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DEALERSHIP COPYRIGHT LAW

Legal Compliance for Using Movies, Television, Music, and Pictures

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OVERVIEW

RESOURCES AVAILABLE

- NADA Compliance Guides
- Legal Counsel
- CNCDA Legal Hotline
- CNCDA Dealership Operations Guide which is available on our website (www.cncda.org) under the "CNCDA Comply" tab.
- Other CNCDA Compliance Resources (available on CNCDA Comply)
 - Other manuals and guides (e.g., employment, CCPA, F&I compliance, Proposition 65, advertising, etc.)
 - Webinar recordings
 - Sample documents



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DISCLAIMER

This presentation is not meant to provide you with legal advice. Please consult your attorney for legal advice.

WHAT WE WILL COVER

Basics of Copyright
Law

Situations Where
Copyright May Apply
to Dealerships

Tools for Protecting
Your Dealership

Identifying
copyrighted material

Determining if you
need a license

Licensing strategies

COPYRIGHT DEFINED

- Copyright is the exclusive legal right to reproduce, publish, sell, or distribute an “original work of authorship.”
- An “original work of authorship” is a work that is independently created by a human author and possesses at least some minimal degree of creativity.
 - Includes: television shows, movies, music, written works, or pictures
 - Does not include: ideas, procedures, processes, systems, or concepts



HOW IS A COPYRIGHT CREATED?

- A copyright comes **into existence as soon as the work is fixed in a tangible medium of expression**, so copyright exists in a work as soon as the author completes the work.
- A work is “fixed” when it is captured (either by or under the authority of an author) in a sufficiently permanent medium such that the work can be perceived, reproduced, or communicated for more than a short time.

COPYRIGHT HOLDER'S RIGHTS

- Copyright Act grants certain exclusive rights to the owner of a copyrighted work, which are different from those enjoyed by a mere owner of a copy of the work. Those exclusive rights include:
 - the right to reproduce the work,
 - the right to prepare derivative works based upon the original copyrighted work
 - the right to distribute copies of the work to the public
 - the right to publicly display the work
 - the right to publicly perform the work

COPYRIGHT INFRINGEMENT

- Copyright infringement occurs when the user of copyrighted material does not obtain a license or permission to use such materials when such license or permission is required.
- When is permission required?
 - To reproduce copyrighted material
 - For the “public performance or display” of copyrighted material.

EXAMPLE SCENARIO – REPRODUCTION

Copyright rules apply in the vast majority of cases when a copyrighted work is reproduced by a person who does not hold a license or permission to reproduce the work, especially for a commercial purpose.

The formality of the reproduction likely will not matter; reposting a photo created by another without a license or permission on an Instagram, Facebook or other social media account will likely violate the copyright.

EXAMPLE SCENARIO – PUBLIC PERFORMANCE

- The public performance right is implicated when a restaurant plays copyrighted music over its speaker system to its customers from the radio, television or from audio cassettes or CDs.
- While listening to music on the radio or on a cassette or CD privately will not ordinarily constitute copyright infringement, it is the public performance aspect of using music in a business environment that is the basis for the need for permission from a songwriter or his agent.



GENERAL EXCEPTIONS TO COPYRIGHT LAW

“Fair Use” of copyright material is not an infringement of the copyright. The factors determining whether “fair use” applies are:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - Examples: criticism, comment, news reporting, teaching, scholarship, or research
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.



EXCEPTIONS TO PUBLIC PERFORMANCE PERMISSION

- The establishment in which the communication occurs has 2,000 or more gross square feet of space and:
- If audio only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or
- If audiovisual, the performance involves:
 - No more than 4 audiovisual devices, of which not more than 1 audiovisual device is located in any 1 room
 - No device has a diagonal screen size greater than 55 inches
 - No more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space.

INFRINGEMENT PENALTIES

Penalties for failing to obtain a license can be substantial.

Range of potential legal consequences:

- Infringer pays the actual dollar amount of damages and profits.
- The law provides a range from \$200 to \$150,000 for each work infringed.
- Infringer pays for all attorneys fees and court costs.
- The Court can issue an injunction to stop the infringing acts.
- The Court can impound the illegal works.
- The infringer can go to jail.

CASE ACT

New legislation will make it easier to bring small copyright infringement cases

CASE Act creates new three-“judge” tribunal called the Copyright Claims Board

Empowered to hear three types of cases:

- Infringement cases by creators;
- Declarations of non-infringement brought by users; and
- Challenges to takedown notices that contain some form of misrepresentation.

Board will likely start hearing cases in June of 2022

WHERE MAY COPYRIGHT APPLY?

