RESHAPE OF THINGS TO COME
How to Keep Pace With Social Media Change
RESHAPE OF THINGS TO COME
A recent lull in social media growth means now is an excellent time for associations to take a step back from chasing followers or likes, come up for air, and assess their current strategy.

BY THOMAS MARCETTI

INTELLECTUAL PROPERTY 101
Unless your association only creates content from scratch, completely organically, you’ll need to learn intellectual property law and what it covers. Educate yourself on copyright and trademark law — types of intellectual property laws — so you can stay out of trouble.

BY ZEBLEY FOSTER

10 REASONS YOUR BLOG FAILED
Blogging is a solid tactic for reaching your audience in a more casual way and establishes your position as an expert in your industry. Help your chances of success by considering 10 common reasons why blogs fail.

BY MEGAN KRAMER
BREAKING THE MOLD

For a cover about shaping social media strategies, the designer literally chose a moldable medium.

MEMBERS ONLY

Your Big Announcements

SHORT RUNS

Quick-Reads on Publishing

BUILDING CAMPAIGNS FROM THE MEMBER UP

Eye Bank Association of America made its national awareness month truly member-centric by celebrating the cause, and giving members the tools to do it for themselves.

BY THOMAS MARCETTI

FACE TIME WITH MARLYS FOX

“In Sales, You’ve Got to Look Them in the Eye”

Long-time advertising executive Marlys Fox, president and CEO of Fox Associates, talks about the importance of in-person meetings — and how to get one.

BY CARLA KALOGERIDIS
INTELLECTUAL PROPERTY 101:
A Primer on Copyright and Trademark Law for Associations

BY ZEBLEY FOSTER

So you want to market your upcoming national conference by using a photo found in the deepest depths of a search engine? Or maybe you want to republish another journal’s article in your publication?

How do you know whether the image or article is free for the taking?
How do you avoid legal trouble when republishing media?

“People think, ‘Oh, if I really like an author and I think their drawings are super cool, I am going to use it and put it into my marketing campaign,’” says Rachel Hughey, shareholder at Merchant & Gould, P.C. “Generally speaking, you can’t do that. You have to get permission from someone if you’re using something that qualifies as their copyrighted material or something that uses their trademark.”
Unless your association only creates content from scratch, completely organically, you’ll need to learn intellectual property law and what it covers. Educate yourself on copyright and trademark law — types of intellectual property laws — so you can stay out of trouble.

INTELLECTUAL PROPERTY

If you’ve seen the movie *The Social Network*, the term “intellectual property,” also called IP, might not be alien. In the film, young Mark Zuckerberg works for Cameron and Tyler Winklevoss and their business partner Divya Narendra on a new project. He develops it into a global social network — Facebook — that he claims as his own. His social network takes off in instant success, and his three ex-classmates sue, accusing him of stealing their idea. In 2017, real-life Zuckerberg settled by paying $65 million in the form of $20 million cash and 1.25 million in shares to the Winklevoss twins and Narendra.

Essentially, they sued Zuckerberg for stealing their idea — their intellectual property. IP is a product of someone’s mind. It can be an invention, a product, a service, or a creative work; it is protected by patent, copyright, trademark, or trade secret laws. The value of the IP reflects the owner’s ability to control its use: If the owner cannot legally require payment in exchange for use, ownership of the intellectual property has little, if any, commercial value.

Intellectual property is enforced through court decisions and regulations, which create the rules for intellectual property sales and licensing, administration, and dispute resolution. IP laws give the owner the tools to go to court because they have the exclusive right to stop others from using their works without permission.

There are four types of IP laws: patent law, copyright law, trademark law, and trade secret law. This guide focuses primarily on copyright and trademark law.

COPYRIGHT & COPYRIGHT LAW

The mark of a copyright is the signature ©. But what does that symbol designate? A copyright is a legal tool that gives the creator of a work of authorship the right to control how the work is used. This includes rights to reproduce, distribute, adapt, display, and even perform the work.

Types of works protectable by copyright are:
- Photographs
- Databases
- Maps
- Artworks, sculpture, and graphics
- Movies and videos
- Computer software
- Sound recordings
- Pantomimes, choreographic works
- Architectural drawings, blueprints, and the design of an actual building

The U.S. Copyright Office grants copyright protection to a work of authorship the moment it is created and fixed in a tangible form that is perceptible either directly or with the aid of a machine or device. Registering a work isn’t obligatory. Owners may register their work if they want to protect it in court. Authors with works that are copyright protected have more ammunition if they want to sue you for misuse of their work, which is why it’s imperative that associations research before using borrowed media.

