

Photo-Trolls Still Target Broadcasters

Legal Alert
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Broadcasters are still being targeted by “Photo-trolls” for copyright infringement claims arising from use of photographs on stations’ websites. For those unfamiliar with the playbook, photographers engage law firms and technology vendors with sophisticated algorithms to scrape the web for uses of images in their portfolios. The station is then met with the attorney’s demand for money under a threat of litigation, typically inflated beyond what the plaintiff could reasonably expect to recover in court, followed by a “cookie cutter” lawsuit in federal court when the demand is refused. A handful of lawyers solicit such clients and are responsible for filing hundreds of nearly-identical cases. Some courts have expressed displeasure at the borderline extortionate tactics of these firms. For now, the vast majority of these cases settle out of court with the broadcaster paying to make the claim go away.

Getting caught in this vicious trap is avoidable. Broadcasters should ensure that they have clear rights to each image and photograph that appear on their website, and be wary of republishing photos obtained from others. Here are few tips that may help you keep the trolls under the bridge.

Know the source. No matter how mundane it may appear, don’t download and use any image posted on the internet. If you are not sure of the ultimate origin of an image or photo, don’t use it.

Do your due diligence. Make sure the source is either the owner of the copyrights to the image, or has a suitable license or rights permitting usage of the image on your website, and that the source authorizes your use, BEFORE you use it. Dealing with reputable stock photo agencies is a relatively efficient and straightforward way of avoiding such risks. Their fees, compared with the distraction, cost, and hassle of defending or settling a claim by a photo-troll, are relatively inexpensive.

Beware of “Open Source” Licenses. If an image is subject to an “open source” license -- such as the Creative Commons licenses -- you are NOT home free. Typically, such licenses have

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conditions on use, including attribution and requirements that the user link to the license and indicate any changes made and distribute the modified image subject to the same license. Some apply only to nonprofit uses. The Creative Commons conditions are a bit complex but are clearly stated on its [website](#). Not all open source licenses are explained clearly. Some photo-trolls are betting that users will violate the license conditions and become vulnerable to a lawsuit.

Protect Yourself. Make sure that any suppliers of images or photos, including agencies and outside website developers or providers who provide content, are reputable and supply the image under a contract requiring them to use only owned/licensed images, and also to defend and indemnify the station in the event of a third party claim. Because indemnification is only as good as depth of the supplier's pocket, make sure you deal only with solid suppliers. Please let us know if you are confronted by one of these claims. Our broadcast and intellectual property lawyers can work with you to limit the damage.