

Copyright Concerns in the Age of Social (Media) Distancing

Amundsen Davis Intellectual Property Alert
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In the age of COVID-19 and social distancing, people and businesses are turning to technology to engage with their communities. Fitness instructors are leading workouts via Instagram Live. Churches are offering live-streamed masses on YouTube. Musicians are hosting “at-home” concerts on Facebook Live. And kids everywhere are teaching their parents what Tik-Tok is. But how can we ensure that in our effort to stay connected, we aren’t inviting claims of copyright infringement? With statutory damages ranging from a minimum of \$200 to a maximum of \$150,000 per infringement, media users should be aware of the potential legal claims presented by their online activities.

Consider this: You’re a fitness instructor leading a virtual workout which you post on YouTube for hundreds of your followers. You curate a playlist to set the rhythm of your sequence of moves, just as you would in an in-person class in your gym or studio. If there are ten songs in your playlist, your single YouTube post could contain twenty instances of infringement (each song contains two separate copyrights – one in the sound recording and one in the musical composition). While the likelihood of the artists filing infringement claims against you individually may be low, the consequences could be devastating, regardless of whether you are receiving any monetary benefit from your post. So what steps can you take to avoid adverse action by the copyright holders?

Consider the Medium - Each platform has its own rules about how it handles infringing or potentially infringing material. Some take down content only upon receiving a notice from the copyright holder while others proactively restrict posts which contain potentially copyrighted material. Some allow you to post the content so long as you “pin” the original artist and title and/or include a disclaimer that you do not own the rights to the work. Be sure to review the site-specific rules prior to posting your content. If you receive a takedown notice, comply immediately or consult an attorney.

Consider Your Audience - The wider you cast your net, the more likely you are to be “flagged” for infringement.

Consider the Use - Do your posts generate revenue for yourself or your business? If so, they may be less likely to be considered “fair use.” While not all “free” services are exempt from claims of infringement, commercial services are

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accorded less latitude.

Consider Your Alternatives - A private Zoom session that is not recorded and posted elsewhere is far less likely to elicit infringement claims than a YouTube video accompanied by paid advertisements which is accessed by thousands of users. Consider which platform is best-suited to your goals, but be mindful of the potential for infringement claims.

Consider the Necessity of Using the Copyrighted Work - If you can avoid using copyrighted material altogether without sacrificing the quality of your content, you should do so. Alternatively, consider using works that are in the public domain or securing a license from the copyright holder.

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