

FURNITURE Today[®]

THE WEEKLY BUSINESS NEWSPAPER OF THE FURNITURE INDUSTRY www.furnituretoday.com

SOCIAL MEDIA: SOMEONE STOLE MY CONTENT, NOW WHAT?

July 8, 2011

What's a frustrated author to do? You work hard to create original content for your website, blog or other platform that will resonate with your audience and then learn that someone has ripped you off. Or conversely, you come across someone else's content or photograph that's perfect for your online use -- can you post it? Although the law is still catching up with the internet and social media, the answers to these issues are based on copyright law.

(a) What is a copyright? Copyright allows the "author" of "original works" to prohibit others from copying the work for the life of the author plus 70 years (and a longer term for "works made for hire" by an employee or independent contractor). Copyright protects the expression of the idea, rather than the idea itself. Expression can be in the form of words, numbers, notes, sounds, pictures, etc., and may be published or unpublished.

(b) Must I register it? No, copyright of a work is automatic upon its creation, but you must register a copyright to sue for infringement and obtain other benefits.

(c) Can someone post my articles, photos, audio/video clips? Only if it falls under an exception such as the "fair use" doctrine which includes an analysis of the following factors:

- (i) the purpose and character of the use, including commercial vs. non-commercial;
- (ii) the nature of the work (factual works are less protected than works involving more creative expression such as fiction, photographs, etc.)
- (iii) the amount and portion used in relation to the copyrighted work as a whole; and
- (iv) the effect of the use on the market for or value of the work. Short quotations, review or criticism, parody, and other "transformative" uses are often fair use.

(d) Defenses to copyright infringement that don't hold up: "Other people copied the work too;" "I gave the author credit for the work;" "It's public information;" "I didn't know it was copyrighted;" "I won't do it again, promise."

(e) Can I invite others to copy from my blog post? Sure, a copyright can be licensed, sold, and transferred. A “Creative Commons” license is a popular method to share your post while reserving varying rights.

(f) What is the DMCA and can it help me?: The Digital Millennium Copyright Act, Section 512(c) protects internet service providers against copyright infringement claims for content posted by third parties when the ISP follows certain guidelines including adopting notice and take-down procedures and a policy for repeat offenders. Upon receipt of a proper take-down notice from a copyright owner, the ISP must remove or disable access to the infringing material. If the party that posted the material believes that its content does not infringe the copyright, such party can deliver a proper counter notice. The ISP must restore the content (and still qualify for the safe harbor) unless the copyright owner files a lawsuit within 10 to 14 business days.

(g) Can I claim the DMCA Section 512 safe harbor for content and comments posted on my website or blog by third parties? This is unsettled at the moment but in any event to qualify you would need to follow the guidelines including registering an agent with the USPTO and establishing certain procedures described above and in the statute.

What about you? Have you had any experience with people copying your work or have you wondered if you could properly use someone’s content? Let us know with a comment below [Jerry FT Blog](#) or email me at jcohen@ctswlaw.com.

Y. Jerry Cohen, Partner
(212) 586-5800

jcohen@ctswlaw.com
jcohen@homefurnishingslaw.com