

# Beware Using Other People's Pictures!

## John asks his assistant Mary to spruce up his business website.

She does some image searches on Google and finds a few photos . . . right-click, save image, upload, *et voilà*, the website has a facelift!

Months later, John gets a strongly worded cease-and-desist letter from a lawyer representing the photographer who took one of the photos that Mary used for the website. The letter alleges copyright infringement and threatens further legal action if John does not immediately remove the photo and pay \$2000. Not wanting to get involved in a legal dispute, John complies.

Let's leave aside the fact that John might have benefitted from the advice of a copyright lawyer before conceding to all the lawyer's demands. The fact remains that Mary's lack of familiarity with copyright—and John's failure to verify that permission was obtained to use the photograph—resulted in a costly mistake.

Many businessowners have found themselves in a similar situation, particularly those who create and manage their own blog or Facebook page.

Here are some copyright basics to dispel some common myths so you can avoid falling into the same predicament John experienced.

### Copyright: The Right to Copy

- Copyright means the sole right to produce or reproduce an image or a work and to authorize others to produce or reproduce an image or a work.
- Copyright protects all original artistic, literary, dramatic, and musical works as well as sound recordings, performances, and communication signals.
- Copyright is automatic; an image or a work is protected as soon as it is created.

### Copyright for Online Images

#### True or False?

**Images found online are not protected by copyright.**

**False.** In most instances, copyright does attach to online images, which means you must obtain permission from **the copyright holder** before reproducing the image on in your website, blog, or print marketing materials.

#### Public Domain

It is safe to assume that most images found online are not part of the public domain.

“Public domain” has a specific meaning in relation to copyright. Under Canadian copyright law, photographs and images in the public domain are typically works created by an author who died more than 50 years ago and for which the copyright has expired. They can be used without permission.

Images found online may or may not be part of the public domain and thus available for use by anyone.

#### Q: What if there is no © symbol?

A: It doesn't matter. Copyright exists whether or not the copyright symbol or other copyright notice is used.

#### Q: Underneath the image I used, I included a link to the photographer's website and a photo credit. Is that good enough?

A: Not necessarily. Giving credit where credit is due is a nice thought, but it does not absolve you of your obligation to obtain authorization from **the copyright holder** to use the image. Remember, it is **the copyright holder's decision** regarding *if, how, when, and by whom* the image may be reproduced.

In some cases, a licence to reproduce an image will be granted by the copyright holder simply on the condition that credit is given to the author. That permission must be expressly stated on the website—and never assumed.

#### Q: I found a photo online and asked the owner of the website if I could use it. He said Yes. Is that good enough?

A: Beware feeling you have done your due diligence because you got permission from a website to use a photo posted there. No. The website owner may not own the copyright for the image and therefore has no right to decide who uses it.

Generally speaking, the *photographer* owns the copyright for the photo, unless it was taken in the course of employment or assigned in writing to someone else. (Prior to November 7, 2012, copyright for commissioned photographs belonged to the party that commissioned the work.)

**Q: If it is advertised as a “free” image, is it copyright-protected?**

**A:** Many websites offer images that can be used without a fee but generally those images **are still protected by copyright**. The copyright holder is simply granting permission to use them with few or no conditions. Even with free-to-use images, it is important to read the terms of use applicable to the specific images you want to use. Some licences are granted for noncommercial purposes only or for use on a website but not on merchandise that will be sold. Some terms/licences allow changes to be made to the image, while others do not. You need to make sure that your plans for using the image fall within the scope of the licence.

On sites such as Flickr, you can find many images made available free under a “Creative Commons” licence. These are simple, standardized licences that give the public permission to use and distribute an image for free, provided certain conditions are met.

All levels of Creative Commons licences require that you attribute the work to the original author. Depending on how you intend to use the image, the attribution requirement may not be desirable from an aesthetic or practical standpoint. If you can't include credit to the original author, don't use images under a Creative Commons licence.

**Q: What are “Royalty Free” images?**

**A:** Royalty-free is not the same as “free.” Many websites offer stock photos. In some cases, you pay a one-time licence fee that allows you to use the image as many times as you wish without having to pay a royalty for each use. It does not mean you own the copyright for the image.

**Q: What could happen if I violate someone's copyright?**

**A:** You will likely need to remove the image and may be faced with a lawsuit, monetary damages, and/or legal fees—not to mention bad karma.

**A Few Basic Rules**

**1. Obtain Permission**

Source your images on stock-image sites such as istockphoto.com, shutterstock.com, flickr.com, gettyimages.ca, and morguefile.com. For a fee, you can download and use images in accordance with their terms of use. The cost of a licence is usually very cheap in comparison to the legal fees to respond to a cease-and-desist letter or lawsuit. As mentioned above, many sites offer licences to use photos for free (Morguefile.com, Flickr.com, etc.).

**2. Read the Licences**

Permissions will vary from site to site and image to image. To understand the scope of the permission being granted, you must read their licence/terms of use.

**2. Ask Your Designer**

If you are hiring someone to design your website or your print materials or manage your blog, find out where that person sources photos and confirm whether there are any licence restrictions, such as expiry dates. Where appropriate, request copies of invoices and licences.

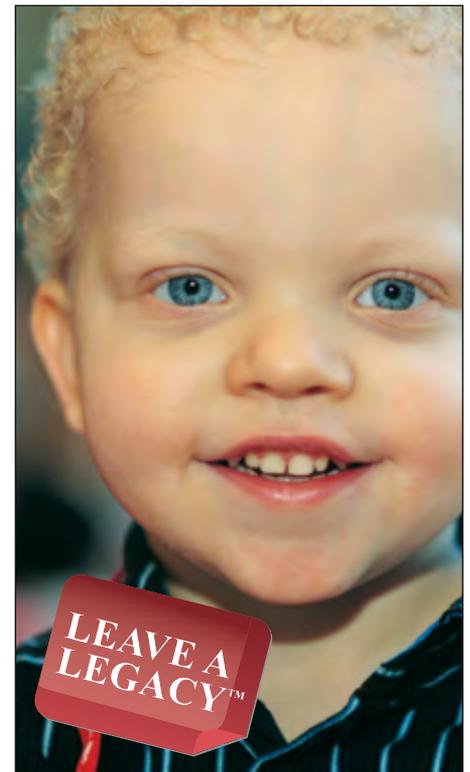
**3. When in Doubt, Don't Use It**

If you find an image you love online but it is not on a stock-photo site and you cannot find the author's contact information to obtain permission, don't use it. A failed attempt to contact **the copyright holder** is no defence to infringement.

It is always a good idea to consult a copyright professional. ▲

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