



How to Avoid Getting Sued for Copyright Infringement

By Wendy Lewis

Picture this.

You subscribe to various stock photography sites. You are paying about \$1 per image to license a photo or vector for a single use. You think you're protected and sleep reasonably well at night. Then a registered letter arrives and...lo and behold, you find out you are liable for over \$10,000 to a stock image site in Canada you never even heard of for an image that was used on your Wordpress blog by a former employee over seven years ago that you never even knew about. Bummer!

It happened to me, and it can happen to you too. There is a little thing called 'copyright' that you need to get familiar with before it's too late.

Here's why.

Defining Image Copyright

Copyright is a concept that protects all creative works. While it may be frustrating to navigate when trying to find images for your social media posts, keep in mind that it benefits you too. The same copyright laws that protect someone's rights to their images protect your rights to all the content you create and share online.

Although the legal definition of copyright may vary slightly by country, the basic premise is who owns creative works and how those works can be used.

In the United States at least, section 106 of the Copyright Law states that only the copyright holder can:¹

- Reproduce the work
- Make derivative works based on the work
- Distribute the work to the public
- Display the work publicly

Therefore, if you created an original artistic or written work, you own the exclusive rights to it, even if you never registered it with a copyright office or other official body. By the same token, if you use a photo or illustration created by someone else—without their express permission—you may be in breach of their copyright. This applies to all images posted that are in the public domain, including on social media platforms and websites. It is that simple.



Social Media Shares, Lifts & Borrows

It is well documented that photos increase social engagement substantially. On Facebook and Twitter, posts with photos generate more likes and comments. The challenge facing plastic surgery practices is how to get real images from patients, or in the alternative, find good images that are shareable.

The natural inclination may be to go to Google, type in "filler injections" and search for IMAGES. That would be a huge mistake. Here's why. Images on Google are not yours to pick off. Notice that most images you scroll through have the ubiquitous disclaimer "Image may be subject to copyright." Therefore, you can't just lift any old image off the web and use it for your own. Sure, you may get away with it for an occasional lecture or a short presentation at a patient seminar. But that may also be risky. For example, there have been cases where as a doctor is presenting his slides with 'lifted' before and afters, the actual doctor who performed the procedure or whose patient is in the photographs is in the audience. Busted!

Social media is all about images. As plastic surgeons, creating compelling content rests on being able to persuade patients to forego their right to privacy and allow you to post their beautiful results. That doesn't always work.

What You Need to Know Before You Borrow an Image You Don't Really Own

You can search online for images, which is the natural inclination we all have to save time, but there are big risks with that strategy because images may be subject to copyright. A bundle of intangible rights granted by statute to the author or originator of certain literary or artistic productions, whereby, for a limited period, the exclusive privilege is given to that person (or to any party to whom he or she transfers ownership) to make copies of it for publication or to sell it.

Copyright owners have the right to control the reproduction of their work, including the right to receive payment for that reproduction. An author may grant or sell those rights to others, including publishers or recording companies. Violation of a copyright is called infringement. Copyrights are like patents and trademarks. These are all examples of what is called Intellectual Property in legalese. Copyright protects the expression of an original idea.

Regrettably, the law has yet to catch up with the advent of digital media, however, the same basic rules apply. Copyright protection has been extended from the printed text to other means of recording 'original expressions.' These may include lyrics to a song, pictures,

Continued on Page 81

How to Avoid Getting Sued for Copyright Infringement

Continued from Page 79

photos, graphics, sculptures, videos and sound recordings. Technically, that include podcasts, tweets, blogs, Facebook Live videos and just about anything else you can think of that involves visuals or sounds.

