

NIESAR & VESTAL LLP

Law Alert

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Dealing with Copyright Trolls

Over the last year, we have noticed an uptick in “copyright trolling.” The term refers to actions by law firms that employ algorithms and other digital technology to uncover works (photographs, illustrations, collectively “Works”) that infringe their clients’ copyrights. Generally, the firms “troll” the internet to find unauthorized uses of their clients’ Works. When such use is found, the Troll will threaten to sue unless the infringer settles by paying an amount demanded by the Troll. The Troll will not particularly care if the use of the Work was innocent or transitory.

In practice, a copyright owner will sign up with the Troll who will then obtain copyright registrations on that party’s Works. If the infringer copies a copyrighted Work after the effective date of the copyright registration, he or she would be liable for Statutory Damages and attorneys’ fees. Statutory damages range between \$750 and \$30,000 per Work. Usually, the amount of damages assessed coincides with what a court believes to be a reasonable royalty for the use of the Work, but this is rarely less than \$750 per work. Between the potential amount of damages assessed and the exposure to attorneys’ fees, infringers very often find it is easier and less expensive to pay the amount demanded by the Troll.

To avoid any entanglement with these Trolls, we suggest the following: (i) Examine existing Works you have published on the web to determine if any were adopted without permission of the Work’s creator. If you know the identity of the Work’s creator, we can advise on the risks arising from the continued use of the Work. (ii) Do not use a new Work without obtaining written permission from the copyright owner (iii) With respect to new Works, consider going to a stock photo houses such as Shutterstock or Getty Images. The fees charged by these and other stock photo houses are generally quite low.

If you have any questions regarding the protecting yourself from Trolls, please feel free to contact Jay Begler (jbegler@nvlawllp.com) or Oscar Escobar (oescobar@nvlawllp.com).

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