

Duff on Hospitality Law

Digital Signage Series Part 3: What You Need to Know

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Digital Signage Part III: Potential Legal Issues

The proverb asserting that the more things change, the more they stay the same, always seems true when one thinks about potential legal issues from new technologies.

Digital signs are still signs, and placement of signs – especially billboards – has long been an issue receiving the attention of local governments. If those signs are emitting light and displaying motion, there may be even greater concern about their placement and their potential nuisance value. The [Federal Highway Administration](#) allowed digital billboards in 2007, concluding that they did not pose a danger to drivers. However, the FHWA has been studying the research and working on a report, which is anticipated this year, focusing on whether or not electronic billboards can be a dangerous distraction for drivers because they are so much more dramatic than conventional billboards. Furthermore, as digital signs proliferate, they will likely be scrutinized more closely under federal, state and local historic preservation and environmental impact laws.

To install and operate a digital sign involves a host of business and transactional matters, such as securing necessary licenses and permits, negotiating with landlords, securing electricity, communications and IT services.

To the extent a digital sign is used to convey an advertising message, all of the state, federal and industry self-regulating restrictions and guidelines on advertising apply. An advertisement on a digital sign cannot be false and misleading. It cannot be libelous or slanderous.

Nevertheless, digital signs raise some rather unique and special legal issues.

To the extent digital signs can “look” at human beings and collect information about them or from their smartphones, there are huge privacy questions. In February 2011, the [Digital Signage Federation](#) adopted voluntary “Digital Signage Privacy Standards” for companies in the digital signage business, their partners and for the venues that host digital signage systems. These standards recognize that digital signage can collect detailed information about individual consumers, when combined with social networking, radio frequency identification devices, mobile marketing, credit card receipts, online browsing habits, purchases or third-party marketing data. The Standards recommend that companies have privacy policies; that

consumers should have a means to choose whether or not their data is collected for advertising purposes, and that companies need personnel and processes to handle consumer complaints.

If digital signs are connected through wired or wireless communications networks, are these signs providing a telecommunications service or an information service as defined by the [Federal Communications Commission](#)? Could the FCC impose public safety / homeland security obligations on digital signage to offer a 911, Enhanced-911 or Next Generation-911 service, if the signs were connected to communications networks? The FCC has not, to date, publicly expressed any such intentions. However, given the fact that under both Republican and Democratic administrations it has attempted to expand regulation of the Internet, there is no reason to assume that as digital signage grows it will escape FCC scrutiny.

If digital signs have the capacity to monitor and record information about the human beings looking at the signs, is the premise of the CBS program, “Person of Interest” so far-fetched?

Both the configuration of hardware and software to create a digital sign, and the presentation and content of the information displayed on the sign, are intellectual property eligible for patent, trademark and copyright protection. This means that proper steps need to be taken to obtain the necessary rights and to stop infringement.

Surely as digital signs become more commonplace, and as they evolve in their form and content, other legal issues will arise.

If you have any questions on digital signs or other telecommunications issues, please contact [Greg Duff](#) anytime. In the interim, we look forward to more digital signage posts from him in the months to come.

Tags: digital signage, FCC, Law, Wi-Fi technology