Sidebar: A Brief History of Copyright Law

Copyright Law is not new. In fact, it predates the Internet by roughly 500 years. US Copyright law has its roots in English Common Law and can be traced all the way back to when the printing press was developing in the 15th century. The landmark Copyright Act of 1976 (17 U.S.C.A. § 102[a]) marked a real turning point in this area. According to this statute, an author receives copyright protection as soon as a work is recorded in a concrete way—like when it is written down, recorded, or stored on a computer disk. Any unauthorized copying of the work is subject to an infringement suit and criminal charges. The 1976 act also allows copyright protection of works that derive from the original, such as motion pictures, CD-ROM multimedia editions, and other adaptations. These subsequent creations are known as ‘derivative works.’ Revisions in the copyright law have been driven largely by commercially significant changes in technology. The distinction between common-law protection for unpublished works and statutory protection of published works has been debated in light of technological innovations in communication vehicles. Congress removed this distinction in 1976.²

‘Fair Use’ allows certain copyrighted works to be used without permission for specific purposes. The guidelines for this exception tend to be somewhat fuzzy, and may be subject to interpretation in a Court of Law. The Court may consider whether the copyrighted materials are being used for commercial, not-for-profit or educational use. The simple fact that should concern plastic surgeons is that using an image to promote your practice in any way is unlikely to meet even the most basic guidelines for ‘fair use.’

Best Workarounds

Think before you download or screenshot that perfect image. You would be better served to first search online, identify some images you may want to use, and then take the next step to find out where they originated from. In some cases, you may find that the images are free to use or can be licensed for a nominal fee for the purpose you have in mind.

Stock photography sites are an obvious safer option. These sites have huge libraries of images, vectors and videos for licensing, with fees based on the size of the image and its intended use. Some images are better than others, and it will take time to sort through available images in the category you are looking for. The more specific and narrow your search is, the faster this process may go. For example, the basic search starts by going to photographs, choose the shape you need (square, oblong, rectangle, etc), narrow your search by color if applicable, choose from royalty-free or editorial (meaning restricted use), and go. Many sites offer small-business-friendly subscription-based accounts that may end up costing about \$1 per image for limited use, as in a social media post, blog or on a website. Extended licenses are also available for using images for a more comprehensive campaign or larger project.

Free or Cheap Sites

- Gratisography
- Picabay
- Unsplash
- DeathToStock

Subscription Sites

- iStock
- Depositphotos
- Shutterstock
- Gettyimages
- Dreamstime

‘Creative Commons’ allows content creators to make their work available for certain purposes without requiring express permission. Look for ‘Creative Commons’ (or CC) licenses on sites like Flickr, Wikipedia, and YouTube. Specific terms of use may vary, such as some licenses restrict usage to include attribution, some restrict usage only to personal and not for commercial purposes (as in an advertisement or for a client), and some may have no restrictions.

There are also a fair amount of images available online that are free to use in the public domain. A Google image search can also be used to find free images. Use the Advanced Image Search function to look for images that are “free to use or share, even commercially.” If you are not 100% sure that

Stock photography sites are an obvious safer option. These sites have huge libraries of images, vectors and videos for licensing, with fees based on the size of the image and its intended use.

the images you want to use are free to use, click on the image to double check the license specifics on the page where the image lives.

Basically, you can technically use someone else’s image if they give you permission to do so. Yet, if you do not have that permission in writing, that may not hold up in Court if any future misunderstandings arise. For example, regramming photos from a branded hashtag or an Instagram contest may be fine if you follow standard practices and give credit to the original Instagram user. However, we are seeing that more big brands now requesting permission from the original user in the comments section of the post to play it safe. The language used may read like this: “We would like to use your content. If you approve, respond #(add brand or company name here)Approve. Terms & Conditions (add link to details here).”

Whenever these questions arise, the best advice is to consult with an intellectual property attorney to know your rights and responsibilities, and to get the appropriate language to use to protect yourself.

By the way, in the end after multiple back and forth emails to their in-house legal team, I negotiated the fee down to \$1,400 from the original \$10,000 asking price and settled the matter. That was a very painful check to write but I was relieved to get it resolved. Chalk it up to another hard lesson learned.

Wendy Lewis is President of Wendy Lewis and CO Ltd, www.wendylewisco.com, author of 11 books and Founder/Editor in Chief of www.beautyinthebag.com. Reach her at w@wlbeauty.com

1. www.copyright.gov/title17/92chap1.html#106
- 2 <http://legal-dictionary.thefreedictionary.com/copyright+infringement>