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By Steve Ridzon

You will learn:

1. You may not have the rights you need to use images you've purchased.
2. You may already have exhausted the rights you purchased.
3. Just because you demand further rights, doesn't mean you can get them.

Finding the "almost right" stock photo or illustration is easy. Finding the "exactly right" match for your firm's message can take hours or even days. And when you find it, you want it for your own—as an integral part of the look of your brochure, as an instant identifier on your website and for as-yet unimagined future projects.

That moment of discovery is a good time to consider the copyright follies.

WHEN DID ARTISTS BECOME SO DIFFICULT?

Before the advent of the Internet, commercial photographers and illustrators were relatively relaxed about enforcing copyrights to the images they produced. Before art became part of the "intellectual property revolution," commercial artists depended on commissions of original work as their main source of income. Today, the licensing of rights for subsequent use has become the bread and butter for many.

The dot com boom was the turning point. The headlong rush to build websites for businesses large and small was a boon to commercial artists. They learned quickly from their new patrons, the web developers and their lawyers, who assiduously guarded the rights to each pixel on their sites. Many artists hired IP counsel of their own. And many became part-time artists and full-time IP portfolio managers.

A cottage industry was born. Today, hundreds of vigilantes are employed to detect unauthorized use of images on the web by using keyword searches and other techniques to find their prey.

Folly #1

A firm bought a "royalty free" CD of images. Some of the images looked great in its printed materials. Others added dash to its website. No problem, until one of the images appeared on packaging of a software product the firm sells to its clients.

Cost: \$10,000 in fees to the producer of the CD. The tiny type on the back of the CD jewel case specifically excluded use of the images on "any article offered for sale."

READ THE FINE PRINT

Stock and royalty-free imagery is neither free nor without strings. But very few buyers know this! All stock

houses forbid the use of their images in any form other than the “derivative work” for which the image is originally licensed. (Here, “derivative work” refers to any product such as a website, collateral brochure, print advertising, etc.)

Royalty-free images usually come with limitations on which uses are royalty-free. Use for a logo or in product packaging, for example, generally requires additional fees.

The use of stock images is even more insidious. A stock house will license to you an image of Marilyn Monroe, but you cannot use it for commercial purposes without permission of her estate. Moreover, many stock images of people do not have model releases! Images of buildings and other landmarks often have similar problems. You may find a photo of the New York Stock Exchange or the Transamerica Building in a stock-image catalog, but you won't be able to use either without first negotiating a license with the owners, who have copyrighted their buildings.

Folly #2

A firm received many compliments from law students on an amazing photo of a rain forest used in its recruiting brochure. That positive feedback led the firm to scan the image for its website without advising the designers of the brochure, who had negotiated the rights for the image with the photographer.

Cost: \$21,000 in additional fees to the photographer.

KNOW WHAT YOU NEED. NEGOTIATE FOR PACKAGES OF RIGHTS.

As designers, our goal is to get the rights you need at a fair price, while maintaining our good relationships with illustrators and photographers. The issue of rights is often confusing even for the experienced buyer of illustration or photography, and it can lead to big trouble if not understood. The key is to negotiate your rights up-front. It's cheaper, and your protections are clear.

Negotiating for several uses at the same time can give you considerable leverage. Bundling use on a website with use in printed materials usually costs less than bargaining for those uses separately.

We often negotiate with artists for the use of their images for the initial printing and reprints over a two-year period. This means you can reprint your brochures without having to consult the artist or photographer. Reprinting your brochure without securing the right to reprint may subject you to significant liability under the copyright law for copyright infringement with the possibility of significant damages. Generally, if you wish to use the images in any other way—in a newsletter, advertising, website or other medium—you must tell us so we can negotiate with the artist for additional usage rights.

BUY ONLY WHAT YOU NEED

Just because you want to buy the exclusive right to use a particular image, doesn't mean you should. Why? Because the costs can be prohibitive. Commercial artists know they can sell the same image multiple times to diverse users. With that goal in mind, they tend to be reluctant to cede rights to any one licensee for more than a few years. Purchase of exclusive (not by anyone else, anywhere) rights is often out of reach for all but the deepest-pocketed advertisers of consumer products.

