

What you need to know

Here are some of the basics you need to know. We've sectioned up the subject areas into bite size pieces – each one will only take you a few moments to read through. And, of course, you can also watch our video 'Image rights explained visually' for a round up of all the main issues.

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Different types of imagery

Q: Is this site primarily about images that are used for commercial purposes?

A: Yes, stockphotorights.com is primarily focused on stock images that are licensed for commercial use.

Q: What are the different types of stock images?

A: Stock images break down into two main types, royalty-free and rights-managed.

For royalty-free images, you get nearly unlimited use. You can use the image in virtually any application, for as long as you like, in as many different projects as you like, as long as you comply with the terms of the license agreement. The image is available to use from when you purchase a license. Following payment of the license fee, no additional royalty payments are owed.

With rights-managed images, your right to use the image is typically restricted, with limitations placed on things such as duration of use, geographic region, industry, etc, as established by your license agreement.

Q: Can I use royalty-free images for free?

A: No. Royalty-free means that once a license fee is paid, the images may be used many times without paying additional fees, but the initial license is necessary to protect yourself and your clients. When you license a royalty-free image, you can use it in nearly any application, for as long as you like, according to your license agreement (although some kinds of uses do require an extended license). The cost is often based on file size, the number of permitted users as well as other factors.

Copyright

Q: What is copyright?

A: Copyright is a form of protection provided by the law to the authors of “original works of authorship.” By virtue of the Berne Convention for the Protection of Literary and Artistic Works, works are protected in all 160 countries that are party to the Convention, as well as various other laws such as the US copyright act.

Q: Does this apply to all images?

A: Yes, this applies to all images. From the time it is created, a photo or other image is automatically protected by copyright.

Q: What is copyright infringement?

A: Infringement can include a violation of the rights of the creator or rights holder. Examples of imagery infringement may include:

- Use of whole or part of an image without permission
- Use beyond the scope of a license or permission
- Adapting an image without permission (art rendering)
- Asking another photographer to identically recreate the image

Q: Who's responsible when infringement occurs?

A: Responsible parties may include:

- The party that infringed (the photographer or the person that stole the image in the first place), even if unintentionally
- Employees or others who participated in the original infringement
- Anyone who published the infringing image, whether they had knowledge or not
- Anyone who authorized or encouraged infringement

Q: Why should I worry about copyright infringement?

A: Infringement of copyright may result in monetary damages, lawsuits, costly legal fees and under some rare circumstances, criminal charges.

Q: Surely no-one will be able to find one image in the whole of the internet?

A: New technology now enables copyright owners to identify unlicensed imagery and act to protect their rights. Imagery is ‘fingerprinted’ so that it can be tracked and found in use, even if it has been modified, recreated or if only part of the image has been used. The image is then flagged up to the copyright owner so that they can check if the correct license is held.

Q: I'm using an image I found through a Google Image search. If it's on the internet, doesn't that mean it's free?

A: No. Just because an image is on the internet, it doesn't mean the image is free to use. You may still need the correct license to use it. There is a difference between an image being online and an image being “in the public domain” (the term given to content that is not owned or controlled by anyone).

Q: Someone else created my website? Am I liable if the images are not licensed correctly?

A: If a third-party designer, employee, contractor or intern designed and developed your company's website, you are responsible for ensuring they have licensed the images for your use. If no valid licenses exist the liability of any infringement may fall on the company (the end client) who used the image.

Q: If someone else built my website, how will I know when the licenses will expire?

A: Don't assume your designer or image provider will contact you about an expiring license. Where the license to the image expires (which is generally not the case with royalty-free images), the imagery provider may send a renewal notice to the purchaser of the license, so your designer may receive this notice if they licensed it on your behalf.

It is best to get invoice numbers or sales order numbers for the images on the website and contact your imagery provider to confirm if the license is connected to your website. It's also wise to keep all your licenses organized so that you know the scope and expiration dates of each license.

Q: I'm just a blogger and my site is non-commercial. Can I use images for free?

A: In most cases, no. Unless your use is specifically permitted by copyright law, all the images on your website must be properly licensed, regardless of the nature of your site. You can, however, license very inexpensive images from many imagery providers that are perfect for web use and will be properly licensed.

Q: How can I be sure I've taken the appropriate steps in licensing an image?

A: There are various places that you can go for information; hopefully this website will give you a basic understanding of the potential risks you need to bear in mind. You should consult with your legal counsel if you have specific questions. Please also see our resources section for more information and also take a look at our ‘what you need to do’ section.

