

billboard Country Update

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BILLBOARD COUNTRY UPDATE

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Stop Before You Post! That Website Photo Could Cost You Big-Time



Need an image of **Carrie Underwood** or **Johnny Cash** for a blog post? A photo of **Garth Brooks** for the home page on a website?

Be careful. The wrong photo could cost \$150,000.

Millions of consumers stick photos on their social-media feeds without really thinking about where those pictures came from. Businesses that do that are potentially setting themselves up for a lawsuit, since a photograph — similar to a piece of writing or a sound recording — is often a copyrighted work owned by the photographer or an archive, such as Getty Images, Michael Ochs Archives or the Country Music Hall of Fame.

Social media encourages people to post photos, and Google Images makes it easy. But doing it carelessly can bring down the wrath of the photo's owner. Spotify and All Media Network were recently sued for infringing an image of the late **Notorious B.I.G.**, a New Jersey photographer sued iHeartMedia for \$150,000 when urban contemporary **WWPR** New York used a photo of **Azalea Banks** without permission that had appeared previously in *The New York Post*, and Cox Media Group was sued for using a photographer's photo on 47 websites without authorization.

Adams and Reese LLP/Music Row partner in charge **Lynn Morrow**, an intellectual property attorney, offered some insight into the issue. Her comments are intended as a guide and should not be considered actual legal advice.

It feels like lawsuits involving copyright infringement with photography are happening more frequently. Is that the case? And if so, why?

Yes, I believe it's safe to say these copyright infringement suits filed by photographers or clearing houses for photographers, such as Getty Images, have increased over the past five years. Most every business has a website with some sort of photographs or images displayed on it. Further, social media platforms are image-driven, which provides more opportunities for content to be infringed. These lawsuits should make



MORROW

every company and individual think twice before using a photograph on its websites or Facebook page.

In one current case, a freelance photographer sued iHeartMedia in New York. What likely went wrong? It appears a settlement may have been reached in that case, so we will not likely know all of the facts that surrounded the

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photo that was posted on the Power 105.1 website. I suspect that an employee or intern who was charged with updating the website lifted the photo from the *New York Post* website and posted it on the radio station's website with no payment, license or credit given to the New Jersey photographer.

That iHeart suit is for \$150,000. I read about another one where a small-time blogger was hit with an \$8,000 suit and settled for \$3,000. What are typical damages?

If the court finds that the copyright infringement was not willful, the penalty per instance of infringement ranges from \$750 to \$30,000. If the court determines that it is willful infringement, the damages could be up to \$150,000 per infringement.

People copy photos all the time from websites and post them in their Facebook and Twitter feeds. At what point do they cross a line?

Generally, people cross the line when they copy the photo. The copyright owner has the exclusive rights to, among other things, reproduce the work. Make sure you have rights to your content before you put it online, especially if you are a business. If you are going to post a photo that is owned by a third party — stop — and get permission to do so. A “safe zone” appears to be the retweet of a tweet that contains a photo, provided you are not a business retweeting it for commercial purposes.

Record companies and publicists supply photos to media all the time, and there is no charge for those images. Why is that different?

The difference is that the record companies and publicists are inviting the use of photos that have likely been cleared. The photographer either transferred ownership in the photograph or licensed the photo to the artist, or record company, to use in connection with the album artwork and promotion of that album.

Should media feel safe to use an image any time that it was supplied by someone seeking publicity? If Big Machine sends out a photo of Tara Thompson, is it fair to use that image of her forever?

Forever is a long time. If the media were to use that photo in connection with that person's career, then it is likely acceptable. However, if the media uses the photo to create merchandise, that is crossing the line of the intended use.

Google Images makes it easy to find photos in a heartbeat. How do you know if it's OK to grab an image and use it on your blog or social media?

It's tricky. The burden is on the user to seek out the owners of the photographs to make sure they have the necessary clearances to use the photos. That clearance may come directly from the photographer or through a clearance house. Plus, the terms and conditions of use on the Google Images website clearly state that by using the service, you are agreeing to the terms, so read them carefully.

You need to be very careful when grabbing a photo from “creative commons” sites or other sites that represent that their content is free. If you read the terms of service of many of these sites, the “free” content is often free for personal websites or Facebook pages, not for commercial purposes.

What are the best practices to employ to avoid getting tied up in a photo infringement case?

One: Assume that all pictures are copyrighted.

Two: Make sure you have rights to the photo before putting it online, especially if you are a business.

Three: Make sure the clearance rights you get in the photo carry over to all digital platforms — not just your website.

Four: If you receive a demand letter for improper use of pictures or content, take it seriously. Do not ignore it. In fact, immediately take down the content until you can get clarification from the claimant.

Five: Don't rely too heavily on “fair use” to save the day. It's difficult to apply conclusively.

Six: Don't exploit a photographer's content in a way that impairs his or her ability to profit from it.

Seven: Act now to clear a photo to avoid bigger problems later.



Jason Aldean's performance during the LakeShake Country Music Festival in Chicago was shot for a *CMT Concert of the Summer* special. From left: Spalding Entertainment manager Chris Parr, CMT vp music and events production Margaret Comeaux, Aldean and Switched On Entertainment president/CEO John Hamlin.



Toby Keith (left) hung with WKMK Monmouth-Ocean, N.J., PD Chris Van Zant on June 18 when he played the PNC Bank Arts Center in Holmdel, N.J.



Marie Osmond spent time with The Country Network CFO Gary Pflieger before an interview with the company. She was one of roughly 50 artists who took part in TCN tapings in a scant 78 hours.



Maddie & Tae lived participants in the Academy of Country Music's ACM Lifting Lives Music Camp for a meet-and-greet and line-dancing session on June 23. From left: Music Camp director Maurisa Fisher, Maddie Marlow, Tae Dye, assistant Music Camp director Laura Hermann and ACM manager of administration and operations Tommy Moore.