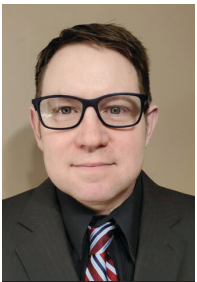


Business Owner Liable For Vicarious Copyright Infringement | IP Frontiers

By **Trent L. Rector** [SPECIAL TO THE DAILY RECORD](#)



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As a business owner you may occasionally rent your business for private or public events. In the case of a restaurant or bar you may also serve food and beverages during these events. Today nearly anyone can connect their phone or laptop to a large monitor to display a video or livestream to a larger audience. What happens if this takes place at a business and the livestream that is displayed has copyright protection? The livestreaming of the Floyd Mayweather and Conor McGregor fight on August 26, 2017, has resulted in dozens of businesses being sued for copyright infringement. This article will review the facts of one such lawsuit as a cautionary tale. The facts of the case come from *Joe Hand Promotions, Inc. v. Griffith*, No. 3:20-CV-382, 2023 WL 4752375 (E.D. Tenn. July 25, 2023).

In this case the bar owner rented his bar for \$1000 to an employee. Prior to the fight, the bar uploaded multiple posts on its Facebook page promoting the fight and encouraging ticket purchases. The employee paid \$99 for a personal license to view the livestream fight and connected her laptop to a bar television to allow customers to view the fight. Each customer paid \$6 to view the fight at the bar. The bar owner did not receive any of the entrance fee but did make money on food and beverages during the livestream. The bar owner was not present during the livestream.

Another company, JHP, had the sole and exclusive license to distribute and authorize the public exhibition of the fight in a designated geographic area. In the weeks leading up to the fight, JHP promoted the event, sold commercial licenses to broadcast the event at bars and

restaurants, and collected fees from those establishments. The commercial licensing fees to air the fight were significantly more expensive than a personal license ranging from \$3,700 to \$15,700 based on the establishment's occupancy limits. The exclusive license further gave JHP the exclusive right to take enforcement actions for copyright infringement with respect to any unauthorized exploitation of the commercial rights in the fight. JHP began suing restaurants and bars that livestreamed the fight without purchasing the commercial license including this business owner.

Evidence presented at court proved the employee livestreamed the fight at the bar for the benefit of paying patrons without first purchasing a commercial license. The fact that the employee believed she could livestream the fight with the personal license she

purchased was not a defense to copyright infringement. Because JHP exclusively owned rights to distribute and display the fight and the employee livestreamed the fight at the bar without purchasing a commercial license the employee was liable for copyright infringement. The court then addressed whether the bar owner was liable for copyright infringement.

The bar owner argued that he was not liable for copyright infringement because he did not receive any financial benefit stemming from the infringement and he was not present the night the fight was livestreamed. The court determined whether the bar owner was liable for copyright infringement using the theory of vicarious copyright liability. Vicarious liability is an outgrowth of the common law doctrine of respondeat superior, which holds the employer liable for the acts of its employees. The court used a two-prong test for determining whether the business owner could be held vicariously liable for the infringing actions of his employee.

First, the court determined whether the business owner had the right and ability to supervise the infringing conduct. Second,

the court determined whether the business owner had an obvious and direct financial interest in the infringement. For vicarious liability to exist, the financial benefit need not be substantial. Instead, there must only be a causal relationship between the infringing activity and any financial benefit the business owner reaped.

As to prong one, the court found the bar owner leased the premises to the employee to livestream the fight, and as owner and manager of the business possessed the right and ability to supervise the employees conduct at the time of the infringement. Even though the bar owner was not present during the livestreaming of the fight he was found to have had the right and ability to supervise the violations. In analyzing the facts, the court stated the bar owner need not have been present at the time of the streaming or even have been aware of its occurrence to be held vicariously liable for the employee's actions.

As to prong two, the court found the bar owner possessed an obvious and direct financial interest in the employee's infringement. The bar advertised on Facebook that it was the

cheapest place around to view the fight and directly benefited from food and beverages sold during the fight.

Business owners and managers should take steps to reduce their potential liability. The nature of the business rental may help insulate the business owner from potential liability. In some instances, courts have found no vicarious liability for copyright infringement where a business rents space on a fixed rental fee that does not depend on the nature of the activity of the lessee because there is no direct financial benefit from the copyright infringement. However, business owners should be sure to have contractual agreements to secure their rights and limit liability. This story should serve as a cautionary tale to business owners. Though the commercial license to livestream the fight was not cheap, as much as \$15,700, the attorney fees in this case exceeded the highest commercial fee nearly twofold.

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