



Copyright Infringement and Website Images

By TDIC Risk Management Staff

While surfing the web looking for photos to jazz up your website, you see a photograph of a dazzling smile in an online image library. So you download the photo and post it on your website. You may even credit the source of the photo. Or maybe the photo was "royalty free." You're covered, right?

Unfortunately, it's not that simple. Photos published on the Internet are not public domain. The Copyright Revision Act protects photographs and other works such as videos, graphics, music, text and trademarks, and the Digital Millennium Copyright Act extends protection to the Internet.

When it comes to dental practice websites, the most common copyright violation is use of a photograph without obtaining a license, according to Eric Gale, a California attorney specializing in copyright infringement cases. Gale noted a spike in copyright cases about five years ago, and said the number has since remained steady.

The Dentists Insurance Company reports an increase in web-related copyright infringement claims with 16 cases in 2012, up from two claims in 2009. TDIC analysts say dentists, or the individuals who set up dental practice websites, may not be aware of the legal requirement to secure a license for photos and other materials used online.

Dentists are responsible for the content on their websites, whether they hire a website designer or create the website themselves.

While the use of copyrighted images may be unintentional, penalties can include retroactive licensing fees for each violation and can result in a website ban. TDIC reports damages between \$1,000 and \$2,000 per image violation. However, damages can range from \$750 to no more than \$30,000 per image. If the copyright infringement is established as "willful," the fine can jump to \$150,000 for each violation. Additionally, new technology makes it easy to identify copyright infringement. For instance, photographs may have invisible identification watermarks embedded in them that can be found by searching the web.

In the event of copyright infringement, the owner of the image will typically send a cease-and-desist letter requesting royalties for use of the photo or removal of the photo. Dentists receiving such a letter are advised to contact their insurance carrier immediately.

Gale said cease-and-desist letters must provide documentation of the copyright violation, and are sent to stop the infringement and avoid inequitable conduct. The letter also serves "to provide a basis for claiming that any continuation of the infringing conduct after receipt of the letter is willful," opening the door for a significant increase in fines.

Following are a few key points to help avoid copyright infringement on your dental practice website:

- If hiring a vendor to create your website, choose a knowledgeable individual or firm, require a written agreement and approve all content prior to publishing on the Internet.
- Make sure a license has been obtained for photos and other materials used on the site and require proof of license.
- If setting up a website yourself, take your own photos, hire a photographer or pay a photographer for use of his or her images.
- If taking your own photos using staff or patients, obtain written permission from the subjects prior to using the images. TDIC offers an Image Release form online at thedentists.com.
- Online image libraries abound and offer royalty-free photos, but they are not free. Photos can be purchased individually, in a group or by subscription to the photo library. With royalty-free photos, you buy them once and can use and reuse them without paying again. Royalty-free photos have license agreements, so understand the restrictions.
- Be aware of "rights managed" photos that require a fee to use a photograph for a set period of time in a very specific way. For instance, use of a photo for one year on your website only.
- There are public domain photo sites that allow use of photos for photographer credit, but these sites state that some photos require model or property release.
- Secure written permission before using photos of products or trademarked words or symbols on your website.

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