

(<https://www.socialmediaexaminer.com/category/view-points/>) You've heard the adage that a picture is worth a thousand words (<https://www.socialmediaexaminer.com/26-tips-for-using-images-to-engage-fans-and-followers/>), but when that picture is protected by image copyright, the picture is only worth three words: cease and desist.

OK, that's kind of a lawyer joke. But it illustrates how protective people are about finding their copyrighted images used online without permission.

Copyright laws were established not to give the author the right to deny their work to other people, but instead to **encourage its creation**.

Article I, Section 8, clause 8, of the United States Constitution states the purpose of copyright laws is *"to promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."*

It's a delicate **balance between the rights of the creator and the public's interest**. When in conflict, the balance tips more heavily toward the public's interest, which is often contrary to what the creator believes to be fair or just.

This article will cover exactly **what copyright is and what it covers**.

And then we'll look at the concept of fair use as it pertains to using images online. The goal here is to better **understand how to use images others create in a way that is both respectful of the author's ownership rights and allows others to use it**.



## What Is Copyright?





Copyright attaches at the time of creation and there is no requirement to use the “circle c”. Image source: renjith krishnan / FreeDigitalPhotos.net

*Copyright* is a federal law of the United States that protects original works of authorship. A *work of authorship* includes literary, written, dramatic, artistic, musical and certain other types of works.

**Copyright attaches as soon as the original work is created**, and applies to both published and unpublished works. As soon as you type words, click the shutter on your camera (or, for many of you, hit the home button on your iPhone), apply paint to canvas or paper or lay down tracks for your next hit, you’ve got a copyright (with some exceptions).

**Copyright is an automatic right and does not require the author to file special paperwork**, as is the case for trademark and patent. Registration is required to enforce the rights, but as a matter of right, an author is not required to register anything to get the right to use the “circle c,” showing the work is copyrighted.

One of the many terrific things about copyright is that it comes with a host of exclusive rights that allow the owner to do or authorize a number of things and exercise substantial control over his or her work. **The copyright owner has the right to do four things** (called *exclusive rights*):

1. Reproduce the copyrighted work;
2. Display the copyrighted work publicly;
3. Prepare derivative works based on the copyrighted work; and
4. Distribute copies of the copyrighted work to the public by sale, rental or lending, and/or to display the image.

Source: 17 USC Section 106 (<http://www.copyright.gov/title17/92chap1.html#106>).

**Copyright does not apply to works in the public domain**; words, names, slogans or short phrases (those may have protection in trademark law); blank forms; works that are not original; and government works. This is important to know because if the work is not protected by copyright, then there is no concern whether the *Fair Use Doctrine* will apply to allow you to use the work.

As online content creators (<https://www.socialmediaexaminer.com/how-to-develop-a-social-media-content-strategy/>), curators (<https://www.socialmediaexaminer.com/content-curation/>) and managers (<https://www.socialmediaexaminer.com/how-to-create-content-that-engages-prospects-and-customers/>), you **know the value of using images to get the reader’s attention** (<https://www.socialmediaexaminer.com/26-tips-for-using-images-to-engage-fans-and-followers/>), add a visual component to commentary, illustrate using an infographic or any of a host of benefits. Using the correct image can definitely take a post from drab to fab very quickly. It can also help tell a story that words alone can’t.

But unless you're a photographer showcasing your own work, chances are you'll need to use work created and owned by ~~Social Media Marketing Society~~ of sources. While **the general rule is that you can't use a copyrighted work without express authorization from the owner**, there is one significant legal construct that allows millions of people every day to see and share images online.

Please keep in mind that **stock photo services, creative commons licenses and public domain repositories of images are not subject to fair use** due to the rights they carry.

Stock photo services require you to pay for a license, creative commons licenses confer the right to use an image under certain circumstances and public domain images are not subject to copyright in the first place.

## What Is Fair Use of Copyright? Can I Use That Image?

Fair use is not the same as free use. **Fair use is a legal exception to the exclusive rights an owner has** for his or her copyrighted work.

It has little to do with what we may think is fair, and everything to do with keeping the balance tipped in favor of the public interest. It's a delicate balance, mind you, but one that often leaves the copyright owner wanting to scream.



Fair Use is a balancing between protecting the creator and promoting the interests of the public. Image: ciansuebsri / FreeDigitalPhotos.net

The purpose of the *Fair Use Doctrine* is to **allow for limited and reasonable uses as long as the use does not interfere with owners' rights or impede their right to do with the work as they wish.**

Since this discussion will only pertain to use of images online, I will use *examples* specific to this.