Legal Protection

Q: I paid for my image; does that mean I can't be sued?

A: Not necessarily. Even if you license an image from a reputable supplier, copyright disputes (as well as various other disputes) can still occur.

Q: So how can I make sure that I am covered against these potential legal disputes?

A: You should always consult with legal counsel for the greatest certainty. The best way is to source your image from a supplier that offers legal protection with its images. The first lines of protection are in the form of model and property releases if the image includes people, or items that are not public property. Some image providers offer additional legal protection either for free or with an additional fee attached that is basically an extension of the warranty. This provides additional peace of mind so that if a dispute arises, for example around the copyright, you should in most cases be covered.

When you license an image that comes with legal protection it offers you an umbrella of some protection around that image. For instance, if someone who claims to own the copyright of an image issues a claim against you for copyright infringement, the supplier who licensed the image to you in the first place can step in, fight the legal battle and cover the legal costs (assuming that the user is otherwise in compliance with the applicable license agreement).

Suppliers that provide legal protection in the form of model and property releases, as well as extended protection, may also have inspection processes in place for the images that they offer.

Q: Are there any other words or phrases that mean the same thing as 'legal protection'?

A: Yes, 'indemnification' is commonly understood as a legal concept that means essentially the same thing as legal protection – this is how it may be described in your license agreement. Certain image providers may also have different names for the legal protection that they offer, for example some agencies call it a legal guarantee.

Q: What does indemnification mean in legal terms?

A: The legal concept of indemnification (more commonly referred to as legal protection) is generally understood to mean that one party agrees to bear the liability and assume the costs relating to certain legal claims. In license agreements that include indemnification, the supplier of the imagery often assumes liability for certain kinds of claims and costs, depending on the type of image.

Q: So how does legal protection work in practice?

A: If a customer receives a claim, they notify the supplier, who will pick up handling the claim from then on (provided it is a claim that they cover as part of the legal protection agreement). The specifics of what and how this will be done may vary depending on the supplier but are often detailed in the legal protection agreement.

Q: Which suppliers of imagery offer legal protection?

A: Various companies offer varying degrees of legal protection.

It is best to check the license agreement thoroughly before you agree to buy, and to go with a supplier that offers legal protection in situations where you require more peace of mind.

Q: What sort of disputes might arise after I have legally licensed an image?

A: Disputes can still arise even after you have legally licensed an image from a reputable supplier. One potential source of dispute is from individuals depicted in the image. All models have rights of publicity and privacy.

The rights of publicity protect them against the commercial use of their name, voice, likeness, or persona without their permission. The right of privacy protects against the disclosure of private facts and false portrayal of someone in an offensive manner.

Models depicted in stock images should be asked to sign a model release which provides permission for their image to be used commercially. Reputable suppliers of imagery should have model releases in place for applicable stock images, protecting both the supplier and its customers against claims of invasion of privacy or publicity.

There are instances though, when someone will claim they are the person depicted in the image and that they did not sign a model release. This means that whoever used the images may be liable for the legal costs of defending against the claim, unless the image is covered by legal protection.

Legal Protection (continued)

Q: Do all types of images come with a model release?

A: No. It is always best to check and the supplier should indicate on its website, or in the license agreement, whether a model release is available for each image.

Q: What if I want to use an unreleased image for a commercial purpose?

A: Some stock agencies have rights and clearance services that can sometimes arrange special permission for certain uses, but these are typically done on a case by case basis.

Q: Are model and property releases required for editorial use of images?

A: Generally speaking, model and property releases are required for commercial use of images (e.g. any advertising, promotional or marketing use) but not for editorial use (e.g. use in a news report).

Q: What about trademarked items in the image? Can I be sued by the owners of the trademarks?

A: Yes, in the same way you need a model release to cover people depicted in an image, you may also need a property release to cover trademarks in an image. A trademark can be a word, a symbol, or a shape, that is used as a product or service brand to distinguish one's goods or services from the goods and services of others. So for example, there could be an image of a model carrying a bike which has a trademark appearing on it, and a property release may need to be in place for that trademark.

Similar to model releases, reputable suppliers should have property releases in place for their applicable images when necessary. There are cases where a property release is not necessary. For authentic clips of a street scene, it may not be practical or required to get a property release from each storefront or billboard depicted. It is always best to check if the image has a property release in place and whether this affects the legal protection provided with that image.

Q: So, aside from trademarked items, do I need to be wary of any other items appearing in the image?

