

Duff on Hospitality Law

Cease and Desist! Copyright Infringement

on 8.24.11 | Posted in Music Licensing/Copyright

(Companion post to [“Do You Know What’s Happening on Your Network? Copyright Infringement.”](#))

A number of organizations, such as the [Electronic Frontier Foundation](#) and [Chilling Effects](#), keep watch on what they consider overly aggressive policing of rights on the Internet by owners of copyrights and trademarks. Lately, a couple of [extremely irate attorneys](#) have taken up the cause against Getty Images and its ilk, going so far as to call them extortionists. BMI, ASCAP and SESAC are widely loathed in every industry but their own. Copyright owners these days are, depending on who you talk to, defending their rights against millions of infringers on the Internet, or filing lawsuits they never intend to pursue to make money by forcing settlement in a last, desperate attempt to prop up a business model that is doomed to failure in the Web 2.0 age. Either way, there seems to be a significant increase in policing of potentially illegal copying and use of protected materials that may find its way to you.

For example, you might receive a cease and desist or demand letter, or you might just receive a copy of a lawsuit that has been filed in some far-flung jurisdiction in which plaintiff copyright holder is suing John Does 1-7443 for copyright infringement in the form of illegal downloads, uploads and distribution. The complaint will be accompanied by a threatening letter stating that unless you pay \$XXXX within a certain amount of time (usually 10-14 days from the date of the letter) to settle the matter, the plaintiff will file a motion to substitute you in for John Doe #436, say, and you will officially be a defendant in a lawsuit. It is believed by some that the copyright holders have absolutely no intention of following through with these lawsuits; rather, the idea is to frighten you into paying the requested settlement amount (or some lower amount that you can negotiate). In my experience, the communications are formulaic; websites are set up with click-through settlement agreements and 1-800 numbers in case you want to pay over the phone. It’s hard to get through to an attorney to actually discuss the matter.

Copyright holders can retain investigators or purchase software that allows them to locate unlawful copies of their materials, including the date, time, file type and IP address associated with the illegal action. They can then file suit against thousands of defendants at once, based solely on the IP addresses associated with the unlawful copying. Because the actual individuals or entities behind the IP addresses are not yet known, the defendants are called John Doe 1, 2, 3, and so on. The court hearing the suit may then, upon a motion by the plaintiff,

issue subpoenas to the Internet service providers (ISPs) for the IP address/network for each infringement, who must then in turn disclose the subscriber name and contact information associated with the IP address from which the infringement occurred. ISPs may, but often do not, fight the subpoenas, and eventually, the plaintiff's attorney finds you and sends you a nasty letter.

Once you've been contacted, I suggest you take Greg's advice about how to deal with patent trolls, particularly steps 1-3. If your employees are illegally downloading porn on their work computers, you need to know that. If you figure out it was most likely a customer using your free Wi-Fi, you need to know that too.

Pending cheaper, more widely available technology and considerable changes in the level of monitoring network users are willing to accept, it is not likely you will be able to prevent infringement on your network. However, if you follow the basic "best practices" mentioned in my first post on this issue, you will go a long way to protecting yourself from being found legally liable for it.

[Sample Lawsuit Letter 1](#)

[Sample Letter 2](#) (received after a brief, friendly phone call with a paralegal at the firm)

Tags: ASCAP, BMI, cease, copyright, demand, desist, dmca, infringement, intellectual property, license, SESAC