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A classic example of fair use of an image online (<https://www.socialmediaexaminer.com/how-to-legally-use-images-in-social-media-marketing/>) is product reviews. If you want to **review a book, a new piece of technology, a food product or whatever widget**, you'll likely want to include a photo. But not some washed-out, overexposed, shadowy, laundry in the background kind of photo that you'd take.

So you head to the manufacturer's website and right-click that image and save it to upload to your site. A photo will not substitute for the actual product, so the owner's rights should be very minimally affected. Therefore, your right to use the copyrighted image would likely be permitted under fair use.\*

Fair use is in place for the greater good, to **allow copyrighted works to be used without permission for the benefit of the public**. Imagine not being able to use images of a dead dictator to tell the story of how he died. Or not being able to talk about fashion without showing the outfit you're referring to.

However, there are limits and only a court has the final decision-making ability. Section 107 of the Copyright Act states:

*the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.*



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*In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;*

*the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; **and** the effect of the use upon the potential market for or value of the copyrighted work.*

Source: 17 USC Section 107 (<http://www.copyright.gov/title17/92chap1.html#107>).

All **four factors are used in determining fair use**, with the first (the purpose and character of the use) being the most important the court will examine. When it comes to photographs, copyright law has a long-standing deference to permit a photographer control over the first time an image is made public. In this discussion, we'll assume that you're not hacking computer systems or digging through rubbish bins looking for non-public images.

One of the issues with photos is that using just part of it is, well, a bit ridiculous. This is the third factor courts will look at (how much of the work is used); however, it is often a very significant element of whether fair use exists.

Unlike the written or spoken word, where excerpting a portion to illustrate is possible, with images it is usually the whole that is necessary. A partial photo, unless you're doing some kind of guessing game, does not portray the level of professionalism you're likely going for.

Same with using a very low-resolution option. Not only does a low-res image look bad on your site, the image creator (whether photographer or designer) probably doesn't want a bad-quality image circulated, as it could impact his or her reputation.

## 5 Things to Think About Before Using Copyrighted Images



5 questions to consider when using copyrighted images online. Image  
source: Rawich / FreeDigitalPhotos.net

So you're likely thinking this is insane and who has that much time on their hands to figure out all of this just for an image on a blog? In reality, though, answer question 1 of the 4-part fair use test and you're likely to get a very good sense of whether you'll have a leg to stand on if challenged.

**#1: Do you understand the term *fair use*?** Just because you *provide attribution and/or a link back* to the original doesn't mean you're free and clear. Fair use has nothing to do with attribution. That's an issue related to plagiarism, which is different from copyright.

*Fair use* basically means you're allowed to infringe on someone's copyright and they can't do anything about it. If your use is covered by fair use, you don't have to provide attribution anyway (although it would be nice).

**#2: Why are you using the image?** If it is "...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research..." you're on the right track.

If you're just using the image to pretty up a post, then think twice; or better yet, get permission or buy a stock image.

**#3: Have you transformed the image?** If the new work which incorporates the copyrighted image is a "transformative work"—what you created no longer resembles the original—there is a greater likelihood of finding an exception to copyright infringement.

Are you taking an image and incorporating it into an infographic? Is the image now part of a video used for one of the reasons set forth in the Copyright Act?

**#4: How much of the image are you using?** If you're using a thumbnail and linking to the original location, there is greater likelihood of finding fair use than if you just post the original image. If you're doing a post about facial features and are just

using a portion of the face from an image, you stand a better chance of arguing fair use than if you used the entire image.

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**#5: Are you willing to risk your site being taken down**, getting a cease and desist/bill/[DMCA](https://www.socialmediaexaminer.com/how-to-submit-dmca-takedown-notice/) (<https://www.socialmediaexaminer.com/how-to-submit-dmca-takedown-notice/>), or being sued? The Digital Millennium Copyright Act (DMCA) provides very powerful options for a copyright owner to protect his or her works in the digital space. By hitting “publish,” you may be opening a can of worms.

## In Summary

When it comes to photos, **when in doubt, assume it's subject to copyright and don't use it without the appropriate permission**. What it comes down to is that if you need to use another person's image, make sure it fits clearly into one of the protected purposes or seek legal counsel if there is a significant investment of money or time in your project.

Fair use may be an exception allowing you to use copyrighted images, but chances are you'll be in for a discussion or possibly **find your site taken down by your host if the copyright holder disagrees**. Unfortunately, there are no significant cases that establish hard-and-fast rules when it comes to fair use and images used on the Internet.

