

WHAT YOU SHOULD AND SHOULDN'T DO WITH PHOTOS

# COPYRIGHT, COPY WRONG & ETHICAL ISSUES

COPYRIGHTS

WHAT DOES COPYRIGHT PROTECT?



# UNDER 17 USC 102

- **Copyright protection subsists . . .in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the photographs.**

- **A copyright is created at the the click of the shutter.**
- Film or digital
- Images on the web are protected by copyrights, just as your prints, slides, etc. are.
- **Protects both unpublished photos and published photos, regardless of whether they have been registered with the U.S. Copyright Office.**

# PUBLIC DOMAIN? HOW CAN YOU BE SURE?

- Works go into public domain for one of three reasons:
- **the author failed to satisfy the required statutory formalities needed to perfect the copyright** (only covers work published prior to March 1, 1989) ;
- **it is a work of the U.S. government; or**
- **the term of copyright has expired.**
  - for photographs created after 1988, you (or your heirs) own the copyright for 70 years after your death

# PHOTOGRAPHERS' RIGHTS AS COPYRIGHT HOLDER UNDER 17 USC 106

- to reproduce the work;
- to prepare derivative works;
- to distribute copies to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- to display the work publicly

# COPYRIGHT DOES NOT PROTECT

- **any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work**
- **It does not protect information; it protects the creative expression of that information.**

# WHAT IF NO CR NOTICE IS POSTED WITH THE PHOTOGRAPH?

- **Protected by at the click of the shutter.**
- **With CR notice**
  - **cannot claim that the infringement was innocent. 17 U.S.C. § 401(d).**
- **Without CR notice**
  - **till liable for the infringement. In essence, copyright infringement is a strict liability regime. "The standard rationale for excluding innocence as a defense to copyright infringement is that, as between the copyright owner and the infringer, the infringer is better placed to guard against mistake"; "the strict liability rule should discipline an infringer, who might otherwise mistakenly conclude that his copying will not infringe the copyrighted work, to evaluate the legal consequences of his conduct more carefully." P. Goldstein, Copyright § 9.4 at 162 (1989).**



# WHAT IF THE PHOTO IS NOT REGISTERED?

- **Even without registration, the photo is protected. However, if it's a U.S work, it must be registered if the photographer wants to file suit for copyright infringement.**

# WHERE DID YOU GET THE PHOTO

- Source of Photo
  - Social Media—Read the Terms of Service that you agreed to by using the service.
    - Facebook
    - Instagram
      - a non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use the Content that you post on or through the Service
      - may not post copyrighted content to Instagram unless they own or are allowed to post the copyrighted content

- Internet Site
  - Read the legal and terms of service for use of the photo.
  - Beware of Free Wallpaper sites

# END USE FOR THE PHOTO

- Internal Use
- External Use
  - Print
  - Online use
    - Downstream Infringements
  - Social Media
    - Sharing + downstream infringements

GOOGLE IMAGES

BUT, I RAN A GOOGLE SEARCH AND SEARCHED FOR FREE PICTURES.



Earl Richardson Kansas City

www.earlrichardson.com - 903 x 1140 - Search

Visit page

View image

Related images:



Images may be subject to copyright. - Send feedback

# HERE'S WHAT GOOGLE SAYS:

- **The images displayed in a Google Image Search may be protected by copyright, so we can't grant you the right to use them for any purpose other than viewing them on the web. If you'd like to use images from our image search, we suggest contacting the site's webmaster to obtain permission.**
- Well, that's mostly right. The webmaster likely doesn't own the copyright, but hopefully the webmaster will direct the potential client to who does!

# EXCUSES, EXCUSES

- Sovereign Immunity—you can't sue us because we're a government actor, i.e. a state university, so you need our permission to sue us.
  - personal liability
- I didn't post it, my web designer did (they're an independent contractor)
- I can't be held personally liable.
- I didn't make any money on the infringement
- I didn't know it was copyrighted

# MORE EXCUSES

- The infringement was a mistake
- If it's on the web and I don't see a CR symbol, then it's in the public domain.



# MORE EXCUSES

- I only used a small part, so it's fair use. Don't bet on it.
- There is no set amount you can use; it's a factual determination on a case-by-case basis. Courts look at 4 factors to determine. (1) The purpose and character of the use, including whether it is for commercial use or for nonprofit, educational purposes; (2) The nature of the copyrighted work; (3) The amount and substantiality of the portion used in relation to the copyright-protected work as a whole; and (4) The effect of the use on the potential market for or value of the copyright-protected work.

# EXCUSES

- I hired the photographer, so I own the photos.
- I credited the photographer
- I took it down when asked.
- I got it from Google Images

# WHEN IN DOUBT

- Ask/license.
  - Don't go outside the terms of the license.
    - Creative Commons License
      - Pay attention to those terms.
- Don't use the photo.
  - There are often times a very similar photograph can be found at low cost or no-cost.

# THRESHOLD QUESTIONS

- Do you have an agreement with the photographer?
- Does it state the terms of use for the photograph?
  - Many contracts explicitly state what may and may not be done with the photograph
  - Discuss with the photographer
    - You don't want to change the photograph in a way that may cause legal problems for the photographer.
      - Release/no release

# ALTERATION + MANIPULATION OF PHOTOGRAPHS

- Be Truthful
- Audience and Use
  - Marketing
    - Somewhat more latitude
  - News release
    - No alteration except minimal toning, color correction.













# ALTERATION + MANIPULATION

- Photo illustrations should be clearly marked as such so as not to mislead the viewer.
- Don't alter the photograph in a material way that misrepresents the situation.
- It's OK to alter contrast, color, saturation, crop, some burning and dodging, so long as it doesn't mislead.
  - OJ Simpson Time cover

# ALTERATION+ MANIPULATION

- It's not OK to add elements that are misleading or materially alter reality.
- 2000, UW-Madison case; black student added to a view book. If you're using that to attract a diverse student body and they rely on that as an accurate representation of your student body in making a college choice, you're arguably committing fraud. At the very least, you're being dishonest.

# ALTERATION + MANIPULATION

- What about original photography commissioned by the university and its departments?
- It should accurately reflect the university and not misrepresent reality. The university's credibility is at stake.
- <http://www.npr.org/2013/12/29/257765543/a-campus-more-colorful-than-reality-beware-that-college-brochure>