

Copyright (Legal) - Blade Forums - Quang-Tuan Luong - Case 531094Mon, Apr 8, 2019
at 1:20 PM**Shannon Quarles**<squarles@higbeeassociates.com> To:
spark@bladeforums.com

Dear Kevin Schlossberg,

Thank you for removing the image, we really appreciate that. However our client still needs to be compensated for the Unlicensed use. Our client has rights to statutory damages. Statutory damages means that the statute itself determines what the damages award would be depending on the situation. For UNINTENTIONAL infringement, the statute gives the court the discretion to award anywhere from \$750 - \$30,000. If the infringement is found to be INTENTIONAL the court may award up to \$150,000. Additionally, the court would likely award court costs and attorneys fees, which can really add up. Our client is assuming that it was done unintentionally here which is why we are trying to handle it this way, as opposed to simply filing a lawsuit in court. If you are not familiar with how copyright law works our attorneys have advised that it may be best for you to talk with an attorney that is well versed in copyright law. Our client is willing to negotiate the initial demand offer. Do you have an good-faith offer you would like us to present to our client for consideration?

Thank you,

Shannon Quarles
Claims Resolution Specialist
Copyright Division
Direct Line: 657-229-6219
Law Offices of Higbee & Associates (<http://www.HigbeeAssociates.com>)
[1504 Brookhollow Dr. Suite 112, Santa Ana, CA. 92705](#)
Phone: (800) 716-1245 ext-190 - Fax: (714) 597-6559

Higbee & Associates
A NATIONAL LAW FIRM

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Kevin Schlossberg <spark@bladeforums.com>
To: Shannon Quarles <squarles@higbeeassociates.com>

Mon, Apr 8, 2019 at
2:02 PM

Hi Shannon thanks for getting back to me. After further research, we will need the following:

.
. .
. . .

A copy of the final, issued copyright registration for the Image, and not just the application.

A copy of the deposit materials for that registration, in order to confirm the Image is encompassed within it.

A chain-of-title history of any transfer or licensing agreements surrounding the Image, particularly with respect to who held any exclusive rights throughout 2019. A copy of any DMCA notice(s) sent on behalf of your client to terragalleria.com & other sites regarding the Image, between 2007-2019.

A three year history of licensing fees for the Image.

Since the offending image in question was linked in 2007 by a third party user & not site staff, you should also explain why you feel you have a valid copyright infringement case & how the statute of limitations has not been exceeded. Have a great day!

[Quoted text hidden]

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Shannon Quarles <squarles@higbeeassociates.com> To: Kevin Schlossberg <spark@bladeforums.com>

Mon, Apr 8,
2019 at 3:06
PM

Dear Mr. Schlossberg,
My supervising attorney would like to address the follow:

1. I have attached a screenshot of the registration which can be pulled directly from the copyright registration office. Under VA 1-300-874
2. At this time our clients are not willing to provide deposit copy material due to this image being registered within 5 years of publication. This means it falls under 17 USC § 410 C, which shows the registration to be prima face evidence until and/or if we take this to litigation. In addition you can request a deposit copy from the copyright department if you wish to obtain one.
3. A chain of title is not necessary since you can clearly see through the registration as the author of the image is the same as our client. Our client maintains ownership of the image and is pursuing the claim under that ownership.
4. No DMCA take-down notice was necessary since we have no evidence that “Balde Forums” is properly protected under Safe Harbor.
5. This image is registered timely and prior to the infringement upload of 2007. Therefore our client is seeking statutory damages which means we only need to prove that an unauthorized and unlicensed use occurred, showing infringement, and thus our clients are able to seek anywhere from \$750.00 to \$30,000.00. At this time our clients do not find it necessary to provide licensing history since we are not seeking actual damages.
6. Statue of limitations starts from the time the image is discovered to be infringed, not the time it was published.