However, photographers and graphic artists often make a living from selling or licensing their work and if we all just poached what we wanted, we'd be circumventing not only the law but also interfering with their right to control how they distribute their images.

Copyright fair use has been fought over when it comes to using words and images in print publications. The Internet, though, is still very much in its infancy when it comes to fair use guidance.

Without bright line rules, we're each **left to interpret laws that were written long before digital communication was ever imagined** and did not contemplate the ease of sharing that exists today. While it may be a remote possibility that the average blogger will be sued for copyright infringement relating to an image, bear in mind that you may be the proverbial “straw that broke the camel's back.”

If you're considering taking images from large agencies, they have legal teams that do nothing but look for infringing uses. There are inexpensive ways to search for images online, even if you change the file name. And if you're thinking you'll just crop the image so you can't see the copyright notice or other identifying information, **think twice about that because the penalty for doing so is very stiff**— up to \$25,000, plus attorney fees and damages.

There are many [resources for free images](http://www.savingforsomeday.com/blog-law-photo-use-and-etiquette/) (<http://www.savingforsomeday.com/blog-law-photo-use-and-etiquette/>), whether public domain, licensed creative commons or inexpensive stock images, so you really shouldn't need to use copyright-protected works for [beautifying your site](https://www.socialmediaexaminer.com/6-blog-add-ons-that-spur-social-media-activity/) (<https://www.socialmediaexaminer.com/6-blog-add-ons-that-spur-social-media-activity/>), [creating that cool presentation](https://www.socialmediaexaminer.com/5-easy-steps-to-creating-reusable-social-content/) (<https://www.socialmediaexaminer.com/5-easy-steps-to-creating-reusable-social-content/>) or [making a video](https://www.socialmediaexaminer.com/29-tips-to-make-your-video-marketing-easy/) (<https://www.socialmediaexaminer.com/29-tips-to-make-your-video-marketing-easy/>). But if you really have to have *that* image, **ask first. You'd be surprised at how many people would gladly grant permission** for use of their images.

*Fair use doesn't mean fair game*, but it's there to allow for uses that will benefit society and the public good. Don't be afraid to use images. **Use this information to make good decisions and you're likely to be just fine**. Always, though, if in doubt leave it out (or get permission or ask a lawyer).

**What do you think?** Leave your questions and comments in the box below.

*Disclosure:* While Sara Hawkins is an attorney, this article is for informational purposes only and is not to be considered legal advice.

\*Not intended to be legal advice.

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IMAGE SOURCE FREEDIGITALPHOTOS.NET: [RENJITH KRISHNAN](#)

([http://www.freedigitalphotos.net/images/view\\_photog.php?photogid=721](http://www.freedigitalphotos.net/images/view_photog.php?photogid=721)), [CJANSUEBSRI](#)

([http://www.freedigitalphotos.net/images/view\\_photog.php?photogid=2148](http://www.freedigitalphotos.net/images/view_photog.php?photogid=2148)) & [RAWICH](#)

([http://www.freedigitalphotos.net/images/view\\_photog.php?photogid=1758](http://www.freedigitalphotos.net/images/view_photog.php?photogid=1758)).



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**ABOUT THE AUTHOR**

**Sara Hawkins** (<http://www.sarafhawkins.com/>)

Sara Hawkins is a lawyer, blogger and doer. No longer happy waiting for someday to find her, she's finding ways to make her somedays happen.

[Other posts by Sara Hawkins »](https://www.socialmediaexaminer.com/author/sara-hawkins/) (<https://www.socialmediaexaminer.com/author/sara-hawkins/>)

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**Bill Corbett** • 8 years ago

Thank you for this post, it was very informative. I would love to hear your advice on the use of video clips embedded in Power Point presentations.

^ | v • Share



**LucidGal** • 8 years ago

How does reposting/retweeting a link to an article, which often brings a photo with it, relate here? Does introducing a repost of an online article constitute "commentary?"

3 ^ | v • Share



**Jan Wong** → LucidGal • 8 years ago

Hi there, I happen to have read through Twitter's TOS and it says:  
"You retain your rights to any Content you submit, post or display on or through the Services. By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed).  
Tip: This license is you authorizing us to make your Tweets available to the rest of the world and to let others do the same."  
This also means that retweeting an article is perfectly legal (or so I perceive it to be).

