Do You Know Your IP Rights In Your Imagery and Other Data Products?

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Two recent court cases highlight the need for businesses to carefully consider the intellectual property rights associated with building data products and services. This issue is of growing importance as companies increasingly build business models based upon the collection, use and distribution of imagery and other digital data collected from sensors mounted on a multitude of platforms, such as Unmanned Aircraft Systems (UAS), commonly known as drones.

In Drauglis v. Kappa Map Group, No. 1:2014cv01043 (D.D.C. 2015), Mr. Drauglis alleged that Kappa Map violated the terms of the Creative Commons Contribution-ShareAlike 2.0 (?CC-BY-SA?) license under which he had published a photograph. He had posted the image for free on Flickr under a CC-BY-SA license, which requires anyone using that image to attribute the work to him (the ?attribution requirement?) and that any derivate product created from the image be subject to the same licensing terms (the ?share-alike requirement?). Drauglis claimed that Kappa Map violated his copyrights and the terms of the CC-BY-SA license by including his image on the cover of an atlas that was sold for commercial gain. Specifically, he argued that the cover and the atlas had become derivative works and therefore subject to the ?share-alike requirement.? Following discovery, both parties moved for summary judgment on the claims. The District Court of D.C. granted summary judgment for Kappa Map and held that neither the cover nor the atlas was a derivative work because neither was ?based upon? the image or ?recast, transformed or adapted? the image. Instead the court held that the atlas was a collection of separate and independent works assembled into a collection and therefore constituted a collective work. As the ?share-alike requirement? of CC-BY-SA does not apply to collective works, the Court held that Kappa Map had satisfied the ?attribution requirement? by attributing the plaintiff?s work on the back cover of the atlas; it could therefore claim copyright in the maps and sell the atlas for commercial gain.

A second important case, Phantomalert Inc. v. Google Inc., Waze, Inc. et al Case No. 15-cv-3986 (N.D. Ca. Sept. 1, 2015), involves Waze, the popular app used by drivers across the world to avoid traffic that Google purchased in 2013. Phantomalert, a company that also provides navigation apps for mobile phones, is suing Waze, and its parent company Google, for copyright infringement and conversion. It

alleges that Waze incorporated points of interest (POI) into its maps that are subject to Phantomalert?s copyrights. Points of interest, as the name suggests, are specific points on a map that are of interest, such as restaurants, museums and government offices and can be of considerable value in building mapping products and services. Normally, factual data such as POIs are not subject to copyright in the United States; however the compilation of the data may be of sufficient originality so as to merit copyright protection. Phantomalert claims to have obtained a copyright registration from the U.S. Copyright office in its POI database in August of this year. It claims it can tell that Waze has copied its POI because it observed the same errors on Waze maps that Phantomalert intentionally had imbedded in its own database. Intentionally created errors in mapping are commonly known as Easter eggs and often are used to catch unauthorized copying.

The advent of drones and other platforms that collect images and other types of digital data will result in more sophisticated and timely data products and services. However, as these two cases highlight, intellectual property rights in data can be complex. Moreover, there is little case law on important legal matters such as what constitutes a ?derivative work? under a data license. As a result, it is important for both data providers and data service providers to understand the various intellectual property considerations.

For example, a business that wishes to distribute data collected from a drone must carefully consider what copyrights or other IP rights there may be in the data and the terms of the license under which it wishes to distribute the data. Often this will depend upon a variety of factors, including the type of data and the intended use. As the Drauglis case indicates, failing to understand the implications of licensing terms can have serious negative consequences.

Similarly, it will be equally important for companies that wish to develop products or services based upon data collected from drones or other unmanned systems or devices to understand intellectual property rights in data, as in many cases these product and services will require aggregating other types of data from a variety of different sources. These data types may be subject to different intellectual property protection, and each data source may have its own license with distinct conditions and restrictions. A failure to address these rights and restrictions properly when creating products and services could result in costly litigation.

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