

Protecting Your Event from Intellectual Property Problems

As an attorney who has practiced intellectual property law and a law professor who now teaches it, I keep a pretty close eye on IP issues and recent lawsuits. Lately, I've noticed several new disputes involving festivals and intellectual property. It could be just a coincidence but, nevertheless, in light of these cases, I thought it might be a good time for a primer on IP issues that festivals and events could face. Hopefully, you'll never need this advice, but if a problem does arise, here are three basic strategies to have in place:

1 "Invest Before You Brand." One of the most common types of IP lawsuits involves trademark infringement. Trademarks are essentially trade names, slogans, or logos that companies use to identify themselves. In the festival and event world, the name of your event is often hugely important in generating interest among potential visitors. At the same time, even a great name, logo, or slogan can be a problem if it causes a claim against you for infringement by another event or company that claims a previous right to the trademark.

That's why it's a good idea to hire an attorney to conduct a basic trademark search for your event before you brand it with a name, logo, or slogan (or, before you change your existing brand to a new one). While nobody likes to spend money on legal fees, you can probably negotiate a fixed-rate with an experienced IP attorney who can conduct (or have their paralegal conduct) a search to determine whether someone else beat you to the punch and has priority rights over you.

If they do, then it's a great deal easier to re-brand your event before running into an IP problem rather than after you've received a threatening legal letter or lawsuit.

2 "Assume Everything is Owned By Another." What I mean by this is that, when it comes to music,

images or videos, there is almost always a person or company who owns the copyright to that product. In simple terms, a copyright is the exclusive right that someone has to allow the performance or reproduction of a creative work. This includes everything from background music that you play at your festival to images you use on your event's website. Even if you aren't charging money or playing the song or video as a feature at your event, you can still be liable for copyright infringement if you haven't received the proper permission.

So, for every image, video, or audio product you use—even if just incidentally—make sure you have received permission. This includes people displaying, performing, or otherwise participating at your event. And, remember, just because it's on YouTube or somewhere else in the World Wide Web doesn't mean it's free to use. Triple checking to confirm that all the correct copyright permissions are in place can go a long way toward providing legal protection for your event.

3 "Build Protections Into Your Contracts." Even when you are as diligent as possible, sometimes IP problems might slip through the cracks. This is most common related to exhibitors, performers, or other third parties at your event. Under the law, a festival can, under certain circumstances, be responsible for infringing conduct by

third parties at your event. This could involve a musical performer playing songs for which they don't have permission or an exhibitor showing videos that they don't own.

To help guard against infringing third parties at your event, you should make sure that all contracts you enter into with these parties clearly provide that they shall not engage in any type of infringement and, if they do, then they will hold your event harmless and indemnify you for any damages or legal costs that you might incur.

Since many insurance policies don't provide (or severely limit) coverage for intellectual property infringement, making sure that your third-party agreements provide you protection can be a critical line of defense in the case of a claim against your festival for infringement.

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