



**FULFILLING OUR PROMISES**  
TO THE MEN AND WOMEN WHO SERVED

# NONPROFIT ADVISOR

For DAV Departments and Chapters

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## COPYRIGHTS AND COPY WRONGS

### *Music, Recordings and Celebrity Images*

The last issue of the newsletter related the actual story of a copyright claim that a DAV department was forced to settle – for several thousand dollars – just because a member newsletter featured a photograph of an iconic public event. The department downloaded the photograph from an internet site, where there was no indication of copyright or restriction on reproduction. It didn't matter. The photographer had hired a professional researcher to use sophisticated search tools to identify unauthorized usage of his work. The DAV department had no viable defense. Copyright law is heavily weighted in favor of the creator of a work.

It is not only calendar-type pictures that are subject to protection. This issue of the newsletter is intended to alert DAV departments and chapters to other liability-creating traps that may exist for those who – with no bad intention or malice – use property owned by others.

#### **Can we use “public domain” musical works in our bar/lounge operation or at an event and not worry about a license fee?**

The universe of “public domain” musical works is actually a lot smaller than you might think. In the United States, musical works published before 1922 are now in the public domain. So those can be played with no fear of adverse consequences. And “played” means just that – by live musicians. If you are thinking of

playing *recordings* (records, tapes, CDs, downloads) of performances of musical works, read on.

#### **Okay, you've got my interest. What about recordings?**

In October 2018, the Music Modernization Act was signed into law. This legislation affects recordings and basically provides that sound recordings will enter into the public domain either 95 years after they were released or 120 years after they were recorded, whichever comes first. Recordings made prior to 1923 will enter the public domain in 2021. (Take heart, there is a good argument to be made that those recordings are in the public domain now. So feel free to crank up the Victrola...)

#### **How do we find out about license fees and is there any real possibility we'll ever get caught?**

First, the “getting caught” question. The DAV department was understandably shocked when it was contacted by an aggressive copyright lawyer. In addition, it is well known that the so-called “performance rights organizations” (PROs) send “spies” to restaurants and other places where people gather and music is likely to be played. And the “penalty fees” for unlicensed use can be hundreds of times greater than the license fees. The best place to start is with the PROs. The main ones in the United States are BMI, ASCAP and SESAC. Those organizations can guide you further. PROs are basically royalty- collecting clearing



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houses. Note: if the music being played is through a service like Pandora, check with your provider first to see if the license fees are included with your subscription.

**Do you have any more good news?**

Sure. Departments and chapters should also be wary of using “celebrity images” as attention-getters for events or promotions. In recent years, there has been much legislation to recognize and protect the images of celebrities living and dead. A leading case of “image of the dead” is Elvis Presley.

**Elvis? Hasn't he left the building?**

Nope. When Elvis died, his estate was essentially bankrupt thanks to some seemingly shady dealings by his manager. His former wife, Priscilla Presley, realized that there were only two assets that might produce revenue: (a) Graceland (by means of admission charges) and (b) Elvis' image (through a series of licensing agreements). The problem was, at that time, the law was unsettled on whether the image of a celebrity could pass to his/her heirs as property. The two leading cases had reached opposite outcomes. The heirs of Bela “Dracula” Lugosi lost the battle. The widows of Stan Laurel and Oliver Hardy won theirs.

Priscilla Presley created the so-called “Elvis Lobby” and succeeded in having many state laws enacted that supported her position. The tactic worked. Within a few years – by 1997, to be exact – the once-bankrupt Presley estate was worth in excess of \$200 million. It is worth much more now.

Celebrities living and dead now protect their images with great care and, often, with great aggression. With the bulk of Elvis's first fortune gone forever, Priscilla was forced to make the best of what remained, namely Graceland, and Elvis's name and likeness. Now anyone who tries to use Elvis's name or likeness -without the consent of Presley Enterprises will pay the price. Demand letters are routinely sent by the Presley lawyers to charities, schoolteachers and anyone else who – even with the best motives – tries to use the King to promote a business, an event or a cause.

**So what's the final word on images?**

Instead of Elvis, or Catherine Zeta-Jones or even Groucho Marx, we'd suggest using a picture of your department or chapter adjutant. **With permission, of course!**



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