^ | v • Share



**Gail Becker, MS.Ed.** → Jan Wong • 4 years ago

Yes, that is what the article stated in the definition of "fair use." While in law school, I once read a court decision, ruled by the presiding judge that when one posts content on the internet, there is no expectation of privacy, and the content may be admissible in court. What the aforementioned article also stated was it would be respectful to offer some type of attribution and even a contribution for using the owner's content posted online.

^ | v • Share



**carolynne** → Gail Becker, MS.Ed. • 4 years ago

I am trying to find how to approach the original owner for images of historic artworks I've found on line via Google for preparing an informative book of great artists. I am wanting to write about and promote the person or artist and those I have traced have been happy for me to use them. In other instances I have found images

happy for me to use them. In other instances I have found images on multiple sites through google images, where many don't respond that you approach, so I am at a loss as to true ownership. I also only want to post a portion of the subject, amongst hundreds of images and relay information about the artists in question or their web-link, as an educational or interest factor, so just who is the rightful owner or photographer?

Another curious issue with copyright. If a photographer goes around taking photos of others artworks or sculptures, new with owner living or ancient, how does this give them the right to post them online and get revenue from them? Their images would have no value if the original artist had not produced them in the first place. Is this not infringing the original artists copyright. If the subject is ancient, is this still something others should make revenue from, by simply clicking their camera. I've taken thousands of photos of ancient paintings and sculptures myself. Are you allowed to use these? In many instances images are listed by photographers with the aim of selling them, if it's of someone else's artistry that gives it its value, maybe this should be unlawful as well. No one is going to sell an image without some visual interest. To click a photo of anything these days is a simple matter of using a phone to get some reasonable quality images of anything, and is mostly available for the general public viewing, which in most instances, is most things. If it is a carefully orchestrated image, with hand created special effects, that's taken hours of time to produce and is not of someone else's artistry and skill, maybe only then it should be deemed artistic copyright.

The laws protect such strange areas, but not everything. The camera captures the image in a second, does the manufacturer of the camera have as much right to ownership in the process of production? Most things that can be photographed are of items viewable by the public eye, and they post them for others to view. If they want to be acknowledged for their creative genius maybe they should have to post their name and contact, so others know how to respect their expected copyright or the cost they will charge to use it. Some do put all their information which is brilliant, but many don't.

To post their images all over the internet, they clearly want many as many people as possible to view and admire them, or they wouldn't be there in the public domain in the first place. To me, how others (the public) share them, such a facebook, blogs, youtube and pinart, is only spreading their appreciation to a wider viewing public and if highlighting the artist or photographer by name and their weblink, it's spreading their fame and recognition. If the images are posted by photographers or artists for marketing with intentions of

posted by photographers or artists for marketing with intentions of making money, for selling only, maybe this should be stated, then everyone will know their intentions, by any of those viewing or wanting to share them. Most of the free image sites I have seen so far, don't even show images of subjects you search for, unless there are good ones I have not seen yet.

After all the trouble I've had finding or contacting the owners for consent, for a few images I could easily source or produce myself, I'm now going to set up a site for artists and photographers who want to share their talent, website link and allow free use of their images, as long as the end user details the artist/photographer and weblink in recognition; a site which I am sure will be popular by all those looking for exposure, as well as those looking for imagery they can promote or use freely, to enhance their websites, educational research or books etc. There is nothing like free marketing and exposure or sharing completely. How the public gets to view images and for them to be appreciated, surely won't make any difference, on just how or where it is seen, if it still relates to the original site, owner and creator posting it.

I am an artist and photographer myself and to have an image shared or highlighted by others, I would consider it advantageous in getting my work known. If I was scared it was going to be used or shared in this way, surely I would not put online in the first place, I would keep offline and out of sight, only viewable at restricted public sales or exhibitions where copying is limited. If an image is also not traceable or clearly labelled and the producers are intently protecting their copyright, why don't they have to stipulate this when placing on the internet, by putting their name and contact details fully viewable, so there are no disputes and people then won't share their images or site, but they can at least approach them to request or negotiate usage if required. I know there are those who don't list their works on public domain sites, such as Google, pinart or face-book, as they don't want recognition, most of all they want money. By putting anything on the internet, surely it's as good as the public domain, where anyone can view, use, learn from, admire and access. If it's so readily viewable, it surely has no way to be protected, unless by membership and password access.

Can anyone suggest how you contact the owners of images on pinart, google or obscure sites, without contact details? To have some clear processes put in place, that makes those who place their images on line for public access, that they can be reachable by others who may want to share, promote or use their public images, especially when used for work or imagery that is acknowledging or promoting them in the process. along with their

images and websites, and or educating others.

