

## **Sheldon v Daybrook – The pitfalls of copyright of infringement**

### **Background- What is copyright?**

Copyright law seeks to protect the form of expression of ideas. This can range from literary works, to music and recordings and even dance and mime. The authors or creators of original works are rewarded each time they are used through payment of royalties. Copyright is an automatic right and there is no register of copyright as there is for other intellectual property rights such as trademarks or patents. There is also no legal requirement to use the © symbol to show a claim of copyright in the UK. It is therefore difficult to determine whether something is subject to copyright, and who the original author or creator may be. Copying, publishing or performing someone else's work without permission or the necessary licence can amount to copyright infringement. This was the basis of the claim in *Sheldon v Daybrook House Promotions Ltd*.

### **The Case**

The Patents County Court has recently given a preliminary decision on the damages that will be awarded for copyright infringement of photographs on the internet. The case highlights the dangers of reproducing images from the internet without the photographer's consent. In *Sheldon v Daybrook*, a photographer brought proceedings against a night club in Nottingham for the unauthorised use of one of his photographs of the pop star Ke\$ha, taken back stage on her UK tour. The defendant argued that it had not been aware that it was not entitled to use the photograph in its poster advertising campaign. It had taken the image from a social networking site, which had been widely available on the site. It held a genuinely mistaken belief that this meant that the photograph could be freely used.

### **The Damages**

The photographer asked the nightclub to stop using his image and issued it an invoice for £1,351 for using the image in its advertising materials. The defendant believed that the value of the photograph was low and offered the claimant £150 for it. As a result, the photographer issued a claim to recover the royalties he believed he was owed. The court considered what level of compensation may be awarded if the claimant was successful in his claim. It held that the correct level of damages was what the reasonable royalty/licence fee for the photographer would constitute in this instance i.e. what would the claimant have earned for the photograph? The court favoured the claimant's submissions in relation to the level of damages, which included the celebrity status of the subject of the photograph and the exclusivity of access backstage at her concert. The court therefore held that the claimant would be entitled to £5682.37 in damages.

## **Implications**

This case highlights the need to take care in reproducing images and photographs from the internet in any written or online publications. Charities and not-for-profit organisations should consider the implications of this case when producing any materials such as newsletters or pamphlets etc. The assumption that an image is free to use due to its proliferation on the internet is incorrect, and will not act as a defence in court. Charities should make sure that branches and staff are aware of this and need to consider whether they are authorised to use an image before publishing materials. Otherwise, the organisation could be liable for a hefty royalties claim.

Organisations should also be aware that the copyright attached to any photographs or images that they commission belong to the photographer who took the photo, not the organisation. Equally, this principle applies to photographs or other materials produced by volunteers or any other person who is not employed by the organisation.

For further information, please contact:

### **David Mears**

Partner

+44 (0)20 8394 6484

David.Mears@russell-cooke.co.uk

### **Hannah Lyons**

Trainee Solicitor

+44 (0)20 8394 6493

Hannah.Lyons@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP.  
© Russell-Cooke LLP July 2013

**[www.russell-cooke.co.uk](http://www.russell-cooke.co.uk)**