

October 28, 2022

Legal Alert: What to Do When You Receive a Copyright or Image Violation Notice

Many of Lawyers Alliance for New York's Legal Alerts focus on how a nonprofit organization can best protect its intellectual property, such as images that it may own and display on its website or other media. However, sometimes a nonprofit organization finds itself the recipient of a copyright or image violation notice, also known as a "cease and desist letter." It may come as a surprise to you that your organization could be on the other side of the fence: did your organization really commit copyright infringement? What if it was an accident?

If your nonprofit organization has received a letter alleging that you have used an image owned by a third party without a proper license or permission, read the following frequently asked questions and step by step instructions on what you should do.

1. What is this letter and what does it mean?

Copyright or image violation notices, or cease and desist letters, often include the following characteristics:

- The letter is from a "licensing compliance service provider" or similar entity.
- The letter states that the sender represents an image license provider, such as The Associated Press (or AP Images), Reuters, Getty Images, or any company that might hold a copyright.
- The letter states that it has noticed your organization is using an image on your website or your other public media that is owned by its client (e.g., AP Images) without a license.
- The letter demands that you either provide proof that you have a valid license from their client to use the image, or immediately remove the imagery and pay them compensation by a certain date, which often ranges anywhere from \$200-\$2000 (or more).
- The letter may explicitly or impliedly threaten a lawsuit if payment is not made by that date.

If your nonprofit organization receives a letter that includes some or all of the above characteristics, you should not ignore it. Recipients of these letters often ignore them, mistaking them for spam or a phishing attempt. There is no need to panic if you receive a letter like this, but it is important to act swiftly. The longer the letter is ignored, the higher the potential risk for increased monetary damages against your organization.

In order to be sure of the veracity and legitimacy of your letter, contact an attorney immediately.

2. Did our organization really commit copyright infringement?

Immediately upon receiving a copyright violation notice, you should investigate the claims being made in the letter against your organization.

- Check your website and any other media to confirm whether the alleged image was or still is being used by your organization.
- Investigate where the image came from. Was the image found on Google or another internet search (in which case, a third party likely owns it), or was the image taken by an employee of your organization (in which case, you may own it)?

- If the image is owned by a third party, does your organization have a valid license to use the material? Consider whether a license could have been purchased under the name of another employee or an independent contractor who worked for your organization.
- If you confirm that your organization is displaying this image owned by a third party and you are unable to identify a valid license or other permission to use the image, then you should remove the image immediately.

Be sure to have all of this information handy when you speak with an attorney.

3. Does it matter that this was an accident and we never intended to commit copyright infringement? Does it matter that we are a nonprofit organization?

Unfortunately, it does not matter that this may have been an accident and that you or whomever decided to use this image was not aware that it was owned by a third party and required their permission for use.

In some very specific cases, the fact that you are a nonprofit *may* bolster a defense of “fair use.” Fair use means that your use of the image does not constitute copyright infringement due to a number of different factors, for example, if the image is not being used to generate any revenue (among other considerations). Fair use is a highly fact-specific inquiry; there are no blanket rules to determine what is considered fair use, and it is often the case that a nonprofit’s unauthorized use of a third-party image on its website or other media does *not* qualify as fair use. For example, if your nonprofit organization is using a third-party image on your website and there is also an option to donate to your nonprofit on that same website, then this may not constitute “fair use,” even if the revenue generated by donations are not-for-profit.

Even if there is no legal effect, as a practical matter the third-party may be more willing to offer a ‘discount’ on a settlement as a result of your organization’s status as a non-profit organization.

Do not assume that just because this was unintentional or because you are a nonprofit that you cannot be liable for copyright infringement. In copyright law, it is often the case that these factors do not matter.

4. What next?

As noted above, you should immediately consult an attorney upon receiving this type of letter. It may be that you have a defense, and in any case, you want to be sure that any payment you make formally settles the matter (including that you are settling with the correct entity and that the documents involved are correctly drafted). Do not make any statements or confirm or deny anything regarding the matter in your interactions with the sender of the letter or their representatives unless advised to do so by your attorney. Be sure to mark at the top of all email communications that the email is for settlement purposes only.

As a practical matter, these issues can often be settled for some dollar amount below the initial amount requested from the third-party, but this depends upon the facts and circumstances of each situation.

5. How do I make sure this does not happen to our organization again?

If your organization has inadvertently used a third-party image without permission in one instance, it is possible that there are other instances of unauthorized use by your organization of which you may not be aware. In any case, now is a great time to do an inventory of all images and other third-party materials that are being used by your organization. Confirm that your organization either owns or has a valid right to use any such images or materials and immediately remove any images that you do not own or have a valid right to use.

After you have completed an inventory of all images and third-party materials, the next step is to ensure that all members of your organization or anyone who has the ability to edit your organization's website or other media is aware of this potential issue. All such persons should be trained to understand that you cannot use third-party images without the owner's permission.

Keep in mind that merely 'retweeting' images, or reposting someone else's social media post with proper attribution is generally not a violation of copyright law, but consult the terms of use of each social media website.

If your organization has a need to use third-party images or stock images, there are a number of stock photo image providers that enable you to lawfully use thousands of images for a nominal license fee. A cursory internet search of stock photo image license providers should point you in the right direction. You can consult with an attorney to confirm that the stock photo image provider you choose offers a license that suits your organization's needs.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Rafi Stern at rstern@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit <http://www.lawyersalliance.org/becoming-a-client>.

For her assistance in preparing this Legal Alert, Lawyers Alliance would like to thank Christine McLellan, a legal extern from the Skadden, Arps law firm.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations and social enterprises that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, Lawyers Alliance for New York helps nonprofits to provide housing, stimulate economic opportunity, improve urban health and education, promote community arts, and operate and advocate for vital programs that benefit low-income New Yorkers of all ages.