

Duff on Hospitality Law

## **Do You Know What's Happening on Your Network? Copyright Infringement**

By Ruth Walters on 7.11.11 | Posted in Food and Beverage, Hotels, Music Licensing/Copyright

Customer Internet access, preferably wireless, is expected in the hospitality industry. Unfortunately, some guests and customers use the Internet access and computer networks you provide to break the law. Specifically, they infringe copyrights by uploading and downloading illegally obtained copies of movies, songs and television clips that are probably themselves illegally obtained copies of copyrighted works, which enterprising persons then illegally post to publicly available Internet sites for download or further sharing (read: illegal copying).

OK, this is naughty, but why should you care? Because it might get you into trouble. Even though you have no control over the actions of your guests or customers, current copyright law may consider you to have committed “contributory” copyright infringement—basically, you contributed to or encouraged the infringement, and you should have to pay up (as well as the original infringer, who is virtually impossible to find).

There are ways, as always, to try to limit your risk. The most common set of legal protections invoked by those who provide Internet or online services is referred to as the Digital Millennium Copyright Act (DMCA) [Safe Harbor](#). The DMCA is actually a series of amendments to the existing Copyright Act, and the sections linked to in this post set forth a series of requirements that online services providers (including providers like you, who are merely giving third-parties access to the Internet) can adhere to in order to be effectively immunized from liability for the goings-on on their networks.

Unfortunately, if you're a hotel, restaurant, bar, coffee shop or similar type of business, you may not meet at least one of the requirements, which of course appears way at the bottom of the section dealing with these matters, namely, that you “[have] adopted and reasonably implemented...a policy that provides for the termination in appropriate circumstances of subscribers ... who are repeat infringers” 17 U.S.C. §512i(1)(A) (see the link above).

If you do not capture, track and monitor identifiable information about the people or the machines accessing your network, you have no way of knowing who the repeat infringers are, let alone whether any repeat infringement is occurring. This is particularly troubling for food and drink establishments, whose guests don't even stay the night. There may be software solutions that allow you to connect a particular device with a person and the device and the

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person with an infringement, but we understand from our hotel clients that merely tracing network activity to one room requires a lot of expense.

However, just because you may not be able to take advantage of the DMCA Safe Harbor does not mean you will be found liable for contributing to the copyright infringement of your network users, as long as you are not actively contributing to the infringement. Generally following the DMCA requirements—including, most importantly, a well-drafted set of Terms and Conditions for use of your Internet access that clearly indicates all use must be lawful—will help you protect yourself.

Next post: more detail about what a demand letter looks like and additional steps you might consider to reduce infringements carried out on your networks.

**Tags:** Act, bar, bar coffee shop, coffee, copyright, Digital, Digital Millennium Copyright Act, download, Harbor, hotel, illegal, illegal download, infringement, Internet, Internet network, Millennium, network, Restaurant, Safe, Safe Harbor, shop