^ | v • Share ›



**Larry S. Evans II** ➔ LucidGal • 8 years ago

That's a very interesting question, because it is unique to the Internet context.

To my knowledge reposting, retweeting and linking to a site which contains copyrighted material would only accrue some kind of liability to the person reposting if they were aware the work in question was an intentional infringement that clearly did not sustain a fair use defense.

There's always the argument in legal circles of the "reasonable" action. That is, if most people looked at the content and were able to determine that the material should be protected by copyright, then reposting it would be seen as a willful infringement.

It is important to understand that just because you may consider something "fair use", the copyright owner can still issue a cease and desist order, and can still sue. Copyright is a civil matter rather than a criminal one, so all that is required for legal action to be taken is an aggrieved copyright owner.

The question of republishing (a more global and legally accurate term for re-tweet, etc.) is further muddled by the fact that the technology of the Internet makes a local electronic copy of material in order for you to view it. This very action violates the usual prohibition against "transmission" and "storage in an electronic medium" which is included in many copyright notices. Even if no one "retweets" a blog with an image, the mere act of opening the page in the browser "republishes" the content. That's why it has been so difficult to get clear case law on these questions.

Disclaimer: I am not an attorney, but have worked extensively with licensing and protecting digital intellectual property. The previous comments are for informational purposes and not to be considered legal advice of any kind.

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**LucidGal** ➔ Larry S. Evans II • 5 years ago

Copyright is not unique to the internet, nor is it negotiable or subject to someone's opinion of what is "reasonable." The creator owns the copyright ~ period ~ the instant something is created. Anybody can sue for anything and anybody can issue a cease-and-desist letter, but that doesn't make it legal or enforceable.

1 ^ | v • Share ›



**Sara F. Hawkins** ➔ LucidGal • 8 years ago

If you RT something, you're (hopefully) sharing the original site for the post/image. A RT alone would not have you re-posting an image. True, if you cut/paste a tweet it may have the person's avatar that may be subject to copyright but the

resolution is so low that it would likely be covered by fair use.

Reposting articles to Facebook which will populate an image (hopefully, if it's working right!) again does not populate the full resolution of the image and may therefore fall under fair use. In addition, you're directing your audience to the original with this 'teaser'.

Reposting articles in full with an introduction, would not likely be Fair Use because you can easily direct the audience to the original after making your commentary.

1 ^ | v • Share ›



**IdiocyAbounds** ➔ LucidGal • 5 years ago

Resharing content on social media that was shared by the owner on social media is content curation and is not copyright issue based on the TOS of all social media sites

^ | v • Share ›



**Keith Griffis** • 8 years ago

Sara,

In order to find royalty free images I recommend Acobox <http://acobox.com/> or a similar service. The added bonus is that you can hotline your images (ie paste a bit of code that pulls the image from their server) and it saves space on your site. The downside is that you don't have complete control over the image name which can contribute to your Seo rankings.

Anyone else know of places to find royalty free images for blogs without a fee for membership or download?

Happy Thanksgiving,  
Keith

[www.SimpleMediaMarketing.com](http://www.SimpleMediaMarketing.com)

3 ^ | v • Share ›



**Marianne** ➔ Keith Griffis • 8 years ago

You can find an overview of the best resources for free stock photos at <http://www.whichstockagency...>

However, it's important to remember that you get what you pay for in a commercial environment and if you pay nothing, well, you're likely to get close to nothing... a reject image, an image that has never sold or even an image that might infringe some copyrights. Who knows? However, if you really have no money, you can't afford to pay rock bottom microstock prices and you're aware of potential pitfalls, then free images are useful.

^ | v • Share ›



**IdiocyAbounds** ➔ Marianne • 5 years ago



some sites charge an arm and a leg-and the images are no better quality than on some of the budget sites

^ | v • Share ›



**nouf** • 8 years ago

Thank you for all this infoematiom. It very useful for me.

1 ^ | v • Share ›



**Shevonne** • 8 years ago

How about when you embed images from sites like Flickr and Pinterest?

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**Sara F. Hawkins** → Shevonne • 8 years ago

Flickr images are protected by copyright unless otherwise stated. You can find the license information for each image on the right sidebar under 'License' and you'd need to use only those images that would allow for your use. Flickr has a Creative Commons community - <http://www.flickr.com/creat...> - and you can use those images for the purposes licensed.

