

How Businesses Can Recover Serious Damages from Website Copyright Infringers

A company's website is their calling card, and with so many emerging startups looking to establish their brand, it is easy to overlook the “little things,” like copyrighting website content.

As attorneys who often advise firms on copyright protection, we know better than anyone that protecting intellectual property is top of mind for technology and brand conscious business owners. What is not always top of mind is everything that encompasses intellectual property, like website content.

Companies invest a great deal of time, energy, creativity and cash in developing their websites. The trend we are seeing, however, is that unscrupulous competitors take content shortcuts and “scrape” or wholesale copy entire websites. Some are repeat offenders, too, scraping website content and marketing it as their own for a profit while providing no benefit or credit to the author. Others do it expressly to divert traffic to providers of knock-off goods and services. Leaving websites unprotected provides infringers the message that they can take free advantage of the hard work and creativity of others without giving credit where it is due.

This disturbing and often overlooked trend is difficult to remedy once the damage is done. Unless you have promptly registered your web content with the U.S. Copyright Office submitting printouts or screenshots of your website as identifying material as part of your copyright registration, you will only be entitled to recover actual damages that you can prove. In fact, copyright registration or the filing of a copyright application is a prerequisite to bringing an infringement action in most jurisdictions. The failure to file early requires you to prove the actual amount of money lost due to the infringement, or the infringer's profits attributable to the infringement, which in many cases will be difficult and expensive to do.

PROTECT YOUR PROPERTY

- By marking your web pages with an appropriate copyright notice (©, the year of first publication, and your name) and registering your work with the U.S. Copyright Office, you can go after scrapers for potentially thousands of dollars in statutory damages without proving your actual damages. In addition, you may be able to recover full costs and reasonable attorneys' fees. A copyright registration covering your website content establishes a public record of the copyright claim, and registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate. This simplifies an infringement lawsuit by serving as proof of the date of creation. The filing of a copyright application is a prerequisite to the filing of an enforcement action for copyright infringement.
- Where the copyright application is filed early (within three months of first publication of the work) and prior to the commencement of infringement, the copyright owner may elect “statutory” in lieu of “actual” damages. The amount of statutory damages a court will award depends on the circumstances and severity of the infringement. For example, with an early registered copyright, you could be entitled to statutory damages ranging from \$750 to \$30,000 per infringement (as the Court considers just) and the Court may, in its discretion, increase the award of statutory damage to a sum of up to \$150,000 for willful infringement.
- Copyright registration will allow you to enjoy numerous other benefits. In addition to protecting features of your website such as its text and images, copyright may also extend to files and documents that can be downloaded from your website. It also offers potential international protections for enforcement purposes, such as those that extend from international copyright treaties and conventions in which the United States and other countries participate.

HOW TO REGISTER YOUR CONTENT

To protect your intellectual property, register your copyrights by submitting an application to the United States Copyright Office.

- File an online copyright application, which is available at the U.S. Copyright Office website at www.copyright.gov (takes up to 8 months), or otherwise complete registration with paper forms (Form TX) which will take longer (up to 14 months).
- Attach a printout of or download your web pages to deposit with the Copyright Office.
- Submit the registration fee (currently, \$35-\$85) with your completed application and deposit to the U.S. Copyright Office, 101 Independence Avenue SE, Washington, DC 20559, or file it online.

To maintain your copyright as the work evolves, submit similar applications periodically, corresponding with significant updates to your website, but no less than annually.

Make sure that each “author” or website contributor signs a formal Assignment document assigning the author’s copyrights and all other intellectual property rights to the copyright claimant (owner or company). Note that if the author is an independent contractor rather than an employee, the copyright does not automatically belong to the company. Whether your website was prepared by an employee, independent contractor, or other contributor, you can protect your right to your intellectual property by securing appropriate written assignment agreements and maintaining updated copyright registrations with the U.S. Copyright Office.

For more information on registering and updating copyrights, go to www.copyright.gov.

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