

Protect yourself from copyright allegations

Others may post material to your site

This month's law column is one you need to keep. I've been going around to the regional press association meetings doing presentations on the Digital Millennium Copyright Act. I don't know how many of you are on top of this issue, but it's something you need to watch for, and sooner or later, you'll confront it.

One paper in the state got a letter just last month that relates to this. The letter, in edited version, said: "I am the editor of (name of website), which also is the legal owner of the copyright in the material published on the Website. It has come to our recent attention that your publishing client's website has original articles produced expressly for (our website), and as such our copyrighted property. The following are the URLs for our articles that have been copied to your client's site: (omitting URLs). Copyright of the above material has been infringed upon in the entry by (screenname) at the following URLs of the offending site: (omitting URLs).

"Permission was neither asked nor granted to reproduce our Work and your Work therefore constitutes infringement of our rights. In terms of the Copyright Statutes, we are entitled to an injunction against your continued infringement, as well as to recover damages from you for the loss we have suffered as a result of your infringing conduct. Under these circumstances, I demand that you immediately remove all aforesaid infringing material and notify me in writing that you have done so.... I have a good faith belief that use of the copyrighted materials described above is not authorized by the copyright owner, its agent, or the law. I swear, under penalty of perjury,

that the information in the notification is accurate and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed..."

This letter is a classic example of what is called a Take Down Notice. Under the provision of this act, if you are providing a website on which the public may upload material (a lot of your community pages/public forum pages constitute such websites), then if someone uploads material that violates another's copyright, you may not be liable for that infringing content if you follow the rules set out here.

First, it is required that you don't have knowledge that the content which is at issue is a violation of someone's copyright.

The person owning the copyright is required to send you a Take Down Notice similar to the one above. (There are possible issues here because the Take Down Notice was sent by email rather than by fax or by regular mail. Partly the answer to that may depend on what you have in your policy statement online – more on that later. For our purposes here, however, we aren't going to address that issue.)

Once you receive it, your initial response should be to REMOVE THE POTENTIALLY OFFENSIVE MATERIAL. Then, you follow that act by sending notice to the person who posted the material that you have taken down the material, including with it the Take Down Notice that you received.

The original poster has the ability to follow up with a Counter Notice claiming that they have ownership rights or copyright user rights to the material. That Counter Notice must meet cer-

tain requirements under the law. If you receive a valid counter-notice, then you may re-post the material.

Obviously, the Counter-Notice issue has lots of legal issues and I won't detail them here. If you get a Counter-Notice, we need to talk. All I want you to know, for purposes of this article, are two things. One is to recognize a Take Down notice when you receive it.

The other important thing is that you **MUST** have designated an agent at your business to receive such notices. Information about that agent **MUST** be filed with the U.S. Copyright Office (use the suggested form at <http://www.copyright.gov/onlinesp/agent.pdf> or use something similar and pay the filing fee). Then, post on your website/forum the SAME INFORMATION.

You may also want to include information on your website about the process to give you Take Down notices. You may want to advise that such notices **MUST** be presented by fax or by mail. You may also wish to advise your registered users of the forum that repeated violations of copyright law may result in their being terminated from using the forum.

Obviously, if you receive a Take Down Notice, feel free to call me. But the most important thing is that if you have complied with the notice requirements set out above, and you receive a Take Down Notice, **AND** you remove the content, then you are **NOT** liable for any damages for copyright infringement under the law.

This law was designed to protect you from those posting on your forums who may violate others' copyrights. If you go through the steps set out above, you should be protected.



Jean Maneke, MPA's Legal Hotline attorney, can be reached at (816) 753-9000, jmaneke@manekelaw.com.

If someone uploads material that violates another's copyright, you may not be liable for that infringing content if you follow the rules set out here.