Pinterest TOS do not grant any type of license to 3rd users. If you want to direct others to something that is pinned you should do so by link rather than cut/paste of an image or content. If sharing the pin, the image size is greatly reduced and thus may be covered under fair use.

2 ^ | v • Share ›



**Shevonne** → Sara F. Hawkins • 8 years ago

Thank you so much!

1 ^ | v • Share ›



**Kelly Grace** → Sara F. Hawkins • 8 years ago

Hello Sara, Mike suggested I read your posts and direct my questions to you. I also wanted clarification about what internet content could legally be posted to Pinterest or Tumblr. I've read all the posts and I think you are saying that copyrighted photos are an obvious no without written permission, but non-copyright photos posted as thumbnails used on aesthetic curative sites are generally deemed fair use. Does royalty free mean it is not copyrighted? Is [sxc.hu](http://sxc.hu) a good source?

I am glad that I'm not the only one confused by the changing landscape introduced via the Internet, but I'll be glad when the legislation reflects the current situation. Thanks for your contribution to this site.

Kelly Grace

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**Fred Friendly** • 8 years ago



So now exactly do google news and yahoo news operate with their thumbnails? They can't possibly be paying for every photo thumbnail they use! it would be hundreds of thousands of photos every day they would have to pay for. Please explain how they are using fair use in their news services.

^ | v 1 • Share ›



**Sara F. Hawkins** ➔ Fred Friendly • 8 years ago

Fred,

Several years ago, the US Court of Appeals, Ninth Circuit, ruled that Google's use of thumbnail images was a fair use of the copyrighted images. Perfect

10, Inc. v. [Amazon.com](#), Inc., et al, 487 F.3d 701 (9th

Cir 2007)

Since it was a US Appellate Court it does have influence in other circuits but it is not true precedent since other circuits do not have to follow, although they likely would.

The caption is referencing Amazon, as it was the lead defendant, but Google search engines were the primary focus and was also a Defendant in the case.

Hope this explains it sufficiently.

Sara

1 ^ | v • Share ›



**Ali Asim** ➔ Sara F. Hawkins • 4 years ago

Sure, Google is the all mighty new God of this world.

^ | v • Share ›



**Angela Crocker** • 8 years ago

Terrific article, Sarah. Copyright, fair use, creative commons & public domain are topics I make a point of covering in the courses I teach. Of course, copyright law in Canada (and other parts of the world) vary some (or a lot!) from the USA which poses a huge challenge for us all as we communicate globally across the Internet. My suggested approach is to follow legal and ethical guidelines of countries that acknowledge a balance between the rights of creators and users. Thanks for laying out such best practices here.

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**Sara F. Hawkins** ➔ Angela Crocker • 8 years ago

Angela,

Thank you for reading and commenting. Yes, US law is the focus in my article.

But as you mentioned, US law is often very different than laws of other countries.

As a perfect example is the reference above to Google using thumbnail images. It appears it is Fair Use in the US but in other countries it has been ruled to be copyright infringement



Finding that balance can be a challenge. Even though you don't intend to market to people outside your home country the fact that the internet can be seen (with some exceptions) by nearly anyone makes us all potentially liable in other countries. That doesn't even just apply to Copyright either. Defamation, decency, religious and cultural laws and norms often create a diverse view of what is and is not protected.

Thank you for pointing this out. For those who market internationally, there are more concerns to be aware of today.

Kindly,

Sara

1 ^ | v • Share ›



**Caroline** ➔ Sara F. Hawkins • 8 years ago

Which takes precedence, laws of a particular country or the Berne Convention? (Assuming that country is a signatory.) For countries that have signed both Berne and WIPO, their laws are all the same, is that correct?

^ | v • Share ›



**Sara F. Hawkins** ➔ Caroline • 8 years ago

Caroline,

The laws of a particular country will be precedent. If they are a signer to a treaty then the country must also adhere to the construct of the treaty and not have laws that are contrary to the treaty. If the laws are more strict or contrary to the Berne Convention then the treaty would control, so long as they are a member-nation.

WIPO oversees a multitude of treaties, including the Berne Convention and many other IP treaties. With regard to copyright, WIPO Copyright Treaty (WCT) attempted to fill in the gaps when it came to internet and online copyright, rental of copyright and copyright as applied to counterfeit goods. WCT is an extension of the Berne Convention and is an extension of the Berne Convention.

Countries who have signed on to Berne and WCT, and other treaties, do not necessarily have the exact same laws. They may be similar but there may be slight differences.

