

Is Your Dealership Complying with Copyright Laws?

Like many retailers, you are looking for ways to make visits to your dealership enjoyable for your customers. You download mood music from the internet to play in the showroom and buy DVDs of popular movies to entertain customers while they wait for their vehicles to be serviced. But did you know these activities can lead to substantial liability?

Guide to the DMCA

Signed into law October 28, 1998 by President Clinton, The Digital Millennium Copyright Act (DMCA) addresses significant copyright issues. It provides very strict rules by which your dealership must abide or face substantial damages. Here is a guide to what is legal and illegal for consumer activities in your dealership under the copyright laws.

Can my dealership play music in the showroom on the radio?

Preferably, to play music in your showroom, obtain a license from a national licensing source because copyrighted music may not be played to the public without a license to do so. Under the DMCA, you may play music in your dealership via the radio without limitations if it is from a broadcast station licensed by the Federal Communication Commission and the dealership is less than 2,000 square feet (excluding space used for customer parking). If the dealership has 2,000 square feet or more, then the dealership may play the radio but the broadcast cannot be communicated by more than 6 loudspeakers, of which only 4 loudspeakers are in any 1 room or adjoining outdoor space.

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Employment Law: Deal with Problems Directly

Here are two situations dealers sometimes face. What do you think about the suggested easy solutions?

Situation 1: You hire a sales manager. He wants a monthly income guarantee for three months to develop the business. You are concerned because you want to protect against a claim he has a minimum ninety days employment that will prevent you from replacing him quickly if he does not work out. Your solution: call him a probationary employee.

Caution: An employee is an employee. Designation as "probationary" does nothing to protect the dealership because a court may find that the guarantee ensured the manager would be employed for ninety days.

What is a better solution? Clarify that the guarantee is only a method of being paid, and use a disclosure in the pay

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Can my dealership play videos in the service lounge?

The dealership may not play motion pictures from DVDs it may own without receiving a license. Motion picture copyright owners provide a home-use license to view a DVD or movie in the comfort in the DVD owner's home, but they do not give that owner a right to show that DVD to people publicly (i.e., to customers at a dealership). Although the copyright laws offer exceptions, showing motion pictures for employee training or to entertain customers do not fall under such exceptions.

However, like music from the radio, dealerships may play a television broadcast station licensed by the Federal Communications Commission, or by a cable system or satellite carrier without limitations, if the dealership is less than 2,000 square feet. If the dealership is over 2,000 square feet, under the DMCA you can play the broadcast if "any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than 1 audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space."

Can my dealership be held liable for copying legally purchased DVDs or CDs and converting them to digital files?

Some dealer employees think that they can download content from legally purchased DVDs or CDs to the dealership's computer system. However, the DMCA prohibits reproducing copyrighted work and distributing copies of copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The DMCA criminalizes the use, creation and distribution of technology, devices, or services that circumvent anti-piracy

protections commonly embedded by media distributors in DVDs and software. With the wide availability of software to defeat these protections, converting or "ripping" (converting physical media like DVDs and CDs to digital files on a hard drive or iPod) digital media is tempting. Circumventing these anti-piracy protections may well infringe the copyright.

Can my dealership be held liable if an employee downloads music or other copyrighted materials such as computer programs?

It is illegal for people to download copyrighted works on the internet and file share those works, including music, movies, and computer programs. Computer programs are literary works protected under the DMCA.

Businesses whose employees use the business computer system to download copyrighted material can also be held liable. For example, the recording industry entered into a \$1 million settlement with Integrated Information Systems, Inc., an Arizona based high tech company, whose employees accessed and distributed thousands of music files using the company server.

To obtain Licenses

For dealerships that desire a license to play music in their places of business, there are three licensing companies in the United States: Broadcast Music, Inc. (BMI), American Society of Composers, Authors and Publishers (ASCAP), and SESAC, Inc. Licenses are offered for

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business entities on a yearly basis so licensed music can play in your dealership without fear of violating copyright laws. Providers that have licenses, such as Muzak Holdings, which was purchased by Mood Media, also can be a source of licensed music to provide background music specifically geared to your dealership's needs.

