Copyright Infringement Claims

BEWARE

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Recently a few clubs in our district have been charged with violating copyright laws subjecting the club to payment of damages to the owner of the copyrighted item. The typical example is that the club identifies a published item (typically a photo) on the internet and copies that item and subsequently posts the picture on its website or in a club bulletin or newsletter. There are companies available to scan the internet to identify offending photos which leads to a cease-and-desist letter to the club and a demand for the payment of damages for copyright infringement.

As soon as a club becomes aware that materials used by the club are subject to a copyright (and almost all published materials are automatically subject to a copyright) it should cease using the offending photo or other material, but this does not excuse prior infringements.

Copyrights are not limited to photos but include literary works, musical works, dramatic works, pantomimes, and sculptural works among the many classifications of works that are subject to copyright protection.

Copyright protection extends for the life of the author or creator plus 70 years. Once the protection has expired it becomes part of the public domain and belongs to everyone.

A claim of copyright infringement occurs whenever the form or expression of an idea is copied. The reproduction does not have to be exactly the same as the original nor does it have to reproduce the original in its entirety.

Statutory damages range from $750 - $30,000 per work although they can be reduced to as little as $200 per work if the offender was unaware or had no reason to believe the work was copyrighted.

Criminal penalties are available for willful violations.

To avoid a claim of copyright infringement be very careful in taking materials from the internet. It is more than likely to be copyrighted. It is possible that the copyright has expired – for example the copyright on the song “Happy Birthday to You” has expired. If you can establish the owner of the photo or other copyrighted material it may be possible to obtain permission from the owner to copy the item through a license agreement. The fee for such an agreement varies but should not be more than statutory damages for an infringement.

In summary the rule of thumb when dealing with works that may be copyrighted is to avoid using them in any way (particularly from the internet) unless you can establish the copyright has expired. The alternative is to seek permission to use the item through a license agreement.

The information provided in this article is not intended as legal advice on a particular legal issue and no attorney-client or confidential relationship is created.