director of the Engelberg Center on Innovation Law and Policy at New York University School of Law, where he teaches intellectual property law, antitrust law, competition policy and comparative constitutional law. He has also taught at the University of Virginia School of Law, as well as the Law School of the University of the Witwatersrand in Johannesburg, South Africa.

Maura Whelan

Counsel

Maura Whelan is a member of Simpson Thacher's Exempt Organizations Practice. She advises private foundations, public charities and social welfare organizations on structural and operating issues, including formation and governance, as well as domestic and international grantmaking. Maura also counsels donors on charitable gift planning and structuring. In addition, she advises institutions on investments in a wide variety of vehicles, including mission- and program-related investments and other private and public market investments.

Links to Useful Materials

1. Creative Commons: www.creativecommons.org
2. Harry Fox Agency – www.harryfox.com
3. Multiple laws and regulations govern collection, use and sharing of “personal data” <https://www.nysenate.gov/legislation/laws/GBS/899-AA>
4. Website and mobile app privacy policy (<https://vlany.org/terms-of-use/>; <https://www.termsfeed.com/>; <https://www.iubenda.com/en/>)
5. Don't breach your own policy! (<https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-rstrictions>)
6. Rules for minors under 13 (<https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy-security/kids-privacy-coppa>)
7. Sensitive data (https://www.stblaw.com/docs/default-source/memos/firmmemo_03_23_20.pdf)
8. “Reasonable” data security procedures and describe them accurately (<https://www.ftc.gov/system/files/documents/reports/privacy-data-security-update-2019/2019-privacy-data-security-report-508.pdf>) and (<https://www.ftc.gov/tips-advice/business-center/guidance/start-security-guide-business>)
9. Website privacy policy (<https://vlany.org/terms-of-use/>)
10. Reasonable selection and monitoring of data hosts/vendors (https://www.americanbar.org/groups/business_law/publications/blt/2016/11/cyber_center/)
11. Data vendor contracts and insurance policies carefully (<https://www.businessinsurance.com/article/20150518/NEWS06/150519875/Insurers-not-liable-in-loss-of-IBM-employee-data->)
12. Notify users/government after a breach (<https://www.nysenate.gov/legislation/laws/GBS/899-AA>)
13. New York State Attorney General's Office (see https://www.charitiesnys.com/pdfs/disclosure_notice.pdf).



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