

FSAC ADVOCACY CORNER



FSAC Advisory

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Protecting Funeral Home Obituaries in the Digital Age

Background

Families entrust funeral homes with the sensitive task of publishing personal obituaries. Since 2014, these obituaries have been illegally copied and used for profit by unauthorized websites, most notably Afterlife Network Inc. In 2019, the Federal Court of Canada ruled against Afterlife Network, awarding \$20 million in damages for unauthorized reproduction of obituaries and photos from Canadian funeral homes and newspapers. The court described these actions as "obituary piracy," as the company profited through advertisements and memorial sales without permission.

With the rise of artificial intelligence, this issue has worsened. Unauthorized entities now duplicate obituaries, publishing parts or entire pieces without permission. They monetize these pages through ads, cookies, and memorial product sales, often giving the false impression of association with the funeral home. Some websites even collect condolences without the family's knowledge, leaving the bereaved unaware of these comments.

Evolving Tactics in Obituary Piracy

Recently, some websites have started copying only the initial lines of obituaries and using artificial intelligence to rewrite them, spreading false information and attempting to avoid copyright infringement by not copying the entire text. In tragic cases, these sites have even fabricated causes of death to attract visitors and drive ad revenue. Additionally, when an official obituary does not exist, these websites create their own, pulling details from news articles and fabricating content about the deceased. This was the case with the tragic suicide death of Corporal Amy Lahoda where articles and YouTube videos were created to create clickbait to attempt to profit off her death and also prevalent in the days after the horrific Humboldt bus tragedy.

Legal Framework

1. Copyright Protection on the Internet

- Obituaries are protected under the **Canadian Copyright Act** (R.S.C., 1985, c. C-42), as evidenced in the case of Thomson v. Afterlife.
- **Hosting Providers:** Providers are obligated to respond to valid copyright takedown requests. If hosting companies knowingly allow widespread infringement, they risk liability for contributory infringement.

2. Notice and Notice Regime

- As of January 2, 2015, the **Notice and Notice regime** under the Copyright Modernization Act requires hosting providers to notify content owners of copyright infringements.

3. Digital Millennium Copyright Act (DMCA) in Canada

- Although DMCA is a U.S. law, many Canadian entities follow similar standards to uphold copyright compliance on digital platforms.

4. Consumer Protection

- Funeral homes publishing copyrighted material should take steps to protect these works, preventing unauthorized copying and monetization. The 2019 decision against Afterlife Network provides a strong legal precedent.

Recommended Actions for Funeral Homes

1. Position as the Community Authority

- Maintain an optimized, secure website where official obituaries can be easily accessed, establishing the funeral home as the trusted source for this information.

2. Publish Obituaries Promptly

- By posting obituaries as soon as possible, funeral homes ensure their version becomes the primary cached result in search engines.

3. Encourage Family Involvement

- Encourage families to publish an obituary or death notice to avoid giving unauthorized websites an advantage as the sole online source.

4. Monitor and Document Unauthorized Usage

- Track instances where obituaries or death notices are copied without permission.

5. Request Takedowns for Unauthorized Obituaries

- Contact infringing websites and hosting providers with removal requests based on copyright infringement.

6. Engage with Consumer Protection and Provincial Authorities

- Advocate for the shutdown of these unethical practices and request public notifications to warn consumers, similar to those issued by the [Bereavement Authority of Ontario](#).

7. Implement Preventive Measures

- Clearly post notices and terms of use on funeral home websites to establish expectations for the authorized use of obituaries. Add copyright protection language to your website, and if separate, your obituary site.

Digital Best Practices for Monitoring and Protecting Content

To track and protect online content, funeral homes can implement the following strategies:

- **Google Alerts:** Set up alerts to monitor keywords and receive notifications when new content matches chosen terms.
- **Social Media Monitoring:** Use tools like Hootsuite, Mention, or Brandwatch to track keywords and mentions across social platforms.
- **SEO and Content Monitoring:** Services like Ahrefs Alerts or SEMrush provide keyword tracking for web content mentions.
- **Advanced Monitoring Services:** Meltwater, Talkwalker, and Cision offer extensive media monitoring, useful for tracking public mentions and ensuring prompt responses to unauthorized uses.

In conclusion, a collective effort from funeral homes, provincial associations, regulatory bodies, funeral home website providers, and the families impacted by these unethical and illegal practices could significantly strengthen our cause. Failing to act risks harming the public perception of the death care profession by allowing these sites to operate unchecked. Taking a proactive stance will not only safeguard our professional reputation but also support the families we serve. FSAC will continue to advocate for stronger legislation to protect these vulnerable families.

By combining the following measures, the Canadian funeral profession could work towards a more robust system that prevents obituary scraping, upholds the dignity of families, and protects intellectual property rights.

1. Legislation to Protect Intellectual Property

Copyright Protection: Obituaries, as original written works, could be protected under copyright law. The funeral profession could advocate for clearer guidelines on how copyright applies to obituaries, especially when they are posted online. This would make it easier to enforce the removal of pirated content.

Fair Use and Licensing: Request the government to ensure that fair use and licensing rules are well-defined for obituary content, preventing unauthorized reproduction without permission or payment to the originating funeral home or family.

2. Stronger Consumer Protection Laws

Advocate for legislation that prevents businesses or individuals from misusing public online information for commercial purposes. This would protect both the integrity of the obituaries and the wishes of the families.

Data Privacy: Request that obituaries, being personal and sensitive data, be granted additional protection under privacy laws, limiting the unauthorized usage or dissemination of information.

3. Regulation of Aggregators

Petition the government to regulate online obituary aggregators that copy and publish obituary information without consent. Funeral homes could seek to have aggregators held accountable for reproducing this content without proper licensing agreements in place.

Transparency on Use of Data: Funeral homes could ask for laws that require aggregators to clearly disclose the source of their content and obtain permission before sharing it.

4. Stronger Enforcement and Penalties

Governments could increase enforcement mechanisms and penalties for entities that scrape obituaries without permission. This would serve as a deterrent and encourage respect for intellectual property.

Establish clearer legal channels for funeral homes and families to report infringement and have pirated content removed swiftly from websites.

5. Encouraging Partnerships with Tech Companies

Lobby for collaboration with search engines and social media platforms to prioritize official sources and prevent pirated obituaries from being indexed or displayed prominently in search results.

Funeral homes might ask for a framework to work with these tech companies to develop easier ways to flag and take down illegally scraped content.

6. Public Awareness and Consumer Education

The funeral profession could encourage government campaigns to educate the public on the ethical and legal implications of obituary piracy. This could help to garner support for stronger regulations and create awareness around the issue.