

197 aerial photography

This document is an attempt by *197 aerial photography* to assist infringers and others to understand their position, where they may have gone wrong and the potential consequences.

The main part of the text is from a *UK Copyright Notice* as published by the *Intellectual Property Office* to help explain specific areas of copyright legislation in the UK and it contains public sector information licensed under the *Open Government Licence v3.0*.

The full document (and licence for use) can be accessed online at:

www.gov.uk/government/publications/copyright-notice-digital-images-photographs-and-the-internet

Added in italics below each section of the *Copyright Notice* are comments by *197 aerial photography* explaining in more detail the actions and consequences once an infringement is discovered and notified.

This document should NOT be considered as legal advice. Nor does it offer a full explanation of the law. Please seek the opinion of a copyright law expert if you need formal guidance on your responsibilities and potential financial losses. Be aware that competent advice on specialist areas of law is expensive.

Copyright Notice: digital images, photographs and the internet

Copyright Notice Number: 1/2014 Updated: November 2015

The basics

Photographs, illustrations and other images will generally be protected by copyright as artistic works. This means that a user will usually need the permission of the copyright owner(s) if they want to perform certain acts, such as copying the image or sharing it on the internet.

References to “images” in this Copyright Notice include:

- digital photos taken on mobile phones and digital cameras;
- images that were first generated on photographic film and any digital images created from them; and
- images such as diagrams and illustrations.

197's comment: Everything on www.197aerial.co.uk is copyrighted – images, text, graphics and the underlying html code. It states that clearly on every page and on a specific page on copyright.

Who owns copyright in an image?

The person who creates an image (“the creator”) will generally be the first owner of the copyright. However, there are various situations in which this is not necessarily the case. For photos, it may depend on when the photo was taken, as different rules may apply if the photograph was taken before 1989. Creators also have what are known as moral rights (see example below on stopping the use of an image if you disapprove).

197's comment: All images published by 197 aerial photography are clearly marked as copyright both on the pages on which they appear and within the image files as metadata. All Moral Rights are asserted in all of the work.

Is permission always required to copy or use an image?

If permission is required to use an image, permission will need to be obtained from all the copyright owners, whether it is a single image with numerous creators, a licensed image, or an image with embedded copyright works. Sometimes there will be one person or organisation that can authorise permission for all the rights in that image; in other cases separate permission may be needed from several individual rights owners.

The creator of a copyright work such as an image will usually have (the) right to be acknowledged when their work has been used, provided they have asserted this right. If you are unsure whether or not the creator has asserted this right, then it is recommended that you provide a sufficient acknowledgement when using their work.

197's comment: In short, you need permission to use any photos copied from www.197aerial.co.uk and you must identify 197 aerial photography as the copyright owner even when using it under a licence (unless you optionally pay an added fee to exclude it).

These same restrictions of course generally also apply to images from any website.

What if there is no © (copyright) symbol, year or name with the image?

The copyright symbol does not have to be present for copyright to exist, so just because there is no name or copyright symbol associated with a photo or image does not mean the image is not protected by copyright.

Sometimes uploading and downloading images causes the associated metadata to be removed accidentally. Metadata is embedded within the image and can give details of the copyright owner. Deliberate removal of metadata that identifies the copyright owner is unlawful.

197's comment: If you use an image copied from a website where it is NOT identified on the page as copyright you should not use it until you are sure it's legal to do so.

If the web page or image metadata indicate that it's copyright then to use it without obtaining a licence or permit would be foolish.

Removing the metadata to conceal the theft is pointless and a further breach of copyright law.

Is there any way I can be completely safe when I use an image from the internet?

The vast majority of images on the internet are likely to be protected by copyright, so it is only safe to use it if you have specific permission to do so through a licence; or your particular use is specifically permitted in the terms and conditions of the website supplying the image and this is the copyright owner's website or another website which has the copyright owner's permission to allow other people to use an image; or if you have established that copyright has expired; or if you are using the image in a way which is covered by a permitted act/ exception to copyright (see above). The use of licensed images is usually much safer than using unlicensed images which offer no protection against infringement.

197's comment: Get permission or buy a licence BEFORE using other people's material.

You can't blame anyone else. If you publish an infringement then you are liable – every time.

What are the consequences of copyright infringement?

When someone infringes copyright, there are various courses of action that could be taken by the individual or organisation that owns or administers the copyright. The user of the image may be asked to purchase a licence, and a commercial arrangement might be reached after which no further action is taken. However, legal action might be taken by bringing a claim in court which could result in having to go to court for a hearing.

Court cases can be expensive, as they often result in the user of the image paying the cost to use the photo, plus legal costs of themselves and the copyright owner and possibly other financial compensation for copyright infringement, which may amount to more than the cost of a licence to use the image. Further, the user of the infringing copy could also be asked to take down and permanently remove all copies of the image from websites as well, unless permission from the copyright owner is secured.

Deliberate infringement of copyright on a commercial scale may also lead to a criminal prosecution.

Even in situations where people may think their copyright infringement will not be detected, they run the risk of being discovered and subsequently being pursued through the courts.

