

Towns & The Law

Copyright Law and the Need to Get Permission



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When most people think of issues that relate to municipalities they do not think of Peloton stationary bicycles. But one of the

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interesting things about municipal law is that events that happen well outside of the local government sphere can relate to things that local governments do. In late March, Peloton was hit with a \$150 million lawsuit filed by The National Music Publishers' Association for utilizing music without the proper licensing.

In another recent story, the Environmental Protection Agency (EPA) created a video game called "Recycle City Challenge" in an attempt to educate people on the importance of reducing waste and energy use. In February, some Nintendo gaming system fans noticed that the EPA had utilized a slightly changed version of music from an obscure mid-90's video game for the background music of the recycling game. Because the music was not part of the educational experience, but merely background music, it likely would have been a copyright violation if the EPA was using the music without license, as it appeared. The EPA took down the music as a result.

Now cities in Georgia aren't Peloton and don't usually create education-

al video games like the EPA, but the Peloton lawsuit and the EPA situation serve as a reminder and as a warning to cities across Georgia of what can happen when the city fails to abide by copyright and licensing laws.

As we head into the warmer weather of mid-spring and early summer more cities start hosting festivals. With festivals comes music. Cities also create promotional videos and utilize music in other ways to improve the city's brand and market what the city has to offer.

People, including city officials, sometimes think that government is immune from needing to comply with copyright laws, but that could not be further from the truth. While the fair use doctrine provides limitations to the exclusive rights of copyright holders such as uses involving criticism, comment, news, reporting, education and research, it does not provide a carte blanche pass to uses of copyrighted materials by city governments.

Cities that utilize music need to be aware of copyright laws and the responsibility the city has in obtaining a music license if the city is utilizing music at a festival, concert or even on a publicly available promotional video. The International Municipal Lawyers Association (IMLA) has license agreements for ASCAP and BMI, two of the largest music copyright holders, available on its website for the city to access. These licenses are not free, but if the city chooses to break copyright

law and use music without a license, the potential liabilities in litigation are far more expensive than the cost of an annual license.

Copyright law does not only matter in regards to music when it comes to cities. Whenever a city uses an image or video clip on its website, in a promotional brochure or elsewhere, the city needs to be cognizant of the potential copyright issues that exist and it needs to make sure it has the correct image. In a prime example from just last year, the United States Postal Service (USPS) lost a \$3.5 million judgment to a Las Vegas artist, when the USPS accidentally used an image of the replica Las Vegas Statute of Liberty without permission on a stamp, instead of an image of the real Lady Liberty.

The Lady Liberty snafu serves as a reminder that even artwork placed in the public arena can have copyright protection if images of the artwork are being utilized in a commercial context, such as a promotional advertisement.

These copyright suits do not just impact large companies and federal agencies. Late last year, the city of Aiken in South Carolina settled a lawsuit with a local artist after the city repeatedly used his artwork, posted on his Instagram account, without his permission. The city and its tourism division had used the artist's holiday themed photo in a paid social media ad and in mass communications in an

effort gin up tourism to the city. Even though the city credited him as the artist in some of the uses it did not obtain his permission and, in the end, that failure cost the city thousands of dollars.

Cities across Georgia should be cognizant of the effort artists put into their work and realize that if the city wants to use such work, it may need to pay a license fee to the artist or the artist's representatives. While permission might cost the city a license fee up front, the potential liability costs on the backend are much larger and can harm the city's brand through negative press.



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