

Protecting and Prosecuting Your Images **Text copyright Carolyn E. Wright, Esquire, all rights reserved**

You're sitting in your easy chair and surfing the web. You're not paying much attention, until you see it. It's your photo, but you did not post it there. You can't believe they used your photo without your permission.

Do you care? Maybe your photo is being used by a family to decorate its news page. Maybe it's being used to sell a product. Does that make a difference to you?

If the answer to both questions is no, then read no further. If the answer is yes to one or both, then read on.

Creating and Owning Your Copyright

A copyright is created at the moment the work is made into a fixed form. For photographers, it happens at the click of the shutter. The image then is protected by a copyright regardless of whether it is recorded on film or digitally. Copyrights give the owner the exclusive right to do, or to authorize others to do, specific things to the property. Specifically, the copyright owner has complete control to reproduce the image, to prepare derivative works based on the image, to distribute them by sale, rental or lending, and/or to display the image.

The photographer who clicks the shutter owns the copyright. The only exception to this rule is when you shoot the image in a work-for-hire condition. This relationship is created only in two situations: (1) when you are an employee hired to photograph for your employer, such as a photojournalist who is an employee of a newspaper; or (2) you are hired to photograph pursuant to a contract, and the contract specifically includes the provision that the copyrights to the images you shoot for the contractor belong to the contractor.

You own the copyright even if you don't register it. Registration does not give you the copyright. The copyright is established when you take the photograph. Registration is only a legal formality that gives you certain additional rights.

You can only transfer your copyright in writing. Giving a slide to a publisher, giving digital files to a client or selling a print does NOT transfer the copyright. While these acts grant what is called "non-exclusive rights," you still own the copyright to the image. The transfer must be specifically described in writing and it must be signed by the copyright owner.

Protecting Your Copyright

When you own a copyright, there are things you can do to protect your rights. The copyright "notice" – the "©" with a date and name of the copyright owner is not required for protection, but it may help to guard your images. It may stop someone from copying your image, either because the person will be reminded that the image belongs to someone else or because your notice impairs the image for the person's use. Also, it helps to include a copyright notice with your image because if it is stolen, the defendant is prevented from using the defense of innocent infringement.

Your image does not have to be registered with the U.S. Copyright Office for you to use the notice. You also can include the words "all rights reserved" for some international protection.

Registering your copyright with the U.S. Copyright Office is required to file suit against an infringer. Registration provides other advantages, as well. These include: establishing a public record of the copyright; establishing evidence of copyright ownership if registered within five years of publication; providing for statutory damages and attorney's fees if registered before or within three months of infringement; and preventing the importation of infringing copies. You have more rights if the image was registered prior to infringement; but register it anyway, even if it is after the violation.

To make the registration process easier, bulk register both your unpublished and published images (separate bulks; not together).

Prosecuting Your Copyright

When your image is used without your permission, your copyright is infringed. You have several options at this point.

You always have the option of doing nothing. You may not care that the non-profit wolf society is using one of your wolf images. You may only want the society to give you proper credit. If so, write the society a letter officially giving it the right to use the image (be sure to designate the parameters of that use), but insist that you get a photo credit with a copyright notice. Also ask the society to add your website name. You may get additional work from the society or others.

Thanks to the Digital Millennium Copyright Act enacted in 1998, you have another option when your copyright is infringed on the web. While the Internet Service Provider ["ISP"] is not liable for transmitting information that infringes a copyright, the ISP must remove the infringing materials from a user's website after receiving proper notice of the violation. The notice must: be in writing, be signed by the copyright owner or the owner's agent, identify the copyrighted work claimed to be infringed (or list of infringements from the same site) and identify the material that is infringing the work. Additionally, the notice must include the complaining party's contact information, a statement that the complaint is made in "good faith," and a statement, under penalty of perjury, that the information contained in the notification is accurate and that the complainer has the right to proceed (because he is the copyright owner or agent). Because the notification requirements must be strictly followed, legal assistance can help to make the claim.

Your most aggressive option is to pursue your legal remedies by filing suit. Remember, your copyright must have been registered with the Copyright Office. To file suit, get an attorney to help you because the legal procedures are complicated.

Usually, your most profitable and easiest road is the middle one. Since you have your proof of registration, you need only to contact infringers to put them on notice. If infringers are business-savvy people, they will know that they're in trouble. If they don't understand the trouble they're in, they will as soon as they counsel with their attorneys. They will want to avoid the legal fees that will be imposed both by their and your attorneys. So make your demand for statutory damages by letter and you will get your just rewards much more quickly.

The weight of your demand letter is dramatically increased if it comes from an attorney. The infringer will recognize that you mean business and are prepared to go forward with suit if the infringer doesn't respond appropriately.

It's a Two-Step Process

Protecting and prosecuting your images go hand-in-hand. If you don't protect them, you can't prosecute them. If you don't prosecute them, then infringers will continue to take advantage of artists, and soon you won't be able to protect your images.



Carolyn E. Wright, Esquire, is a licensed attorney dedicated to the legal needs for photographers. Get the latest in legal information at Carolyn's website, www.photoattorney.com.

These and other legal tips for photographers will be available in Carolyn's new book co-written with veteran photographer Scott Bourne, "88 Secrets to the Law for Photographers." Go to www.mountainschoolpress.com for more information.

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