The screenshot shows the Copyright Office Public Catalog search results for the entry "Quang-Tuan Luong 2004/2web : Group registration/photos--499 photographs." The page includes navigation links (Help, Search, History, Titles, Start Over), search details (Search Request: Left Anchored Copyright Number = VA0001300874), and a detailed record for the registration. The record lists the Type of Work as Visual Material, Registration Number as VA0001300874, Date as 2004-12-09, Title as "Quang-Tuan Luong 2004/2web : Group registration/photos--499 photographs", Copyright Claimant as "Quang-Tuan Luong, 1964-", Date of Creation as 2004, Date of Publication as 20May-27Nov04, and Other Title as "Group registration/photos--499 photographs." The record also lists the Name as "Luong, Quang-Tuan, 1964-". Below the record are options to Save, Print, and Email the page, along with a download format selector and an email address input field.

Thank you,

Shannon Quarles
Claims Resolution Specialist
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On Apr 8, 2019, at 11:02 AM, Kevin Schlossberg
<spark@bladeforums.com> wrote:

Hi Shannon thanks for getting back to me.
After further research, we will need the following:

A copy of the final, issued copyright registration for the Image, and not just the application.

A copy of the deposit materials for that registration, in order to confirm the Image is encompassed within it.

A chain-of-title history of any transfer or licensing agreements surrounding the Image, particularly with respect to who held any exclusive rights throughout 2019. A copy of any DMCA notice(s) sent on behalf of your client to terrageria.com & other sites regarding the Image, between 2007-2019.

A three year history of licensing fees for the Image.

Since the offending image in question was linked in 2007 by a third party user & not site staff, you should also explain why you feel you have a valid copyright infringement case & how the statute of limitations has not been exceeded.

Have a great day!

On Mon, Apr 8, 2019 at 1:20 PM Shannon Quarles <squarles@higbeeassociates.com> wrote:
Dear Kevin Schlossberg,

Thank you for removing the image, we really appreciate that. However our client still needs to be compensated for the Unlicensed use. Our client has rights to statutory damages. Statutory damages means that the statute itself determines what the damages award would be depending on the situation. For UNINTENTIONAL infringement, the statute gives the court the discretion to award anywhere from \$750 - \$30,000. If the infringement is found to be INTENTIONAL the court may award up to \$150,000. Additionally, the court would likely award court costs and attorneys fees, which can really add up. Our client is assuming that it was done unintentionally here which is why we are trying to handle it this way, as opposed to simply filing a lawsuit in court. If you are not familiar with how copyright law works our attorneys have advised that it may be best for you to talk with an attorney that is well versed in copyright law. Our client is willing to negotiate the initial demand offer. Do you have an good-faith offer you would like us to present to our client for consideration?

Thank you,

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<images.png>

[Quoted text hidden]

Kevin Schlossberg <spark@bladeforums.com>
To: Shannon Quarles <squarles@higbeeassociates.com>

Your supervising attorney should already be aware of the Perfect 10 v Google ruling that shows hotlinking images does not constitute copyright infringement, and since the image was not stored on our site at any point, but (as your own letter states) is stored on terrageria.com, your claims are false:

[https://scholar.google.com/scholar_case?q=Perfect+10,+Inc.+v.+Amazon.+com,+Inc.,+508+F.+3d+1146+\(9th+Cir.+2007\)&hl=en&as_sdt=40006&case=9280547131690965273&scilh=0](https://scholar.google.com/scholar_case?q=Perfect+10,+Inc.+v.+Amazon.+com,+Inc.,+508+F.+3d+1146+(9th+Cir.+2007)&hl=en&as_sdt=40006&case=9280547131690965273&scilh=0)

Your supervising attorney should also be aware of Fair Use, which is codified under US law.

Congress codified the common law of fair use in 17 U.S.C. § 107, which provides:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, **comment**, news reporting, **teaching** (including multiple copies for classroom use), **scholarship**, or research, is not an infringement of copyright.

The post cited clearly shows that the picture was used to provide an example of what a "burl" is for the purpose of educating others.

Last, your opinion regarding DCMA protections is noted & disregarded.

If you proceed in further harassment, we will take action including notification of the CA State Bar, CA Attorney General, FTC and other respective agencies.

[Quoted text hidden]



Kevin Schlossberg
<spark@bladeforums.com>

Copyright Case 531094 - Blade Forums - Quang-Tuan Luong

Theodore Sell <tsell@higbeeassociates.com>
To: spark@bladeforums.com
Cc: Shannon Quarles <squarles@higbeeassociates.com>

Tue, Apr 9, 2019
at 1:29 PM

Mr. Schlossberg,

I have reviewed your correspondence with my assistant Shannon and need to set some matters straight.

