

5 KEY TAKEAWAYS

Beyond the Basics

Kilpatrick Townsend's [Crystal Genteman](#) recently presented "[IP: Beyond the Basics](#)" for the Association of Corporate Counsel Georgia Chapter. Ms. Genteman discussed best practices and evaluating practical risks, by exploring common copyright issues encountered by in-house counsel, including photo licenses and releases, using music, posting to social media, dealing with copyright trolls, and fair-use basics.

Key takeaways from the presentation, include:

1

Know the source of your content and make sure you have the rights to use it. The best practice is to buy, license, or create content.

- Even for photos in your archives, you should confirm the copyright owner of the photo, the rights you have to the photo, and if there's a license, whether the planned use is within the scope of the license.
- For photos taken by employees, it's important to know if the photo was taken within the scope of employment or if the employee assigned or licensed the photo.

Don't assume fair use or public domain.

- A fair use defense is often difficult and expensive to prove, and a clever play on another's copyrighted work is not necessarily a parody/fair use.
- Just because an image shows up in a Google search doesn't mean it's in the public domain.
- Attribution to the copyright owner or disclaiming ownership of copyrighted content won't protect from a copyright infringement claim.

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If your team is interested in using music in a video, it's best to consult with someone who specializes in music licensing. Even if your company has a standard license from ASCAP, BMI, or SESAC, you still likely will need to license additional rights, because these standard licenses don't include a synchronization license, which is needed to use music with images.

Avoid resharing others' photos on social media without first getting permission from the rights owner. Most people are glad to provide permission; when you ask, make sure to also confirm the person providing permission took the photo. Keep any resharing within the same platform, and also make sure you know the platform rules for any social media your team uses.

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Follow your team on social media to see what they're posting. With the high volume of content on social media and how quickly it is posted, in-house counsel might not be able to review and approve everything the marketing team creates before it's posted. By following your team's social media accounts, you can potentially catch issues early.