

A surprising plot twist

Why your offer of free entertainment to the public could get you in trouble

Your community is sponsoring a free movie night at the local park featuring “Guardians of the Galaxy,” and you’re excited. As attendees, you and your family have little to no risk. But what if you are the company, nonprofit or person organizing this fabulous family night that will undeniably generate a great deal of good will in the community?

Potential copyright infringement is lurking in the midst if proper measures are not in place. Copyright law protects creative works such as books, music and movies, and most people know that blatant copying of a CD, MP3 file or DVD is against the law.

But copyright law does more than prevent mere copying.

“The owner of a copyright enjoys many rights, including the ability to stop others from reproducing, distributing, preparing derivative works, or publicly displaying or performing a copyrighted work,” says Heather M. Barnes, a patent attorney at Brouse McDowell.

“It is the public performance right that catches many business owners, including nonprofits, off guard.”

Smart Business spoke with Barnes about what you need to know before scheduling your own free movie or music night for the public.

What constitutes a copyright law violation?

Owning a lawfully purchased CD, DVD or digital file is not enough when it comes to playing that particular movie or song in a public place. Owners of restaurants, entertainment venues, hotels and local governmental entities need to ensure that proper licenses are in place to show a movie or play music to the general public.

Many business owners are unaware they may be out of compliance with the copyright

laws. Others wonder if their lack of intent will help negate or minimize potential liability. Copyright infringement is a strict liability offense, meaning intent will not negate a violator’s liability.

It could, however, come into play to determine how much money would be owed to the copyright owner. With respect to movies and music, organizations exist that offer licenses and calculate the amount of money owed.

The cost of a license is usually reasonable compared to the potential penalties, which vary. A copyright owner could be awarded lost profits and receive damages ranging from \$750 to \$150,000 per violation, plus their attorney fees. In certain instances, criminal liability could be attached to the violation.

What if you’re accused of copyright infringement?

Upon receipt of a letter claiming copyright infringement for showing movies in a common space to the general public or playing CDs for an exercise class, the worst action is to dismiss the letter. Movie and music agencies will not go away. They have field agents viewing the Internet and driving around in your community.


It may take time to investigate, but the allegations very well could have a basis. If there is no liability, it is best to communicate



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 **WEBSITE:** To learn more about copyright infringement and what you need to know to avoid it, visit bit.ly/BrouseIP.

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with these agencies, preferably through an IP lawyer, and address the concerns sooner rather than later. Hundreds of copyright infringement lawsuits for movies and music are filed every year resulting in unneeded exposure to the business owner.

How can you protect yourself?

An experienced copyright lawyer will be able to help a business owner identify if there is a violation. They will also be able to identify any exceptions to the law that could minimize any damages owed.

Further, a lawyer who is familiar with these processes may have a rapport with representatives of agencies such as the Motion Picture Licensing Corp., Broadcast Music Inc., or the American Society of Composers, Authors and Publishers. That rapport helps streamline negotiations.

Like anything else, the best defense against any claim is a great offensive strategy. Seek out IP counsel to talk about your business. Identify common gathering places in your business. Do you intend to invite the general public? Will a fee be collected? Copyright law is complex and rarely intuitive. Discussing business goals with an experienced lawyer and how movies or music play into the business plan will help you avoid common pitfalls, which could save your business thousands of dollars. ●