



## **Taking Images and Articles from the Internet – Is Your Association Committing Copyright Infringement?**

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Recently, an association became involved in an unexpected lawsuit. A chapter president created a website for her chapter. On the home page, she put a beautiful picture of the city where the chapter was located. How did she get this picture? She found it on the internet. Two years after the chapter president posted this photo, the photographer who owned the picture's copyright sued her and the association for copyright infringement. Between attorney's fees and settlement costs, the association spent several thousand dollars. It was a painful reminder that, while images and articles are easily accessible on the internet, they are not necessarily in the public domain.

### **A. Summary of Copyright Law.**

Original works of authorship are protected under the Copyright Act of 1976, as amended (the "Act"). The Act protects all types of works – articles, books, drawings, photographs, video clips, as well as electronic documents and software. Once an original work has been created and is fixed in any tangible form, it is automatically copyrighted. No notice or copyright registration is required.

A copyright is sometimes referred to as a "bundle" of rights. These rights include the right to: (i) reproduce (copy) the work; (ii) prepare derivative works; and (iii) distribute (sell) the work. **If an article or photo is copyright protected (and most are), a third party must first obtain permission from the owner in order to copy, distribute or sell the work.** If a third party does not obtain permission it can be liable for damages, including statutory damages, legal fees, and compensation to the author. Therefore, if an association wants to use an article or photograph, it should either first obtain written permission from the owner, or make sure that the item is free for usage. To protect themselves, associations and chapters should always keep a record of the article or image and the release that authorizes them to use the copyrighted work.

There are a few ways associations can provide an article to members without first obtaining written permission from the owner. The best way is not to copy the article, but to provide a link directly to the article. By "linking" to an article, a chapter is just re-directing the member to the site that contains copyrighted material. The chapter is therefore not copying or distributing the article.

Additionally, it is possible that if a chapter uses a small part of the article, it can argue that its use of the article falls under the "fair use" doctrine set forth in Section 106 of the Act. The doctrine of fair use allows use of a copyrighted work without permission of the author. The determination of fair use, though, is not an easy analysis. Courts review several factors, including the purpose and nature

of the use, the nature of the copyrighted work, the amount of the work used, and the affect on the market for the original. There is a large amount of litigation regarding the doctrine of fair use, mostly because the doctrine is vague and determinations about fair use can be highly subjective. Therefore, we strongly recommend that an association be very careful about relying solely on the fair use doctrine to protect itself from copyright infringement claims.

## **B. How Does an Association Determine if it has Permission to use an Article or Image?**

Below is a short summary of how to determine if the association needs permission to use a work. It is always best to speak to legal counsel if you have any questions regarding whether the association has permission to use, distribute or copy a written work or image.

### For Written Materials:

1. Did a Staff Member Write the Article? If a staff member wrote the article for the association, the work is considered a “work made for hire.” The association does not need written permission to publish this work. However, it is always a good idea to inform your employees that work product they create as part of their job duties for the association is considered to be a “work made for hire”. This can be accomplished by including a section regarding employee work product ownership in the association’s employee manual.
2. Was the Article Written by a Volunteer or Independent Contractor? If the author was a volunteer or independent contractor, the association needs to have an agreement with this person, stating that the work is a “work made for hire” and the association owns the copyright to the work. If the volunteer or independent contractor refuses to sign such an agreement, unless the association gets an acceptable license from that party to use such work, the association should be wary about using that work.
3. Was the Article Found Online, or Written By Another Third Party? If so, then the association needs to obtain written permission from the copyright owner before it can publish this work.

### For Photographs:

1. Was the Photo Taken at an Association Event or Taken by an Association Member or Volunteer? If a photo was taken at an association event or by a member or volunteer, two things need to be done. First, the Association needs to obtain permission from that member or volunteer to use the photo. Second, the association should obtain a photo release from anyone in that picture prior to publishing that picture. Some membership agreements contain a paragraph that states that the member consents to the use of their image in association marketing, news and promotional materials. If your association has a membership agreement that contains this statement, then no additional photo release is

needed. However, if your association does not have that language in a form a member signs, then the people in the image should sign a photo release.

2. Did an Association Staff Member Take the Picture as Part of that Staff Member's Job Duties? If so, then the picture is considered a "work made for hire" and can be used without the photographer's permission, as long as you have photo releases from the people in the picture.
3. Was the Picture Found Online? If the association found the image online, it is likely that the image is copyright protected. If the association does not have permission to use the work, it should not use the image on any association materials. If the association wants to continue to use the image, it should locate the owner of the image, and request permission to use the image.

### **C. Conclusion.**

All association staff members need to be aware that copying and pasting photos and articles found on the internet is forbidden without first obtaining proper permission. Nearly every image and article created in the last 30 years is protected by U.S. copyright laws. Just because a photo or article is online, does not mean it is in the public domain. If an association needs a specific image, there are a number of stock photo companies that can be located online. Finally, if you have any questions regarding whether a photo or article is copyright protected, contact legal counsel prior to using it.

If you are interested in learning more about "Taking Images and Articles from the Internet," contact Katie Meyer, GKG Law, P.C. at 202.342.6775 or [kmeyer@gkglaw.com](mailto:kmeyer@gkglaw.com).