A: Yes. Artistic works, such as paintings and sculptures appearing in an image are protected by copyright laws. Also, copyright laws in some countries protect images of unique architectural works or buildings. In addition, some images of buildings are actually registered trademarks such as the Sydney Opera House.

A property release gives consent to use the image of a copyrighted artistic work and also protects against claims of infringement of copyright or trademark for buildings depicted in an image.

It is always best to check if a property release is in place. If a property release is not in place it could mean that legal protection is not offered on that particular image.

Q: Are there any reasons why legal protection might not be granted if a claim arises?

A: Usually certain conditions need to be met for the supplier to provide legal protection to a customer if a claim arises. These will be laid out in the terms and conditions of the supplier's license agreement. For example, the customer may need to notify the supplier of the claim within a certain timeframe and customers must be in compliance with the terms of the license agreement for the legal protection to be offered.

Free images and Creative Commons

Q: Is it possible to get free images, legally?

A: Yes. There are sources of free, legal images.

Q: Does that mean these free images have no copyright?

A: No. Copyright is automatically granted to the creator of any image. That copyright holder must specifically declare the image as free to use.

Q: Is it possible to get legal protection from suppliers of free, legal images?

A: Not usually. Free images typically do not come with any form of legal protection. Most free images will not have model releases or property releases and if a claim arises, the customer will be responsible for that claim.

Q: Are there any downsides to using free images?

A: The quality of these images can be lower than paid-for images. The better quality free images can also be over-used, and their effectiveness may be diluted the more times you see an image appearing in different places. Suppliers of free images are also unlikely to have inspection processes in place, which in turn can increase the likelihood of a dispute arising.

Q: What is a Creative Commons license?

A: Creative Commons is a non-profit organization that has released several copyright-licenses known as Creative Commons licenses. These licenses allow creators of content (which includes imagery) to communicate which rights they reserve, and which rights they waive for the benefit of recipients or other creators. Restrictions include whether an image can be used for personal or commercial purposes, and whether or not the photographer requires attribution or credit.

Q: Do Creative Commons licenses cover you against all legal risk?

A: No. A Creative Commons license will still have certain restrictions on how the image can be used and does not automatically confirm that necessary model releases or property releases have been obtained so you could still be liable in the case of a dispute. The Creative Commons license does not include legal protection, so if a dispute arises about an individual, building, trademark or artistic work in that image, the customer may be liable for that claim.

Infrequent and personal use

Q: My boss has asked me to find some images for an internal presentation. Do I still need to pay for them?

A: Yes, in most circumstances. You will still need to pay for the image and license it for commercial use. There are various sources of free images and clip art that you can use, but these images must normally still be accompanied by a license or permission from the copyright holder.

Q: What's the difference between "personal use" and "commercial use"?

A: Personal use may be commonly defined as use that is not for commercial gain. Examples of personal use (or non-commercial use) might include social newsletters or wedding announcements.

Commercial use may be commonly defined as use that is intended for commercial, promotional, endorsement, advertising or merchandising purposes. Examples of commercial use could include a branded company website, brochure, advert, presentation or product.

Q: Do you need a different kind of license for commercial and non-commercial use?

A: It depends on the imagery provider. Different types of licenses may be available for commercial and non-commercial use.

Q: Do I need to buy images for personal use, or can I use them for free?

A: You will need to acquire a license for personal use and for commercial use. There are various sources of free stock images and free clip art that you can use, but these free images must still be accompanied by a license unless the use is specifically permitted by copyright law.

Q: I'm a business owner, but I also have a personal blog, through which I get a number of referrals. Would this blog still constitute personal use?

A: As long as your blog is for personal use only and does not have any commercial purpose (i.e. ad revenue or promotion of commercial operations) it could be considered personal use, as the site is not designed for the purposes of monetary reward. Images used must still be properly licensed though.

Q: I set up a group on Facebook for my business, does this constitute personal use?

A: This could be considered commercial use, as the Facebook Group is designed for the purposes of promoting your business. Additionally, note that Facebook has a section on 'Protecting Other People's Rights' within its terms (www.facebook.com/terms.php?ref=pf) which provides some further guidance for users of its website.

Questions to ask your supplier

1. Do you have the permission to license the copyright?
2. Do you have model and property releases for all of your imagery?
3. Do you offer additional legal protection should a dispute arise?
4. Does your company have an inspection process for identifying potentially risky properties, trademarks etc? Can you please describe?