197's comment: This is perhaps the most important information in this document. It's repeated later.

The options open to a copyright owner when infringements are discovered are, in brief:

- 1: Offer the infringer the opportunity to buy a legitimate licence perhaps along with an undertaking not to pursue court action. Often a reduced sum for prompt payment and to reduce costs is suggested.*
- 2: If the offer of a licence is not taken up then make a formal claim for damages.*
- 3: Sue.*

In essence, infringers can buy a licence and maybe get to keep using the image (with proper credit) or alternatively refuse to buy a licence and then end up paying even more money in damages, court fees, legal costs etc etc and NOT get the chance to perhaps keep using the image.

Common sense says pay up, write it off to experience and don't do it again. It's by far the cheapest and least stressful option.

The Copyright Notice from the UK Intellectual Property Office refers clearly to the possibility of a criminal prosecution in some circumstances. These cases are rare but not unheard of.

It also advises that infringers will probably be caught eventually. The longer that takes the more it costs.

I want to link to images I found online

Sharing or posting a simple web link to pages where images have been posted publicly online by the copyright owner is usually not restricted by copyright.

The Court of Justice of the European Union has ruled that internet users should be free to share links to material, for example photos or videos, providing the material itself has been published online with the permission of the rights holder. The right to share links however does not go as far as allowing users to share links that are designed to circumvent paywalls or other subscription only services.

Copying images and then hosting them on another website however will usually amount to copyright infringement. You should ask permission from the copyright owner before using images in this way.

197's comment: Use a link to send your website users to see the image on the source website.

That costs nothing, lets your users enjoy the images and is perfectly legal.

But if you copy the image to your own website, or hot-link to it, that's an infringement.

I want to use images I found on the web on a commercial website

You will generally need to seek permission before you do so. There are licences which you can obtain to use images for commercial purposes, such as advertising your business on a website, and usually you will have to pay a higher fee than for non-commercial use. Be aware that some Creative Commons licences are for non-commercial use only, so it is important to check the licence terms if using Creative Commons-licensed material.

197's comment: The first line should perhaps read "always". You will always need to seek permission.

I want to stop someone using the image I created in a way I have not approved

If somebody is making use of your images without your permission, there are a number of options open to you as the copyright owner.

Although you do not have to, it is usually sensible to try to resolve the matter with the party you think has infringed your copyright. This may save you time and money, and it may be necessary to show a court that you have tried to solve the matter with the other party.

If you cannot resolve the matter with the other party, then going to court may be the right solution. But it would be a good idea to seek legal advice at an early stage.

Besides infringing your copyright, it is also possible that somebody may infringe your 'moral rights', which are legal rights enforceable by the authors of copyright works.

When people use your images, they should do so respectfully, even if they have your permission to use them. If you have 'asserted' your 'moral right' to be credited for creating the photo, then that user should acknowledge you as the creator.

Such an assertion is often made by written contract or may be embedded in the image with metadata.

As the creator, you will also have the moral right to object if people alter your work in a way that is negative to your reputation (known as "derogatory treatment").

197's comment: This is repeated from above just to make sure it's clear.

The options open to a copyright owner when infringements are discovered are, in brief:

1: Offer the infringer the opportunity to buy a legitimate licence perhaps along with an undertaking not to pursue court action. Often a reduced sum for prompt payment and to reduce costs is suggested.

2: If the offer of a licence is not taken up then make a formal claim for damages.

3: Sue.

If you make it awkward for the victim of your offence you're not going to be given lenient treatment.

There's also the possibility of additional damages for flagrant conduct. Sometimes as much as five times the normal court award. What constitutes flagrancy? Denying the infringement, concealing facts, deceiving as to the source, making misleading statements, making false claims of innocence. It's a long list. It can also be very expensive for infringers.

197's conclusions

Please remember that the Copyright Notice is government advice from the Intellectual Property Office. Written by the same people who frame the laws and legislation. Judges and top legal experts.

It's always a lot more sensible to obtain licences or permissions BEFORE publication rather than risking it and hoping not to be caught. You will be caught eventually. The longer it takes, the more it costs you.

As a simple example, if a thief steals from your property or car he doesn't stand outside your house and shout out his name and address or hand out leaflets about who he is so he can be traced and arrested. That would be dumb, to say the least.

But if someone steals an image (or video or text or program) from a website and re-publishes it then they do just that – they can and will be traced and held liable. Especially if they are foolish enough to use the stolen material to promote a business.

If an infringer can search for and find images to steal to publish illegally then those image can in turn be found on the infringer's website using *exactly* the same methods that the infringer used to find the images to steal in the first place. Why on earth do they think they can get away with it?

A lot of people put in a lot of time, effort and expense to produce high quality material to publish on their websites and offer for sale. If people – shall we call them thieves? – who lack those skills and intellect try to avoid that investment in time, effort, skill and money and then help themselves to other people's work they can reasonably expect a very rough ride indeed.

This may of course be why you're now reading this document...

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The licence terms can be found at:

www.nationalarchives.gov.uk/doc/open-government-licence/version/3/

Added comments (in *italics*) and the header and conclusions page are *Copyright © Alan Mackie*

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