

Reprinted from the March/April 2011 issue of *The Financial Manager* magazine

When Sites Steal Content

There are easy and cost-effective ways to blow the whistle when Web sites spice up their pages with your proprietary materials. **BY LOUIS J. LEVY & JOHN W. BAGWELL**

One need look no further than YouTube to realize how difficult it can be to protect content on the Web. In 2007, major media companies sued the social media giant over copyrighted material posted on its Web site.

YouTube, of course, did not post the material in question. Rather, it was posted by the site's users. Nonetheless, plaintiffs in the well-publicized case want to hold YouTube liable for copyright infringement, arguing, in part, that YouTube essentially induced its subscribers to post infringing material, and had knowledge they were doing so.

If you discover your intellectual material has been illegally posted on another Web site, such as YouTube, there are steps you should take. Fortunately, it's not that hard to do so, and for very little money.

First, it's imperative that you understand how easy it is for people to misappropriate your content. Proprietary material often appears on social media sites without the content owner's authorization. Graphics and text are frequently copied by third-party Web sites, often under the mistaken belief that anything on the Internet is in the public domain and therefore free for the taking.

Digital media platforms themselves may infringe your rights. Last year, for example, Facebook launched a "community page" initiative, creating new Facebook pages ostensibly designed to generate discussions on a wide range of topics. The topics were often business entities, and in our experience, media entities.

Many of the community pages featured the proprietary trademarks and logos of these entities and, consequently, were often mistaken for the entity's official Facebook page, creating confusion and diminishing the value of the entity's authorized page.

Fortunately, legal and regulatory procedures have been established that address the great majority of these types of infringement. Perhaps most significantly, the Digital Millennium Copyright Act (DMCA) establishes a mechanism that allows content owners to secure the quick removal of unauthorized postings of their content so long as they satisfy certain statutory "notice" requirements.

On the flip side, the DMCA grants online service providers hosting the unauthorized content a safe harbor. It absolves Web sites from copyright infringement liability provided that they also meet certain requirements, which include posting contact information and instructions for submitting copyright complaints on the site, and registering a DMCA agent with the U.S. Copyright Office.

To satisfy the statutory notice requirements copyright owners must:

- Identify the infringed and infringing material;
- Indicate the location of the infringing material (i.e., the specific URL);
- Provide sufficient contact information;
- State a good-faith belief that use of the allegedly infringing material is not authorized by the copyright owner, its agent or the law;
- Sign the submission;
- State that, under penalty of perjury, the information being submitted is accurate, and that the notice is being submitted by or on behalf of the exclusive owner of the right allegedly infringed.

In some instances the individual who posted the material may claim that it does not infringe your rights. For example, they may claim "fair use" of the material or assert that the posted material constitutes a permissible parody.

If this occurs, the online service provider may elect not to remove the allegedly infringing material. It is therefore important to carefully assess the equities in a given situation before sending a take-down notice, as over-reaching can produce negative publicity, at the very least.

In cases of non-copyright infringement – i.e., where your trademark rights, publicity rights or other similar rights have been violated – online service providers can remove such material once a complaint is received, although there is no statutory requirement for them to do so.

Web site "terms of use" or "end user license agreements" generally prohibit users from posting material that infringes a third party's rights, which would allow online service providers to unilaterally remove such material in appropriate cases.

Complaints of non-copyright infringement can take the form of formal "cease and desist" letters sent to the online service provider or directly to the party posting the infringing material.

Many social media sites such as Facebook and Twitter have also created Web site interface pages to receive requests to remove infringing material.

Indeed, online service providers generally want to avoid liability rather than bear the burden of defending against a lawsuit. Thus the DMCA and the other measures discussed in this column provide content owners a relatively easy and cheap way to resolve issues of online infringement as they arise.

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