

The Internet offers such a huge amount of content that within just a few moments you can always find the right picture, video or audio file that will definitely liven up your company website, presentation or blog. However, most of this content is subject to copyright, which means that downloading it and making it part of your own works requires an approval of its author, ordinarily in the form of a license agreement.

The fact that you did not manage to find the author or to obtain his/her approval, will not help your defense in the event of a dispute. Neither can you rely on the idea that the holder of copyright is the same person as the owner of the website, on which the content is placed. On the contrary, in response to pressure of copyright holders, services like Facebook and Google have introduced relatively simple mechanisms for reporting any copyright violations and with respect to its removal they are fast and uncompromising, carrying out only minimum investigations regarding justifiability of the concerned notifications. So how to create a nice presentation without infringing other persons' copyrights?

## Use Legal Databases

There are several options. Your company may have of its own photographs that can be used or maybe you will manage to make an agreement with the author.

However, if you are looking for a "generic" dog, workers or blooming meadow, it is much easier to pick the content of online database of works which have already been approved by their authors to be distributed and used, or which are part of a public domain. Such databases include for instance Wikimedia Commons or publicphoto.org.

Yet when using these databases, two things should be kept in mind. Firstly, the license to use the works contained in a particular database might be subject to various kinds of limitations. Therefore if you are using a particular database for the first time, read carefully the terms of use of the offered content.

Some licenses only allow use for private purposes. Therefore, if you are using a picture for your company presentation, the license must include commercial use as well.

License may also provide other conditions such as an express requirement to indicate the source. However, indication of the source is advisable even if it is not expressly required. By doing so you avoid accusations of passing off someone else's copyrighted content as your own.

Moreover, a statement of a creator of the particular database that use of a particular content is legal does not have to be always true and might not save you from potential legal liability. Therefore, be careful and use only trustworthy websites. If you are for instance a user of Microsoft products, you can pick from the database at office.microsoft.com, where you can find clip art pictures, photos, animations and even audio recordings. License allowing their use for both personal and commercial purposes forms a part of regular license agreement for the products of this company.

## What You Risk

In most cases, secured parties will need to register their security interests to ensure that those interests are protected under the PPSA. However, parties should think carefully about the costs involved and the time taken to administer registrations on the PPS Register. Those considerations should be weighed up against other factors such as the length of time the property will be in the possession of the customer and the likelihood that the customer will become insolvent within that period, or that it will deal with the property in a manner which is contrary to the security agreement.

If you decide to ignore the copyright, you risk to be sanctioned on various levels.

With regards to the copyright, the author (or another copyright holder) may, at first place, demand that you refrain from any further use of his/her work. While on a website this requires just a simple operation, in the case of printed materials even this obligation might cause you considerable financial loss.

The author is also entitled to claim adequate financial compensation, including non-monetary and monetary losses, as well as unjust enrichment. Does the value of the downloaded picture seem insignificant to you? The author can claim a sum of money much higher than you would expect. Under the Czech Copyright Act, in the case of damages the lost profit is calculated as a usual price of license for use of the given work. You will vainly try to explain that no damage could have occurred to the author, as you would not have bought the license anyway and rather have used pictures that were available free of charge.

With regards to the unjust enrichment, there is also a specific rule set out by the Czech Copyright Act. The amount of unjust enrichment is derived from double the usual price of the license for such work. Obviously, the author will claim that the usual price of the license is the one that he offers the license for, regardless of whether anybody has ever been willing to pay such price for a license for the given work.

Furthermore, in the case of a lost court proceedings the aforementioned amounts will be increased by the costs of such court proceedings, which may reach even severalfold of the claimed amount.

Do you consider the chance that the author finds his work on your website and, moreover, that he/she takes the effort to contact you somewhere in the Czech Republic, minimal? Then you are wrong. Nowadays, the big players in the field of chargeable access to pictures, videos and other content use automatic systems which scan the internet in a similar way as Google does. Finding of content protected by copyright then leads to a claim for an amount of regularly even several thousand CZK via Czech representatives of the respective copyright holder. The recipients of such claim, after hesitating for a while, mostly pay the claimed amount of money. That is because they are aware of the fact that they have breached the copyright (at this moment at least a basic verification that the concerned copyright indeed belongs to the claimant is advisable) and that a potential court proceedings would be several times more expensive.

It is necessary to pay a special attention if you are using content of your competitor. Bear in mind that using content of another person can also be considered an act of unfair competition. In such a case the damages and unjust enrichment may reach even a notably higher amount.

The most severe sanction is represented by criminal liability. The threshold for criminal liability is set rather low in this regard. The crime of copyright infringement is any infringement of copyright of another person which is of intensity higher than "negligible". Moreover, the crime of copyright infringement is also one of crimes that may be committed by a corporate entity as well.

## Good Reputation Is Priceless

However, negative consequences do not only include legal sanctions. Use of copyrighted content of others might also substantially damage your reputation. Behavior usually tolerated among young bloggers is absolutely inadmissible in case of high-profile corporations using someone else's content in materials used to acquire new clients, thus to generate profit. Not only will you look unprofessional, you might also be accused by the public of theft or exploiting the work of others. Not only by the authors whose rights you are violating, but also by more attentive guests to your presentation. On the basis of a petition by the copyright holder whose rights you have violated, the court may impose you an obligation to give an apology to this person and also to publish such apology, which is next to the financial compensation another form of compensation of non-monetary loss incurred by the copyright holder.

Therefore, it is necessary to regularly and systematically train your employees on the prohibition of illegal use of copyrighted contents of other persons for the company's purposes as well as on the forms of such use. It is also advisable to continuously monitor the observance of this prohibition, particularly with respect to materials distributed outside of your company. However, do not forget that even in the case of internal documents you can never be sure whether or not will they be disclosed to the public.

## And How About Hyperlinks?

Do you intend to avoid breaching copyright by placing just a link to such content instead of copying it?

Not even the use of simple hyperlink is a 100% safe solution. Although most of the owners of websites will be grateful to you for increasing the number of visitors of their websites by placing such hyperlink, it does not always have to be the case. Especially when your link does not lead to their homepage but to some of the subpages, which means that the visitors do not browse through the higher levels and in general spend less time on the website. Even more questionable is placing someone else's content in a frame within your own website (the so-called "framing"), as in this case the visitor might not even get to the author's website. Moreover, such placement might give the impression that the content is your own. Even simple hyperlinks represent a certain risk in this regard, but it is much lower, as the visitors can see that they are being redirected to a different website.

Author: Lenka Koláriková

This article was published in Právní Rádce No. 4/2013

## Contacts

### Lenka Koláriková

Associate

T +420 221 662 253

E lenka.kolarikova@squiresanders.com