“For copyright, do some training on where staff get the content the company is using in its marketing materials, on its website, etc. Assume everything is copyrighted. Fair use permits some uses, like commenting on the media that is being used or quoting from it,” says Michael Carroll, director of the Program on Information Justice and Intellectual Property and a professor of law at American University. “But if you’re using the media for the same purpose it was created for, check with the creator before making the use.”

By neglecting to obtain authorizations and permissions to use a work, an association could find itself in deep trouble. It’s better to go to an attorney before starting a project just to be sure you don’t make a mistake.

“If you wait until you have a problem, it can be a lot of work for the attorney to sort it out and give you the advice you need,” Hughey says. “If you talk to the attorney upfront, and you have someone you can trust to give you that front line of information, then your whole staff can get that information upfront, and you can put some policies in place. This process substantially decreases the risk that you will have to call an attorney after the fact.”

TRADEMARK & TRADEMARK LAW

The U.S. Patent and Trademark Office defines a trademark as a word, phrase, symbol, design, or combination
thereof that identifies and distinguishes the source of goods from those of others. It is different from copyright because it protects brand names and logos used on goods and services. You’ll know a work is protected by trademark if stamped with this symbol: ™.

You interact with trademarks every day. Some popular trademarks include Google, Walmart, and Exxon.

“The key idea is that trademark law prevents a producer or seller of goods and services from marking or branding them in a way that confuses consumers about who provided them or who sponsored them,” Carroll says. “Most people understand that I can’t create my own cola and sell it as Coca-Cola. But I also can’t use the iconic Coke bottle shape, because consumers might think that my cola is somehow associated with Coke.”

**THE PUBLIC DOMAIN**

The public domain is a great source of content, as it contains creative works that are not protected by intellectual property laws like copyright or trademark law. The types of works found here include books, artwork, photos, songs, movies, and more. Stanford University’s Copyright & Fair Use Guide explains the four reasons a work of authorship can enter the public domain:

- The copyright has expired.
- The copyright owner failed to follow the copyright renewal rules.
- The copyright owner deliberately places it in the public domain, known as “dedication.”
- Copyright law does not protect the type of work.

Creative Commons (CC) licenses are your best bet for finding material to use for your association. Material under a Creative Commons license is licensed from the copyright owner to the public at large for any use, subject to some conditions. It’s important to note that not all works in the public domain are free of cost. However, they are free of headache.

“All of the licenses require you to give attribution to the source. In addition, some licenses limit uses to non-commercial uses,” Carroll says. “Others require that if you adapt the material, you have to license the adapted material under the same license as the source material. This is the license that Wikipedia uses. A different license prohibits making adaptations.”

Public domain works can be found in museums, libraries, books, newspapers, on TV or radio, and even people. The internet is a great place to find public domain work, but should always be used with caution.

“We see a lot of photographers starting to sue even relatively small companies because somebody just did an image search and then copy-pasted the image onto the company’s website. Image detection software now helps photographers find their images on other people’s sites. With trademark, it’s relatively easy to sell knock-offs on various e-commerce platforms,” Carroll says.

You can learn more about Creative Commons at [www.creativecommons.org/licenses/](http://www.creativecommons.org/licenses/) and find Creative Commons-licensed material through CC’s search engine or repositories of CC-licensed content. Examples of these repositories are Flickr and iStock.

**A FEW SIMPLE STEPS**

At first, copyright and trademark can seem daunting. You want to produce the best work you can, but you don’t want to be slapped with a copyright or trademark claim. Training your staff to recognize works that are protected by copyright or trademark is the first step to protecting your association.

The second step is to reach out to authors of works to get permission before using anything, especially if you’re not sure whether the work is protected.

Third, consult an attorney if you’re still unsure. It will cost an association less money in the long run to get expert instruction rather than pay for a huge mistake.

Associations should also protect their own work. “For any content you would be willing to sue over, register the copyright with the United States Copyright Office. Once upon a time, this was a requirement. Now, it’s just an option, but by registering, you let the world know you are willing to protect your rights. You also get extra benefits like statutory damages and attorneys’ fees if you do file a lawsuit,” Carroll says. “Otherwise, it’s just a cost-benefit decision about how much time and effort you want to spend monitoring the internet.”

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