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Risk Alert: Don't Copy Another Company's Terms of Use

March 19, 2025

If you thought that it was okay to copy another company's Website or App Terms of Use, think again. In a recent ruling by the Magistrate's Court in Katzrin, the court held that the Terms of Use were copyrighted, and the defendant was required to compensate the plaintiff for copyright infringement.

Although this ruling originates from a lower court and, as such, holds limited precedential value, it may indicate the start of a broader trend. Therefore, it should serve as a cautionary note to companies regarding the risks and costs associated with copying the website or app terms of others or similar standard or legal documents available online.

Facts of the Case and the Holding

In Civil Case (Magistrate Court Katzrin) 7995-06-22, **Tal Eitan v. Eran Mor Haim**, the plaintiff alleged that the defendant had copied its website Terms of Use and used them on the defendant's own website.

The plaintiff argued that the Terms of Use constituted an original work, thus qualifying as a protected work under the Israeli Copyright Act, 5768-2007 ("**Copyright Act**").

The defendant contended that the Terms of Use lacked originality and were not protected. Alternatively, he invoked the defense of an innocent infringer under Section 58 of the Copyright Act, claiming he was unaware that the terms constituted a protected work.

The plaintiff prevailed, as the court determined:

- a. The website's Terms of Use are considered a protected copyrightable work under the law.
- b. The defense of an "innocent infringer" applies only in exceptional cases where the

infringer neither knew nor could reasonably have been expected to know about the existence of the copyright at the time of infringement. This determination is subject to an objective standard or assessment. The court also noted that the burden of proof rests on the infringer.

In this instance, the court determined that the defendant could not benefit from the innocent infringer defense, which is applicable only in limited circumstances where a defendant could reasonably assume that the work was in the public domain.

Accordingly, the court awarded the plaintiff a total compensation of 17,000 NIS, which includes 12,000 NIS for the infringement itself and an additional 5,000 NIS for attorney's fees.

Analysis and Recommendations

Although this ruling applies specifically to Terms of Use, its logic extends to similar standard or legal documents available online, such as Privacy Policies, Data Processing Agreements, Service Level Agreements, artificial intelligence policies, DMCA policies, and cookie notices. The mere availability of these documents online does not place them in the "public domain."

Therefore, we strongly recommend that the documents and policies on your website be specifically drafted and tailored to your needs. Using documents from other companies can expose your business to significant legal risks, including:

- (1) The document may be drafted with a different legal jurisdiction in mind, which could lead to compliance issues.
- (2) The document may be outdated or not compliant with current legal requirements, potentially resulting in legal liabilities.
- (3) The document may not accurately reflect your practices, products, or services, leading to potential misrepresentations.

For example, using an inaccurate Privacy Policy could lead to legal actions by individuals or fines from regulatory authorities for unfair and deceptive practices. A Privacy Policy must accurately reflect the personal data you collect, the purposes for which you use the data, and the third parties to whom you disclose the data.

Lastly, regarding the use of AI tools: As Artificial Intelligence becomes more prevalent in content creation, it is important to note that courts are still evaluating the intellectual property issues related to AI outputs. Therefore, using AI tools to draft entire Terms of Use or other legal documents may pose infringement risks, depending on the AI's source and training data, as well as the potential for inaccuracies and misleading content. Based on the US Copyright Office guidelines, you would not be able to claim ownership of the Terms of Use and would not be able to prevent a third party from copying them.

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