Buyout rights usually triple the cost of illustration or photography and, in our experience, aren't needed anyway. It's like paying rent for office space you never use.

Folly #3

A firm was delighted to find in a stock book a set of six illustrations that were perfect for use on its website. The design called for use of each illustration in a two-inch square frame. The firm sent the design to the illustrator's agent for review. During site development, the web designers decided the pages would look better if the illustrations were enlarged to 4-by-4 inches. Two months after launch of the new site, the agent made a routine check of the site.

Cost: \$40,000 in additional fees to the illustrator.

DON'T EXPECT TO “OWN” THE WORK THAT YOU COMMISSION

Even original work does not automatically come with exclusive rights. This is often a bitter lesson for novice buyers of artwork. The graphics industry standard allows one-time rights for a specifically identified use! That does not include (1) reprints nor any other uses (2) other than those clearly delineated in writing. That's not a

standard we made up. It's "trade custom" and, without a negotiated agreement, copyright law and trade custom rule!

The days of "work for hire" contracts with artists are largely past. Today, many illustrators and photographers categorically refuse to consider contracts that transfer ownership of their work to an employer. If you commission original artwork for a brochure or other use, don't expect to own the rights for all time and all uses without payment of a hefty fee. Buyouts of all rights to original art can triple the cost and may not be available at any price.

THE GOOD NEWS

While high-end, conceptual photography will probably always come with a hefty price tag and confusing fee structures, the stock photography industry is going through a rapid restructuring that is putting a lot of the power back into the hands of the customer.

Less than a decade ago, stock houses were entirely made up of work from high-end photographers—photographers *by trade*. Before the onset of digital photography, it took a lot more time and professional know-how to produce a piece of sellable art. Thus, the pricing structures for these images were set very high in order to compensate photographers for their *art work*.

These days, much of the imagery being purchased is coming from what are known as "microstock" sites. Microstock is essentially an open-enrollment pool of low-cost, royalty-free imagery produced by photographers and illustrators of all types, from amateurs to pros. The amount of imagery on these microstock sites (such as iStock and Shutterstock) is mind-boggling. And the licenses are simplified and user-friendly.

Conversely, microstock sites offer no exclusivity and they put no limits on how many licenses can be sold for a particular image. It's not unheard of to see an image that has been downloaded over 10,000 times. It goes without saying that a company like Coca-Cola isn't going to revolve a campaign off of microstock.

However, as long as professional-quality camera equipment becomes more and more accessible to the everyday photographer, the more the industry will move towards an all-inclusive structure like that of microstock sites. And along with that movement will come a more universally relaxed licensing structure. Expensive, copyright-laden photography will increasingly be relegated to commissioned and customized work. But until everything sorts itself out, copyright issues will remain something that every marketing professional should keep a very watchful eye on.

FOOD MAKERS DEVISE OWN LABEL PLAN



Did you notice anything different on your box of cereal this morning? Food makers and grocers recently began implementing a brand new label to help you make healthier decisions. In a country where 34% of adults and 17% of children are obese, the Obama administration continues to push Americans to re-evaluate what we consume. With Michelle Obama leading the pack, manufacturers were encouraged to help consumers make more healthful food choices. The Grocery Manufacturers Association (GMA) stepped up to the challenge by partnering with Greenfield/Belser to create a brand new package-front label that highlights the important nutrition information consumers need to know.

The new label design displays the calorie, fat and sugar contents of the package, emphasizing the things consumers should limit in their daily diets. A simple design keeps consumers eyes from wandering, honing in on the key nutrition facts. The versatile design will be applied to all packaged foods. According to the New York Times, the White House has already noted the new labeling initiative as "a significant first step" to fighting obesity.

Next time you are in the store, take a second to look at the packaging of what you are purchasing. Makes you think twice about buying that box of double stuffed Oreos, doesn't it?

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