The Motion Picture Licensing Corporation (MPLC) is a licensing agency authorized by motion picture copyright holders, such as studios and producers, to issue the MPLC Umbrella License® for the public performance of copyrighted motion pictures and other programs. This licensing corporation was developed to provide licensing to entities such as dealerships that wish to show motion pictures to employees or customers publicly but are not making money off the work itself (i.e., the entities do not charge admission to view the motion picture).

Costly Violations

Violations of the DMCA can be costly. In cases of copyright infringement including displaying or playing copyright material to the public, the copyright holder must prove that the infringement was committed willfully to get an increased statutory penalty, which can be no greater than \$150,000. In some cases the court has the discretion to reduce the award of statutory damages to a sum of not less than \$200 if the court believes that the infringer was not aware or had no reason to believe that his or her acts constituted an infringement.

An infringer can also be liable for serious civil penalties. Under egregious circumstances, there can even be criminal penalties under the DMCA.

Besides the civil liability and possible criminal penalties for copyright infringement, a copyright holder could also be awarded attorney's fees and costs should an action be brought against a dealership.

Steps to Avoid Copyright Violations

- Purchase licenses for each dealership for music played in the showroom or to show motion pictures in the lounge area. The cost of a yearly license is minimal in light of the possible penalties and attorneys' fees and costs that the dealership could face if a copyright infringement suit was brought against it.
- Whenever digital media is purchased for a business, carefully read all the limitations included on the media itself or accompanying documents concerning the use of the product. Strictly observe these limitations.
- Do not copy or permit copying digital media which contain encryption or any other anti-piracy technology.
- Do not use nor copy any media that the business did not purchase without the specific permission of the copyright holder.
- Permission to copy, distribute, or perform protected media may often conveniently be obtained from the Copyright Clearance Center (www.copyright.com), which serves as a central clearing house for forwarding copyright royalties to many copyright holders
- Train employees to understand these basic copyright rules.
- Every dealership should have a clear technology use policy either in its handbook or separately.
 - The policy should give notice to employees they may use the company's information systems strictly for company business.

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plan concerning the “at will” nature of the manager’s employment: “Manager is an employee at will. Either the employee or the company can terminate employment at any time. This pay plan only states the method by which the employee will be paid. It shall not be considered a contract, or assurance of employment for any specific duration.”

Situation 2: A female employee complains to the controller that her supervisor is asking her out and that she feels sexually harassed. The next day she returns and says she worked things out with the supervisor and nothing more needs to be done. Your solution: drop the matter since the employees worked things out.

Caution: There are several problems with this solution.

1. The complaint from the employee can be a signal she is not the only one being subjected to this activity. Even though this issue is resolved, this could qualify as a warning if there may be other problems brewing.
2. This complainant could well contend that she was pressured to drop the complaint, and take legal action later contending that the complaint was notice and you should have followed up for her protection.
3. If the original complainant’s work performance slacks off, and you take disciplinary action, she might claim retaliation.

So what should you do? Follow through on all steps of your investigation on the complaint even though the complainant said the matter was resolved. Get details about the complaint, interview those with knowledge, decide, take action on the decision, and keep notes in the personnel file of the complaining employee and the supervisor. By doing so, you can determine whether there is a serious issue that could lead to other problems and whether the complainant’s request to drop the matter was

voluntary. You can document the steps you took if there are any further complaints by the original complainant or others.

In addition, you must be careful in managing the complaining employee. The most prevalent complaint to the federal Equal Employment Opportunity Commission in 2014 was for retaliation. Recognize that you must carefully consider and document any adverse employment action against an employee who has filed a complaint of discrimination or harassment. If a complaining employee’s work slacks off, there should be adequate warnings, documentation of the deterioration of performance, and documentation of the warnings. Before taking adverse employment action about an employee who previously filed a complaint, ask if you would take action against other employees performing adequately. If you take action, document the action and the reasons for it.

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- The policy should be a clear notice that employees have no expectation of privacy for any activities on the company’s computer system. Employees must understand that all information accessed by or received on the company’s computer system will be subject to company monitoring without further notice.
- The policy must prohibit the use of the company’s computer system for transmission or receipt of material that may be offensive, obscene, or that can be construed as harassment or disparagement of others.
- The policy must prohibit sending or receiving copyrighted material, trade secrets, proprietary financial information, nonpublic personal information of customers or employees (unless such a transmission is part of the job functions of the employee).