

## Marijuana and Internet Videos

Assume that C is in state where growing and consuming pot is legal. If C created either a YouTube or some other sort of video of himself and others showing how to grow, cultivate, process and use pot and this were circulated to go into areas where marijuana was not legal, would he be violating any federal laws? C has strong background in videography and connected fields, FWIW.

I probably also need to refer C to some sort of copyright or IP attorney in Oregon to help him protect his video in the event this is a viable venture (creating the How To video).

Family friend, planning on referring out, usual disclaimers, etc. Just trying to figure out what type of lawyer(s) to direct him to see. I've sat in on a few of the ABA seminars about marijuana and the main concept I took away was that it an all cash industry, as the funds cannot be processed through federal banks. So no credit cards, checking accounts, etc., which makes me wonder, how the heck these people handle what has to be a lot of cash flowing in and out of their business. I'm told they even pay employees all in cash. So my curious side wonders if anyone knows anything else about these businesses.

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This is a big emerging area of law in marijuana legal states.

The most important thing to remember is that even if states allow it, marijuana is still illegal to possess, consume, or distribute under Federal law. That is true in all 50 states.

So even if you're in Oregon, Washington, Alaska, or Colorado, posting an instructional video like that is instructing people on how to commit crimes. I would never advise a client to post a video like that. He would certainly not want to seek federal attention by attempting to copyright it.

The Federal prohibition is what creates the so-called "banking problem."

Banks are regulated by the Federal government and must be licensed by the Federal Reserve in order to have access to U.S. Currency. The Federal Reserve abides by Federal law, where marijuana is illegal. They can't accept funds that are a result of criminal activity. So they can't have any accounts for marijuana businesses. Here in Alaska, the banks are so cautious that they even close personal accounts for folks who have applied to start marijuana businesses.

<http://www.adn.com/alaska-marijuana/2016/08/16/alaska-has-yet-to-see-a-legal-pot-sale-but-some-banks-are-already-shutting-down-accounts/>

Like you say, all the business for the state-licensed marijuana enterprises must be in cash. That certainly creates a security risk.

Monica Elkinton, Alaska

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Thanks, Monica! I really appreciate your thoughts on this. I too was concerned about the video and the possibility of prosecution by other jurisdictions.

Which also makes me wonder about videos or books that instruct on homemade bomb building. Seems like that would be an instruction on committing a crime, yet I know such material is or has been out there. Would those who post such info be subject to prosecution if the gov't could prove that another used the instructions to harm others? When I was a prosecutor and later a public defender, I often had cases where a defendant's computer showed access to child pornography. I often wondered why the people who ran the bad sites weren't also prosecuted and/or shut down. Maybe they are. I just didn't see it in state court years ago. And what about those who incite others to join violent attack movements? I assume part of the problem is trying to find the origin of the posts to prosecute, shut down the sites or minimize access to the material.

It just seems that with so much information available out there, these questions are going to be increasing. I'd love to hear others thoughts on this, particularly those who deal in freedom of information and cyber law. Seems like this might be a "new" area of practice or perhaps it's already out there. I would suspect that more and more branches are going to develop in response to increased access to the internet and through other means.

Vicki Levy Eskin, Florida

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I'm having flashbacks to the Anarchist's Cookbook.

Ryan Phillips

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Good ol' Jolly Roger -- gone, but not forgotten. Totse, too.

Seth Combs

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I don't see the violation of federal law by making videos on how to grow marijuana. There is a multitude of instructional material on the Internet and High Times magazine has been published since 1974. Also, marijuana can be legally grown for the federal government.

<https://www.statnews.com/2016/08/31/marijuana-research-dea-growers-permits/>

Bert Krages, Oregon

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Agree with Bert. I used to live in Berkeley, CA where the bookstores had whole bookcases filled with glossy published marijuana instruction materials. The First Amendment protects the right to publish and distribute this material. Also, under the Berne Convention, which we have been in compliance with for many years, original works of authorship fixed in a tangible medium of expression are protected automatically by copyright law. I suspect if you browsed the index of the Register of Copyrights you would find thousands of entries about growing, preparing, cooking with marijuana, even making marijuana beer.

L. Maxwell Taylor, Vermont

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Hmm. You are both incredibly brilliant. So I need others to opine, please as I am torn on how to advise. Oh, and if he can make the video, is an Ip lawyer needed to copyright?

Vicki Levy Eskin

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If client wants to register the copyright, which confers additional benefits including the right to obtain statutory damages in the event of infringement, he fills out a form, pays a modest fee, and sends the video to the Register of Copyrights at the Library of Congress. There is, I believe, an online way to fill out the form and pay. But even

without registration the video is protected by copyright law from the moment of creation if it is an original work of authorship. I am not sure what an IP lawyer would do beyond that. But perhaps my colleagues who handle copyright matters can enlighten me, as my ignorance is boundless.

L. Maxwell Taylor

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I agree with the others there is no problem creating an instructional video to grow and cultivate marijuana, if it doesn't encourage or incite others to commit a crime. There is a distinction between giving instructions for making explosives and encouraging people to blow up their local federal building with a thousand pounds of fertilizer in the bed of an old pickup truck. An IP lawyer isn't necessary to get a federal copyright on a video, but may be very helpful in explaining what protections/remedies are gained with registration of a federal copyright. Similar to the question about whether a client can write their own will or trust.

Duke Drouillard, Nebraska

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To respond to your question, regarding whether C would be breaking any Federal Laws. I am not convinced that C would be, but even if C was, I would look to the eight Cole Factors. These are from a DOJ memo that said that as long as marijuana activity does not fall into one of these 8 categories, the Federal Government will not spend its time and money in pursuing those crimes. As far as advising these client's, in my state, where there is medical marijuana, and up until recently the professional responsibility rules didn't directly address my ethical duty in advising marijuana businesses, the general tone from our Bar Counsel was that as long as an attorney was not giving advice to a business that was going to use its business to violate 8 Cole Factor's, then there probably wasn't going to be a professional conduct issue, if an attorney were to give advice to a marijuana business. Recently this was formalized into our Rules of Professional Conduct.

Tyler S. St Cyr, Vermont

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