



Podcast Transcript

Copyright Infringement in Social Media

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Lee: As social media becomes an increasingly powerful tool for brand engagement, it also presents a growing legal minefield, particularly in the realm of copyright infringement. In recent years, intellectual property litigation has surged in the digital space, with a sharp uptick in disputes involving unauthorized use of copyrighted content on platforms such as Instagram, Facebook, and others. In BakerHostetler's third annual IP Perspectives Thought Leadership piece, BHIPP, the Intellectual Property Practice Group highlights myriad IP-related topics that are at the forefront of industry developments and current challenges and trends. I'm Leeann Lee, and you're listening to BakerHosts.

On today's episode, we discuss copyright infringement in social media. To provide us with insight into this topic, we have Jen Kurcz, a partner at BakerHostetler. Jen is the leader of BakerHostetler's Intellectual Property team in Chicago. She brings more than two decades of courtroom and counseling experience to fast-moving issues that are at the intersection of technology, media, and the law. Her practice spans complex IP disputes with a particular focus on patent law and copyright litigation. Relevant here, she frequently advises clients on copyright risk in the digital space, helping brands, retailers, and creative businesses navigate licensing, infringement assertions, secondary liability, and content governance. Welcome to the show, Jen.

Kurcz: Thanks. Happy to be here.

Lee: So, to start us off, now we've all seen the headlines, and it seems like copyright claims are exploding online. What is causing this spike?

Kurcz: Yes, there have been many headlines making the news lately with eight-figure or higher damages demands. What began as innocent customer engagement may quickly turn into significant potential liability and exposure. Two things are responsible here for this big increase in litigation. First, rights holders, especially in music and photography, have ramped up enforcement. They are especially active in this area, targeting brands that use popular songs to make social media platform posts and reels on Instagram, TikTok and Facebook, allegedly without proper licensing. Second, brands and influencers are posting more than ever, often assuming platform availability equals free use. But that is a costly misconception.

Lee: So, aren't platform music libraries safe for business use? In other words, if I pick a track from a platform's music library, aren't I covered?

Kurcz: Not always. These platforms offer commercial music libraries. Think Meta's Sound Collection or TikTok's commercial music library. But many brands and their influencers don't realize that using original audio or trending sounds on these platforms can trigger infringement claims, as those sounds may reside outside of the commercial music libraries. What makes this especially tricky for brands is that their commercial music account may still have access to unlicensed works via user uploaded audio, which is not cleared for commercial use. If a brand uses those in a marketing post, it can still trigger infringement claims. So, in other words, just because a commercial account has access to posted music doesn't mean it is licensed or cleared for use.

Lee: Okay, so what is really at stake if a brand gets it wrong?

Kurcz: In the U.S., statutory damages can reach up to \$30,000 per musical work, and \$150,000 per musical work if willfulness can be established, plus attorney's fees, and that is before reputational harm to the brand from being involved in a suit or disruption to campaigns. One embedded clip can get very expensive.

Lee: And what are the most common mistakes that you see day-to-day?

Kurcz: Number one, assuming if it is on the platform, it is free. It isn't. Second, reposting influencer content without confirming the music rights. That is a big thing that trips up a lot of people. Third, cross-posting to another platform without checking that platform's commercial library. So, for instance, if you create a post using TikTok's commercial library, you can't just cross-post it to Instagram because the licensing rights may be different. And finally, background music that happens to be audible in a video but wasn't cleared. Any of these four ways can trigger claims.

Lee: So, could you give us a playbook of how teams can post confidently?

Kurcz: The first thing I always tell clients is start with education for internal teams and external partners. Audit existing posts and establish clear pre-publication checklists for music and third-party visuals. They also need to monitor influencer content tied to your brand handle and set rules for reposts. This is a very tricky

area, and it is very easy to make a misstep. So, make sure that legal is monitoring the activities of the marketing team for your company. And when in doubt, consult legal or your friends here at BakerHostetler before a campaign goes live.

Lee: That is great to hear. Now, what about older content that is already out there?

Kurcz: For that type of content, you really need to run a retrospective audit. Clients should flag posts with music or third-party visuals, verify clearances, and replace tracks with approved alternatives where needed. Document decisions so future campaigns follow a consistent standard. Also, at BakerHostetler, we develop best practices and tools to help clients do this retrospective scan quickly and efficiently. For example, we've developed a product called Sounding Board that leverages AI to scrape a client's social media to streamline this audit process for them. Coupled with legal analysis and takedown recommendations, we help clients reduce exposure from legacy posts.

Lee: Well, this has been really helpful. Can we end with a rapid checklist?

Kurcz: Absolutely. Key questions in this area to ask in any social media status check are as follows: First, you need to verify whether the track is cleared for commercial use on a specific platform. If so, document that clearance, whether that is from a commercial music library, a third-party tool, or an existing license agreement with a rights holder. Second, see if your team is cross-posting. If so, recheck rights for each platform and make sure that is part of their workflow. Third, you need to audit whether you're capturing any background music that we don't control or that is unlicensed. And then finally, if it is influencer content, you need to check whether you have rights to the music and the visuals. Just because influencers are making the post does not mean that your company is absolved of all risk. And when in doubt, reach out to IP media counsel with your questions as the landscape in this area is continually evolving.

Lee: This has been a terrific conversation. Thank you, Jen.

Kurcz: Thank you, Leeann.

Lee: If you have any questions for Jen, her contact information is in the show notes. As always, thanks for listening to BakerHosts.

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