I am aware of *Perfect 10 v. Google*, as well as the more recent and more precedential *VHT, Inc. v. Zillow Grp., Inc.*, No. 17-35587 (9th Cir. Mar. 15, 2019). Unfortunately, the case law does not protect your use. The 9th Circuit Court of Appeals purposefully ruled in *VHT* to clear up some misconceptions about the use of thumbnails as well as hot linking. *Id* at *28 (Thumbnails and linking “improve[s] access to images on the internet and their related web sites” by “index[ing]” the internet and linking to the original source image generated in the search results”), citing *Kelly v. Arriba Soft Corp.*, 336 F.3d 811, 815-16, 818 (9th Cir. 2002). The use of thumbnails and linking is limited to use in legitimate, actual search engines. *Id* at *29. A key distinction is the size of the universe of users having access to a *thumbnail* image and also link to original source material with the other key distinction is that legitimate search engines “crawl” the web. *Id* at *31-32. Here, your use of my client’s image only achieve, purportedly, a link to his site but the image was neither a thumbnail nor was the image placed as a result of an internet crawl, but intentionally and purposefully. Your use is then an infringement without excuse as the use did not fulfill the requirements to be a legitimate “hot link”.

As for your Fair Use defense, I will only note that your website is not associated with an actual institute of education, such as a school. Therefore, and without any further analysis provided to analyze, the use is not remotely associated to fair use.

It would not be wise for you to disregard your failure to avail yourself to the Safe Harbor provisions of the DMCA. To receive protection under the DMCA safe harbor, a party “must meet a set of threshold criteria.” *Viacom Int’l, Inc. v. YouTube, Inc.*, 676 F.3d 19, 27 (2d Cir.2012). Among these criteria are requirements that the party qualify as a “service provider,” as defined in the statute; adopt and reasonably implement a “ ‘repeat infringer’ policy”; and “accommodate ‘standard technical measures’ that are ‘used by copyright owners to protect copyrighted works.’ ” *Id.* (quoting 17 U.S.C. § 512(k)(1)(B), 512(i)(1)(A)-(B), (i)(2)). *BWP Media USA Inc. v. Hollywood Fan Sites LLC*, 115 F. Supp. 3d 397, 399-0 (S.D.N.Y. 2015). Here, you did not register a DMCA agent with the US Copyright Office until yesterday, April 8, 2019. As such, you cannot escape liability for any infringement occurring prior to that date. *BWP Media USA Inc. v. Hollywood Fan Sites LLC*, 115 F. Supp. 3d 397, 400-1 (S.D.N.Y. 2015) (“A service provider cannot retroactively qualify for the safe harbor for infringements occurring before the proper designation of an agent under the statute”).

Rest assured, there is no harassment in this matter. Simply put, you violated federal law by infringing my client’s copyright for which compensation will be made, either through settlement or litigation. If you feel the need to contact any legal authority, please be sure to let them know that we contacted you about your violation of the law and my client’s property rights; rest assured, we will as well as we have done so before with other, previous complaints.

Respectfully,

Theodore (Ted) W. Sell, Esq.
Colorado Bar No. 44157
Attorney at Law - Copyright Division
Law Firm of Higbee & Associates
1504 Brookhollow Dr. Suite 112
Santa Ana, CA 92705
<mailto:tsell@higbeeassociates.com>
Phone: (657) 229-6215

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From: Shannon Quarles <squarles@higbeeassociates.com>
Date: April 24, 2019 at 3:19:09 PM EDT
To: Kevin Schlossberg <spark@bladeforums.com>
Subject: Copyright (Legal) - Blade Forums - Claim 531094

Dear Mr. Kevin Schlossberg,

I'm writing you today to inform you that this will be my last attempt to contact you. If you do not respond with a resolution to resolve this matter we will be turning this claim over to our litigation team. Our clients image is registered with the copyright office, therefore our client is seeking statutory damages.

Our client is assuming that it was done unintentionally here which is why we are trying to handle it this way, as opposed to simply filing a lawsuit in court.

Please reference case number (531094) when you call.

Thank you,

Shannon Quarles
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