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Beware of the Trolls: Recent Uptick in Copyright Trolling and What You Should Do

Over the past year, clients have experienced an increase in “copyright trolling,” which refers to the practice by some plaintiff law firms of using algorithms or other digital fingerprint technology to search or “troll” for copyright violations of music and images on the Internet, including, for example, on websites like YouTube and Facebook. Copyright owners possess a set of exclusive rights that includes the rights to reproduce, distribute, publicly display, and perform their works, among others. While copyright law frequently supports the alleged enforcement, “trolling” exposes often fleeting or short-lived infractions (*e.g.*, using one photo four years ago, or using a snippet of a song in a YouTube video of summer camp only viewed by 20 people) in a manner that seeks to exact costly penalties.

Below are some pointers about triggers that might cause your business to garner unwanted attention from copyright trolls, a few practical steps that you can employ to avoid allegations of copyright infringement, and advice regarding what to do if a copyright troll contacts you.

WHO IS DOING THE TROLLING?

Much of this work is done by a handful of law firms who utilize software to search for violations of copyrights owned by their clients. Anything publicly available online is susceptible to being monitored for copyright infringement, commonly including blogs, business websites, and social media pages like YouTube and Facebook.

After identifying a potential violation, these firms will typically send an e-mail inviting an alleged infringer to prove their use was licensed, or otherwise enter into an immediate settlement or risk substantial damages. In light of the strict liability and the frequent availability of statutory damages for copyright violations (typically, when a work was registered at the U.S. Copyright Office prior to the alleged infraction), a settlement is often in the alleged infringer’s best interest. As a result, while it is critical to ensure that the terms of a settlement are reasonable and account for any defenses that the alleged infringer may be able to assert (including fair use), these cases rarely proceed into litigation.

HOW ARE THESE CASES TRIGGERED?

Many common Internet practices can invite unwanted attention from copyright trolls. For example:

- Downloading images from a “Google Images” search and reposting them on a website or on social media pages without first obtaining proper licenses or permission.
- Publishing a video on your own website or on a website like YouTube that contains non-original music that is not in the public domain, without proper licenses or permission. This can include background music and instances of people singing in the video.

While these and other similar practices may seem harmless, they frequently amount to copyright violations and could result in the imposition or threat of steep penalties.

Critically, crediting the original source of the image or music does not exempt the post from an infringement claim. In fact, doing so could backfire by attracting the plaintiff's search and providing evidence that you were aware that the image or music was copyrighted at the time it was utilized without permission.

WHAT CAN YOU DO TO PROTECT AGAINST COPYRIGHT TROLLING?

There are many simple, proactive steps that can be taken to avoid allegations of infringement, including:

- Review your website and social media pages to ensure there are no copyrighted images or music being used without permission. If there are (or you are unsure), promptly remove them and either obtain proper permissions or replace them with licensed images or music, or those that are not subject to copyright protection. Rights-free music and images are widely available, often for little or no cost.
- Craft internal policies regarding the generation of content for your website and social media posts to ensure the correct permissions have been acquired prior to sharing copyrighted material.
- Train content developers and all team members who post content in best practices, and return to them periodically to ensure that they remain aware of, and follow, best practices.

Finally, do not ignore e-mails alleging a violation of copyright. These e-mails may present like a scam or phishing e-mail, especially because they often include demands for settlement. However, the law firms are legitimate, and the claims are often tenable. As a result, you should ensure that employees are aware that any such notices should be forwarded promptly to a designated legal representative for review. Your counsel will take all necessary steps to probe the claims and identify a defense or resolution that makes sense for your business.

As the technology used to identify potential violations continues to become more sophisticated, copyright trolling is likely to continue to increase. However, by following the above steps, you can limit your exposure and ensure that you are well positioned to respond effectively or, better yet, stay on the right side of copyright law.

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For additional information, please contact:

David M. Perry, Philadelphia Office
Partner and Co-Chair, Intellectual Property & Technology
215.569.5767 | perry@blankrome.com

Heidi G. Crikelair, Philadelphia Office
Associate, Commercial Litigation
215.569.5366 | hcrikelair@blankrome.com