Protecting Your (Intellectual) Property On the Internet

Stephen Carlisle, J.D.
Copyright Officer, Nova Southeastern University
Since 1996 Global Music Sales have Fallen 62%
1 Out of Every 4 CD’s sold on Amazon Is Counterfeit

Main Types of Online Infringement

- Stream Ripping Sites
- Search and Download Sites
- Bit Torrent Indexing and Tracking Sites
- Cyber-Lockers
- YouTube, Facebook, Reddit
®  or ©  ?
Trademarks

Must use standard legal enforcement tactics

- Cease and Desist
- Lawsuits
- Jurisdiction and Venue Can Be Barriers
Copyrights

Does the Website Contain Only User-Generated Content (UGC)?

- YouTube
- Facebook
- Reddit
- Twitter
- Snapchat
A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

(A)(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;

(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent;
or

(iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.
(3) Elements of notification.—
(A) To be effective under this subsection, a notification of claimed infringement must be a written
communication provided to the designated agent of a service provider that includes substantially the
following:

(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right
that is allegedly infringed.

(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a
single online site are covered by a single notification, a representative list of such works at that site.

(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and
that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the
service provider to locate the material.

(iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as
an address, telephone number, and, if available, an electronic mail address at which the complaining party
may be contacted.

(v) A statement that the complaining party has a good faith belief that use of the material in the manner
complained of is not authorized by the copyright owner, its agent, or the law.

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the
complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
The Impact of *Lenz*

You Must Consider Fair Use Before Sending a Take Down Notice
Where Do You Find the Registered Agent?

Going to Facebook you would have to:

- Figure out it’s under “Terms and Policies”
- Go to “Community Standards”
- Go to “Protecting Your Intellectual Property”
- Go to “Reporting Copyright Infringement on Facebook”
- Go to “How Do I report Copyright Infringement on Facebook?”
- Then clicking “Form” (and filling it out)
Please note that submitting a report of intellectual property infringement is a serious matter with legal consequences. Intentionally submitting misleading or otherwise fraudulent reports of infringement may lead to termination of accounts as well as liability for damages under section 512(f) of the United States Digital Millennium Copyright Act (DMCA) or similar laws in other countries.
https://www.copyright.gov/dmca-directory/
https://www.copyright.gov/onlinesp/list/f_agents.html
Amended Interim Designation of Agent to Receive Notification of Claimed Infringement

Full Legal Name of Service Provider: Facebook, Inc.

Alternative Name(s) of Service Provider (including all names under which the service provider is doing business): Facebook.com, Facebook

Address of Service Provider: 1601 Willow Road, Menlo Park, CA 94025

Name of Agent Designated to Receive Notification of Claimed Infringement: Colin Stewe

Full Address of Designated Agent to which Notification Should be Sent (a P.O. box or similar designation is not acceptable except where it is the only address that can be used in the geographic location):

1601 Willow Road, Menlo Park, CA 94025

Telephone Number of Designated Agent: (650) 543-4830

Facsimile Number of Designated Agent: (650) 500-0293

Email Address of Designated Agent: info@fb.com

Identify the Interim Designation to be Amended, by Service Provider Name and Filing Date, so that it may be Readily Located in the Directory Maintained by the Copyright Office: Filed March 30, 2012

Designee of the Designating Service Provider:

Date: 3/27/14

Competent Designee of the Service Provider:

Date: 3/19/14

Note: This Amended Interim Designation Must be Accompanied by a Filing Fee* Made Payable to the Register of Copyrights.

*Note: Current and adjusted fees are available on the Copyright website at www.copyright.gov/docs/fees.html

Mail the form to:

Copyright & Recordation
P.O. Box 71537
Washington, DC 20044

Received
AUG 28 2014
Copyright Office
The DMCA Designated Agent Rules Have Changed!

- New Rules effective December 31, 2016:
  - Electronic Filing
  - Flat Fee (Currently $6)
  - All Existing Registrations Must Be Replaced by December 31, 2017
  - Must Be Renewed Every Three Years or Safe Harbor is Abandoned
How Do You Find Them?

- Albumkings
  - Domain: Albumkings.com (formerly albumkings.net and albumkings.co)
  - Registrant: Whois Privacy Corp., Nassau, Bahamas
  - Registrar: TLD REGISTRAR SOLUTIONS LTD
  - Hosting Provider: Obfuscated by Cloudflare, U.S.
  - Traffic: Global Alexa ranking of 37,978 and the new .com domain is averaging nearly 900,000 monthly visits
  - Revenue Sources: Advertising
Good Luck With That One

- **Newalbumreleases**
- Domain: newalbumreleases.net
- Registrant: Sergey Kobilin, Svetogorsk, Russia
- Registrar: DomainSite.com
- Hosting Provider: WIBO, Czech Republic
- Traffic: Global Alexa ranking of 8,733 with nearly 80 million visits in the last year
- Revenue Sources: Advertising
Jurisdictional Considerations

- With respect to J&B Tours' website, although we have not established a firm rule for personal jurisdiction in the Internet context, other courts have recognized that “the mere existence of a website that is visible in a forum and that gives information about a company and its products is not enough, by itself, to subject a defendant to personal jurisdiction in that forum.” “Though the maintenance of a website is, in a sense, a continuous presence everywhere in the world,” J&B Tours' Internet contacts with Florida were “not in any way ‘substantial.’

Jurisdictional Considerations

- In this case, Lovelady is alleged to have committed an intentional tort against Carman—using his trademarked name and his picture on a website accessible in Florida in a manner to imply Carman’s endorsement of Lovelady and his products. The use was not negligent, but intentional. The purpose was to make money from Carman's implied endorsement. The unauthorized use of Carman's mark, therefore, individually targeted Carman in order to misappropriate his name and reputation for commercial gain. These allegations satisfy the Calder effects test for personal jurisdiction—the commission of an intentional tort, expressly aimed at a specific individual in the forum whose effects were suffered in the forum. The Constitution is not offended by the exercise of Florida’s long-arm statute to effect personal jurisdiction over Lovelady because his intentional conduct in his state of residence was calculated to cause injury to Carman in Florida.

- Licciardello v. Lovelady, 544 F.3d 1280 (11th Circuit 2008)
Thanks for Listening

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