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**Leon Lewis** • 8 years ago

Here's another solid resource for copyright info and the web:





**MShah** • 8 years ago

Indeed Angela: the best approach is following ethical guidelines and am sure no country will be with a law which is not covering ethical guidelines. Legally it may be a bit challenging. My take is the rights of the users and creators is equally important to save the subject from mad rush and infringement of personal privacy.

^ | v • Share ›



**Dailadawn** • 8 years ago

What about images found on Microsoft ClipArt - are those free to use in presentations / on websites / etc? I've never seen anything asking you to pay for them . . . .

^ | v • Share ›



**Sara F. Hawkins** ➔ Dailadawn • 8 years ago

Dailadawn,

With clip art, you need to read the license that comes with it (which you likely agreed to but didn't read - like most of us - when you installed it) to determine the appropriate uses. Likely there are strict limitations.

Sara

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**Nabil Stendardo** • 8 years ago

Copyright is a proof that the law is not keeping up with technology (and such laws are ipso facto in favour of incumbents). Same as patent law (IIRC patents lasted 20 years before the industrial revolution, and last for 20 years now, while the people's invention rate is higher and the usefulness time span of an invention is lower). Not to mention the ever-increasing copyright duration.

5 ^ | v • Share ›



**Sara F. Hawkins** ➔ Nabil Stendardo • 8 years ago

Nabil,

That has been one of the biggest arguments in the Copyright area - that technology is making the laws not only hard to implement but, often, irrelevant and draconian. Unfortunately, we're stuck with the laws until they are changed either by legislation or clarified through judicial intervention.

The arguments for patent reform have been on-going since I was in law school in the 1990s and the dot-com boom changed the patent landscape a great deal.

But, we need to work with what we have or be the impetus for change (which has been historically slow).

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Thank you for your input,  
Sara

^ | v • Share ›



**Kimoaz** → Sara F. Hawkins • 8 years ago

Hi Sara,  
Can people use pictures off of the MLS to up-date their own restate website?  
jim

^ | v • Share ›



**Sara F. Hawkins** → Kimoaz • 8 years ago

Kimoaz,

You have to read the TOS for your MLS Service. If you are a realtor who has access to the MLS the TOS should address using images that were taken by the lister/listing company or the company they hired and likely copyrighted by them. If you are not a member of the MLS, the answer is easier - no, subject to fair use arguments.

Sara

- Not Legal Advice -

^ | v • Share ›



**Sadie-Michaela Harris** • 8 years ago

Thanks for sharing this Sara, really useful information for anyone who has an online presence to be au fait with. :)

^ | v • Share ›



**Layla (Cat Wisdom101)** • 8 years ago

Sara, excellent post. As a professional photographer I post a massive amount of images at both my blogs: Cat Wisdom 101 and the Boomer Muse. How would I ever find out if any images are stolen? Re: what you said about "If the new work which incorporates the copyrighted image is a "transformative work"—what you created no longer resembles the original—there is a greater likelihood of finding an exception to copyright infringement." Specifically, I'm curious about transforming one image from one medium to another like another like the controversial Shepard Fairey poster of Barack Obama.

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**Sara F. Hawkins** → Layla (Cat Wisdom101) • 8 years ago

Layla,

While not foolproof, TinEye is one of the bigger image reverse search platforms.

Google also has a 'reverse image' search function in that you can search by image now with Google. Many believe that the new Google Image Search function will render other options worthless, but that's still to be seen.

Unfortunately, there is nothing automated. And, to make matters worse there are some social networking platforms that strip out EXIF information so you can't even use that data for searching.

Hope this helps,  
Sara  
1 ^ | v • Share ›



**Layla (Cat Wisdom101)** → Sara F. Hawkins • 8 years ago

Thanks Sara, and happily shared.  
^ | v • Share ›



**All Natural Pet Care** • 8 years ago

Having wasted time on these matters before, I can't tell you how much I appreciate this post. It's amazing how many people believe that they can just grab someone else's work for their own benefit. It's also amazing how they flutter angel wings and blink innocently when they're called on it. I mean c'mon, we learn about plagiarism in the 4th grade.

Another belief is they can publish someone's content on their website and say it's for the purpose of educating people. That is not what the educational 'clause' is referring to.

Now that the engines are penalizing for duplicate content, it is even more important for people to fight for their content rights.

Creating original content is a lot of work. Creating GOOD original content is even harder. Nobody has the right to just steal it, any more than they have the right to walk off with the stereo you worked hard to get.