In-store entertainment

- Many dealerships have televisions showing programs or movies in waiting areas
- Many dealerships play music in the showroom
- In both cases, the programs, movies and music are almost certainly subject to a copyright.
- Permission is needed in these cases to “publically perform” these works

OBTAINING PERMISSION – TELEVISION/MOVIES

- The Motion Picture Licensing Company (MPLC) is a universal license service that sells public performance licenses covering nearly all movies and broadcast television
- Business accounts with cable companies typically do not include these licenses
- Major exception to these licenses are:
 - Live sports
 - Live news broadcasts

MPLC LETTERS

Dealers across the country are receiving letters from MPLC claiming the dealership is violating copyright by allowing public performance of its licensed television and movies. The annual license is roughly \$300 per facility.

Do you need a license?

- Televisions in public spaces
- Content shown on televisions
- Exception likely does not apply

COMMON QUESTIONS

- We have a business cable subscription and our cable company says we have a license to play the content. Do I still need a separate license?
- We only display TV content from our manufacturer. Do I need a license?
- We only show news/sports. Do I need a license?

LETTERS FROM ASCAP, BMI, OR SESAC

- The three major “performing rights” societies – BMI, ASCAP, and SESAC – generally act as a songwriter’s agent and help enforce the songwriter’s performance rights. These societies grant permission to utilize the music in their repertoires through the issuance of licensing agreements, and they monitor businesses to discover infringing use of their members’ songs and music.
- Alternative is to hire a music provider for business that holds a public performance license for all songs (e.g. Muzak)

WHERE MAY COPYRIGHT APPLY?

Advertisements

- Photographs, background music, video clips, even scripts usually will have a copyright
- Using copyright material for an advertisement without a license or advertisement will almost always infringe the copyright
- Vehicle photographs among the most common issues for dealerships
- This applies in all mediums – tv ads, radio ads, print ads, internet ads, website, etc.



COPYRIGHT STRATEGIES - ADVERTISEMENTS

- If you make advertisements in-house, only use photos, music, video, images, or music if the dealership holds the copyright or has a license or permission to use the material
- If you work with an outside company, investigate their copyright practice and insist on an indemnification provision in the contract



WHERE MAY COPYRIGHT APPLY?

Social Media

- There is no exception to copyright law for social media.
- Reposting content made by another person to a dealership's social media account can potentially violate a copyright.
- Keep in mind, social media is filled with many semi-professional photographers, influencers, musicians, etc., who will act to protect their work.

COPYRIGHT STRATEGIES – SOCIAL MEDIA

Make sure your social media team understands the rules of copyright.

- “Liking,” “retweeting,” and similar interactions are not an infringement.
- Reproducing an image or music, even with attribution, to a social media account is a likely infringement.

Ask for permission to repost an image or music with full attribution prior to posting.

Purchase a license to repost the image or music from the creator.

In all cases, make sure the permission or license is documented in writing.



WHERE MAY COPYRIGHT APPLY?

Software

- Software can be subject to copyright, though this is a complicated issue
- Dealers are unlikely to have the tools to evaluate whether software violates a copyright
- Only use software with an appropriate license
- When working with a software vendor, be sure that the agreement includes copyright warranties and that the vendor indemnifies you

WHERE MAY COPYRIGHT APPLY?

Customer and Business Forms – both electronic and print

- While ideas and processes are not subject to copyright, those ideas and processes concretely expressed can be subject to copyright
- Never use photocopied or reproduced forms
- Purchase forms from the licensee, with warranties regarding copyright
- If you develop your own forms, do not simply copy the work of others



TOOLS TO PROTECT YOUR DEALERSHIP

1. Establish a written policy for your dealership addressing copyright.
2. Educate staff members who make decisions that may involve copyrighted works.
 - Marketing staff
 - Social media staff
 - Website administrators
 - Business office
3. Vet vendors for their approach to copyright and indemnification promises.

TOOLS TO PROTECT YOUR DEALERSHIP

4. If you rely on a legal exception, monitor compliance with this exception.
5. Ensure you have appropriate licenses and/or permission to use copyrighted materials where appropriate.
 - Maintain licenses where appropriate.
 - If you seek permission to use material, work with creators to keep those permissions in place.
6. If you avoid using copyrighted material, monitor compliance.

KEY REMINDERS

It is possible to infringe on a copyright even when the user:

- Bought or downloaded the content (ex: a song from iTunes)
- Recorded the content onto your own recording device
- Gave credit to the copyright owner
- Included a disclaimer that you didn't intend to infringe copyright
- Didn't intend to profit from it
- Modified the work or added your own original material to it
- Found the content available on the internet
- Saw that others posted the same content as well
- Think the use is a fair use

KEY REMINDERS

Ask yourself:

- Did I create all of the content myself?
- Do I have permission to use all of the content included in my post?
- Does my use of the content fall within an exception to copyright infringement?
- Is the content protected by copyright (ex: is it a short phrase, idea or public domain work?)

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QUESTIONS?

