

To what extent do companies perform due diligence on legitimacy of printing products for customers? In other words, if there are suspected licensing, trademarks, or other marks that might be protected, how does the printer know the customer has a legal right to use those marks in the material being printed?

If the person requesting the project isn't the listed publisher or author, we request that they give us something from the publisher saying it's okay.

It is my understanding that the printer does not have any liability for producing customer supplied art. If there is a violation it is the customer that supplied the arts problem.

I am not an Attorney nor do I play one on TV ☺. My company does however work with intellectual property rights i.e. trademarks, copyrights etc. on an ongoing basis as well as owning many copyrights and trademarks through our product line.

The most important question; does this printers customer own the marks being reproduced? If the answer is yes, I would still ask for proper documentation/authorization prior to print. The customer should respect and appreciate the request.

If the answer is no they do not own the marks, then without a doubt the printer needs to get all necessary legal documentation from the customer prior to moving ahead. In short, Companies pay a lot of money to protect their IP Rights and infringement suits can be extremely expensive. That said, I would also advise the printer reach out to an attorney practicing in intellectual property laws for their own piece of mind.

Remember, an ounce of prevention is worth a pound of cure!

You need to ask the question if you suspect the copy or illustration came from another source that may have copyright protection. Do you have written permission. We also have statements in our terms & conditions that hold us harmless from customer infringement of copyrights.

Unless it pertains to a mutual user-type agreement such as an FSC or Recycle logo, we do not investigate the written content of what our customers send us to produce.

In my experience, the answer runs the gamut from “none” to “our terms and conditions require that you certify this IP is your and you will indemnify and defend us if we get sued because of your job”.

Seriously. They're all over the place.

I would suggest to the inquiring member to "legal" up with written terms and conditions if there is any question at all in terms of copyright...better to be safe than sorry!!!

We do not perform due diligence on printing products. I don't think a printing company is liable either. The costs of due diligence would be prohibitive anyway. The customer is responsible for their art.

We have been sued for copyright infringement and lost. This was years ago, before the computer age prior to 2000. We printed for our client who had their own designer. We also had a relationship with their designer as she would do work for other clients of ours and bring in her own jobs that she would handle the printing on for her clients. The relationship was good. One day, our client said they were no longer working with that designer and would we be able to do some letterhead, a brochure and several other things. No big deal, we can handle that. So we picked up their logo and used it on several pieces, redoing their letterhead and some brochures with new copy and photos. A while later we received notification that we were being sued for copyright infringement. Needless to say, our client did not own their own logo. Truly. We had probably printed it on 20 different and various jobs. The artwork had been designed and a contract signed with the designer. If you read the fine print of the contract (which, of course, we never saw), it said that the artwork for each job was for a one time use only and could not be reused. That included the logo. Who doesn't own the rights to their logo? Who would think to ask? We were sued along with our client and lost. So the printer can be sued. I asked my lawyer after this experience what we could do to cover ourselves for the future. He response was that you can get a “Hold Harmless” signed from your client but basically it's not worth the paper it's written on. Needless to say, I do ask clients if they have permission to reprint things that I can tell would have a copyright but you just never know where the client obtained the picture, art or logo they are using.

It is very difficult to economically perform the due diligence necessary to achieve the peace of mind you would like on that issue, but there is a way to protect your business from those risks. The first step is obtaining a representation from the customer that it has the legal right to use any materials or marks that the customer is providing to you. In addition, in my experience, the risk of being accused of indirectly infringing a third party copyright or trademark is often managed by an agreement from the customer to completely indemnify the printer from any such claims. By complete indemnity, I mean covering the cost of defending against such a claim, in addition to any award of damages arising out of such a claim. Indemnification language of this type should be a part of every contract related to the production by you of printed products made to a customer's specifications. Under a properly drafted indemnification agreement, your obligation will be limited to notifying the customer of a claim and directing them to take care of it.

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(Editor's note: Husch Blackwell is a GLGA member.)

(Editor's note: PIA has a free download, Best Business Practice Guidelines for Terms and Conditions of Sale, that includes a small section about Copyrights. To download it, click here: <http://qlga.info/wp-content/uploads/1/2016/02/BestBusinessPractices09.pdf> .)