7 ^ | v 2 • Share ›



**Casdanben** • 8 years ago

Excellent article thank you. We in the craft industry, specifically rubber stamps and digital image downloads are dealing with copyright infringements worldwide and on a daily basis in many forms. It becomes disheartening.

1 ^ | v • Share ›



**The Nerdy Nurse** • 8 years ago

Something I spend so much time on: Finding images that I can actually use. A post without images is just so.... boring.

4 ^ | v • Share ›



**Mark Bosnian** • 8 years ago

A couple of specific laws to keep in mind:

\*ANYTHING I DO NOT HAVE PERMISSION TO USE IS ILLEGAL. I HAVE PERMISSION TO USE ANYTHING I DO NOT HAVE PERMISSION TO USE IS ILLEGAL.

^ VISUAL ARTISTS RIGHTS ACT OF 1990, title VI of the Judicial Improvements Act of 1990, Pub. L. No. 101-550, 104 Stat. 5089, 5128, enacted December 1, 1990.

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\* Online Copyright Infringement Liability Limitation Act, title II of the Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860, 2877 (amending title 17 of the United States Code, to add a new §512), enacted October 28, 1998.

\* Digital Theft Deterrence and Copyright Damages Improvement Act of 1999.

\* In addition, certain authors of works of visual art have the rights of attribution and integrity as described in section 106A of the 1976 Copyright Act. For further information, see Circular 40, Copyright Registration for Works of the Visual Arts.

<http://www.copyright.gov/ti...>

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**Jana Lowrey** • 8 years ago

Thanks, Sara! You're article is a wake up call to me to pay more attention. I appreciate the down-to-earth advice!

3 ^ | v • Share ›



**Lilyana Abdul Latif** • 8 years ago

Thanx Sara. I agree with Jana. This article is very clear and useful. I guess it is "Fair Use" to share your article with my other friends?? :-)

^ | v • Share ›



**Ian Fenwick** • 8 years ago

Very useful. I also did a bit of research on tools to allow bloggers to easily meet the usual requirements (even for Creative Commons images) for attribution of the images to the original owner (<http://blog.digiaindra.com/...>

1 ^ | v • Share ›



**Adam** • 8 years ago

Hi Sara, great article thanks for that.

Could you just clarify for me what to do/where i would stand in this situation -

I am creating a video tutorial series of a commercial software program that i have bought.

I would be using Camtasia software to record myself using this commercial software program showing the public how to use the software.

The video tutorial series would be available to buy from me, either by paying a fee to watch online and download or paying a fee to buy a DVD version.

Would using my recorded footage of me using this commercial software program that i have bought to use generally be classed as fair use and could i expect the sell the tutorial series without any issues coming from the manufacturer of the commercial

tutorial series without any issues coming from the manufacturer or the commercial software program?

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Does how you sell the product to the public make a difference? For instance if i were to charge a membership fee to a website that would allow the paying members to access files of the tutorials be different to just selling a DVD of the tutorial series.

There are a lot of companies out there (e.g. [www.Lynda.com](http://www.Lynda.com)) who sell tutorial series on various commercial software programs, are they only doing so because they have permission to film their use of the software program?

Thanks a lot

Adam

1 ^ | v • Share ›



**Sara F. Hawkins** ➔ Adam • 8 years ago

Adam, it's harder to talk about how to use software without mentioning it by name or showing how to use it. While I can not offer you legal advice, based on the information out there for fair use that showing the software as it is used would likely fall under fair use. You're not giving away the software or the code. Selling the tutorial would take you out of the 'for educational purposes' reason for fair use.

But people do tutorials, product reviews and demos all the time and showing copyrighted material is often covered by fair use because they are not using the copyrighted work as itself.

Hope this helps.

^ | v • Share ›



**NEVILLE M.** ➔ Sara F. Hawkins • 6 years ago

Adam/Sarah,

If you read the Licence Agreement of The Software, it will most likely have a Statement regarding such use of it, and any Limitations. It's possible and even quite likely, that it will State that You Cannot Use it for Commercial Purposes and/or to Gain Profit.

^ | v • Share ›



**Bonz [Con Tour]** • 8 years ago

Thank for this Atty. Somehow it shed light to us newbies in blogging industry / world. :-).

2 ^ | v • Share ›



**Sara F. Hawkins** ➔ Bonz [Con Tour] • 8 years ago

Glad to help out!

2 ^ | v • Share ›



**Henry Louis** • 8 years ago  
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