

When The Government Comes Knocking

by Rachel Hirsch



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In the fast-paced moving world of affiliate marketing, there may be little time to invest in anticipating a problem that has not yet reared its head, but taking some time to develop strategies now will resolve severe headaches later.

A surprise visit by a government official could result in a host of problems if a company is unprepared. Sometimes, the investigation will begin elsewhere, with your affiliates or publishers. An unexpected government visit, however, does not necessarily signal a business' demise.

Whether the purpose of the visit is to serve a subpoena, interview employees, execute a search warrant, or conduct an audit or investigation; there are five steps that online marketers can take to curb further government involvement.

- 1. Educate Employees.** Educate employees before the government comes knocking. This means distributing practices and procedures to employees who are most likely to come in contact with government officials so they know how to respond. The message to these employees should be that they should not provide information or documents to the government without understanding the purpose of the visit and that they should refer the government to the company representative for information.
- 2. Designate a Company Representative.** Designate a company representative who can speak on behalf of the company. This can be an in-house attorney, a human resources representative, or a company executive. The benefits of a company representative are that he or she provides a unified message on behalf of the

company and coordinates employees as necessary.

- 3. Identify Purpose of the Visit.** Identify the scope of the visit to understand the issues involved. Does the investigation relate to matters involving the company, matters involving an individual employee, or matters involving a third party. Even if the investigation initially relates to matters involving an employee or third party, these issues could ultimately implicate the company, as online marketers are often held responsible for the actions of their affiliates and service providers. The best strategy in these cases is being able to demonstrate that the company has established policies and procedures to ensure that their third-party affiliates/vendors comply with all applicable federal and state laws and regulations.
- 4. Contact Counsel.** Communicate with counsel before any information is provided to the government and make sure that the government understand that attorney input is routine and company policy.
- 5. Involve Counsel Post-Visit.** When the government leaves, involve counsel in conducting an internal investigation to determine the scope of inquiry, facts involved, and potential defenses. Counsel can respond to any subpoena and determine what documents to produce.

The key to success in any case is retaining counsel who understands your business and long-term goals. With experienced counsel by your side, if the government comes knocking at your door, you shouldn't be afraid to answer. **[FF]**