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Is My Company Potentially Liable For The Copyright Infringement Of A Third Party?

[Kristie Prinz](#)

Q. I sell web design templates for another company ("Third Party"). My website acts as a showcase for their products. I place a line of code within my websites' page which then "pulls in" their displays within my own page. My visitors then choose a template and make a purchase. The purchase is viewed as if it is on my website, but the purchase is actually occurring on Third Party's website. The money goes directly to Third Party and the template is sent to the client from Third Party (with my business branding in the download). Finally Third Party pays me a percentage of the monthly payouts. (It's an affiliate program). The Question is this: Third Party has apparently been using stock imagery without permission within its templates. I understand that stock imagery companies are now going after affiliates (like me) and suing them. Am I or my business actually liable for these copyright infractions?

*-- Gene***A.**

Based on the facts you have provided, it is not clear whether or not you could be held liable for the copyright infringement by the third party web template designer, but the fact that you were not the direct infringer of the outside third party's ("Outside Party") work does not necessarily mean that you would not be found liable for copyright infringement. Recent case law has established that third parties can be found liable for copyright infringement in some circumstances, where no direct infringement exists. There are various theories of liability that can be applied to assign liability to the third party who is only indirectly involved with the infringement, and it is unclear if one of those theories could be applied in your case from the facts you have shared above.

Also, your question did not address the terms of any agreement you entered into with such Third Party. Did you agree to indemnify the Third Party from intellectual property infringement claims? Did Third Party agree to indemnify you? Such clauses could affect your liability as well.

My advice would be to consult as soon as possible with an [intellectual property attorney](#) in your jurisdiction who is familiar with copyright law and copyright infringement litigation, in order to evaluate the

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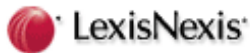
specific facts of your situation, so that you can address your potential liability as soon as possible and take prompt action to minimize your risks with respect to your existing affiliate relationships.

As for future business relationships of this nature, I would make sure that all agreements and understandings are memorialized in writing, and that the terms of each contract specifically address relevant liability issues, particularly in the case of copyright infringement. If you expect the Third Party to indemnify, defend, and hold your company harmless in the event such Third Party is found liable of copyright infringement, then this should be stated expressly in the agreement. Warranty, disclaimer, insurance, and limitation of liability clauses should also be expressly provided for in the agreement. An intellectual property attorney who specializes in licensing and drafting intellectual-property related transactions should be able to advise you on how best to draft these terms in your particular circumstances.

Also, if have not already done so, you should consider buying business insurance that covers claims of this nature, in order to protect your business from any such claims that do arise against the business in the future. Intellectual property and internet risk insurance come to mind as two logical choices that may be able to protect your business in the event you ever get held liable in this type of situation. I would consult with your current business insurer to determine what type of coverages are available, and confirm the scope of your existing coverage.

-- Kristie Prinz

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