



what you need to know to start and grow your business

online copying

What is online copying?

Online copying can mean different things. For domain names registered using someone else's brand names, see our separate Domain Names guide. Here we look at selling products, or using or uploading content, that infringes someone else's intellectual property (IP) rights (usually copyright or trade marks)

Content creator or rights holder?

You may well take a different view on alleged copying depending on which you are. If you create and post content on social media, perhaps even for your living, it can be very upsetting for that to be in jeopardy from claims from rights holders to have your content removed, revenues diverted, or your ability to update frozen. As a copyright or other IP rights holder, you may feel genuinely aggrieved at rife copying of your creations and loss of revenue. You may find yourself on both sides.

How can I avoid a dispute in the first place?

CONTENT CREATOR/UPLOADER

- Don't copy: only create and upload original content and keep paper/digital records of your creative/design process
- Avoid inadvertent copying via subconscious influence.
- Check databases for unregistered intellectual property rights:
 - Copyright: Copyscape in US
 - Unregistered design right: ACID (anti-copying in design) in UK
- Check registered trade marks and registered design right databases at UK IP Office: you can infringe even if you did not copy
- Don't assume content available on the internet is free to use: always check website terms of use
- If in doubt, seek owner's prior consent (may need to pay)
- If you can't contact the owner, don't use the content.
- Be careful with contractors providing you with content to include in your works/posts, such as website or graphic designers: get IP assurances in your contract that their content does not infringe third parties' IP rights and check by doing searches yourself.

INTELLECTUAL PROPERTY RIGHTS HOLDER

- Unless there is critical business impact, you could try to rise above it and not take action. Imitation is testament to the appeal of your products or brand
- Focus on providing high quality goods/ services: preserve the premium appeal of your brand
- Keep innovating and improving: stay ahead of the imitators and competitors.

How can I check for copying?

- It is not possible to monitor all online activity. However, you can:
- Set up Google Alerts for free: regular notification of new content with key search terms you define to capture copying
 - Instruct a trade mark attorney or portfolio manager to run an automated watch for applications to register trade marks or online use of trade marks similar to yours.

To stop online copying, what are my options?

WHACKAMOLE (COURT CLAIM)

- Try to contact the uploader and if this fails, start a court claim. If you succeed you can get an injunction (court order) against infringer preventing use of your copyright/trade marks on any online service and possibly damages payments for lost business revenue in the past.
HOWEVER
- They could be anywhere in the world and could disappear and then reappear under a different name/location and continue to sell or upload infringing materials.

TAKEDOWN

- Use the take down tools offered by each online service provider (OSP). You may get the infringing content removed, a freeze on any fresh uploads of similar content by the infringer, and possibly diversion of advertising revenue to you.
HOWEVER
- Would only succeed for that OSP: need to repeat with each OSP using their own takedown tools, as needed.

What are the online takedown tools?

All service providers offer a tool to submit a copyright and/or trade mark infringement notice and a mechanism to remove infringing content. At least in the case of copyright claims, the content uploader first has the chance to submit a 'counter-notice' to explain why they think the relevant content does not infringe.

- You will usually need to show you are the owner of the intellectual property (IP) right you claim is infringed and may need to register with them first. For unregistered rights such as copyright, this may mean providing time-stamped evidence of when you created your work/ first uploaded it to the service provider.
- You will need to demonstrate why the content in question infringes your copyright/trade mark/other IP right

As content creator/uploader: again, good practice to avoid potential dispute in first place (see above)

Small businesses as rights holder: consider instructing a lawyer to help make the complaint to add 'weight' and precision

Some online service providers are beginning to provide more sophisticated complaints and rights management services:

Online Service Provider	Take Down Tools
Alibaba	<ul style="list-style-type: none">• Intellectual Property Group Platform - apply to take down infringing items listings and receive help with monitoring future infringements/enforcements of your rights
Amazon	<ul style="list-style-type: none">• Amazon Brand Registry - enhanced management and protection of your brands on Amazon store• Project Zero - help quickly remove counterfeit goods from Amazon store• Transparency - use a unique code for each item your brand lists: this can be traced (Amazon scans the code) to check the product is not a fake before it is sent to the customer.
eBay	<ul style="list-style-type: none">• Verified Rights Owners (VeRO) - once registered, you may get additional help form eBay staff or additional information on eBay users
Facebook	<ul style="list-style-type: none">• Audible Magic software - rights owners can 'fingerprint' the media files they upload. Later videos are checked by Audible Magic at the time of attempted upload: if a match is found, the upload will be prevented and the user is notified• Rights Manager - rights owners can log all their content and if a video uploaded later matches your content, you can block it, claim ad revenue, request attribution (linking to your own content) or report copyright infringement and seek to have it removed.
YouTube	<ul style="list-style-type: none">• Time-stamping: rights holders required to show time-stamping of relevant content to demonstrate an earlier upload date than that of the alleged infringer• Video-editing functionality to remove just alleged infringing elements of content (eg remove infringing music and replace with authorised audio content) - rather than have the whole video blocked/removed.
Etsy	<ul style="list-style-type: none">• IP infringement notice: Reporting Form
Google	<ul style="list-style-type: none">• Legal Removal Requests: you may need to log in via your relevant Google account. Your request may be published on the Lumen database for transparency
Instagram	<ul style="list-style-type: none">• Copyright/Trade Mark Report Form

Can I bring a court action against online service providers?

If the takedown tools don't help you, yes you can bring a court claim against the online service providers. Courts are willing to grant orders requiring them to stop users uploading/selling content infringing your copyright and trade marks. However, this could be an expensive process, and you may have to meet the costs of the OSP in carrying out this order.

Also think about

- Copyright • Design rights • Trade Marks • Intellectual Property Rights • Disputes
- Selling Online • Domain Names • Licensing Your Creations, Technology & Brands

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