

## Articles

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### Considerations for Businesses When Using Getty's New "Free" Images

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Getty Images, one of the largest online U.S. stock photo image companies, recently made over 35 million photo images from its inventory available for free online use by any interested person. Getty had previously charged for the use of all of its images. Given the ease with which a digital image can be copied, however, frequent use of Getty's images online caused the images to turn up in search engine results that led to rampant re-use and sharing by additional persons without an appropriate legal license from Getty. This shift in Getty's policy offers a new approach to prior and often unsuccessful attempts by Getty to control the systemic infringement of its images online. Getty's new policy provides a select group of images for free via a new embedding feature that provides attribution and a link back to Getty Images' website. Beginning March 6, 2014, a business will be able to visit Getty Images' library of content, select an image, and copy an HTML-embedded code to use the image on its own website.

Businesses often make frequent use of Getty images on their respective websites. This policy shift offers an intriguing option for businesses to exploit a Getty image at no cost. Although businesses can use these photos for free, it remains critical to understand the limits of Getty's new policy.

The new Getty policy does not permit all types of use. Specifically, Getty Images' Terms of Service states that the images cannot be used: "...for any commercial purpose (for example, in advertising, promotions or merchandising) or to suggest endorsement or sponsorship." The line between what kind of use constitutes commercial use as opposed to non-commercial use on the Internet is murky at best. Consequently, understanding the limits of Getty's free usage option may prove difficult to navigate. Getty has yet to offer a comprehensive interpretation of its Terms of Service for this new image policy.

Some pieces of insight from Getty on its interpretation of what constitutes "commercial purposes" have begun to emerge. In a recent statement emailed to the online publication GeekWire, a Getty spokesperson said the following:

*"Embedded Getty Images content may be used only for editorial, non-commercial purposes (meaning relating to events that are newsworthy or of public interest). If the use promotes a company, product, or service, the users will need to purchase a license. If not, they can use the embedded content so long as they are happy to use it in the embed frame and functionality. The presence of ads on a site doesn't automatically make use of an embedded image on that site a commercial use. Think about sites like CNN.com or any online newspapers or magazines which support editorial content with site ads. The key attribute in classifying use as commercial is whether the image is used to promote a business, goods or services, or to advertise something. If not, it is a non-commercial use. Likewise, corporate blogs would be treated as editorial/non-commercial unless the image is directly being used to sell or promote their products or services."*

This recent statement helps to clarify Getty's own interpretation. First, it is now clear that businesses likely cannot use the images to market their own products or services. Further, it is likewise clear that use in connection with editorial or news-based activities looks acceptable. But, use generally on a website, in connection with programs or events, or where other third-party advertising is a part of the use remains less clear. In other words, grey areas remain.

Businesses should keep another issue in mind when determining whether to use the free images. According to Getty's Terms of Service, Getty gives to itself some additional rights in connection with providing the photos at no cost, namely, "Getty Images (or third parties acting on its behalf) may collect data related to use of the Embedded Viewer and embedded Getty Images Content, and reserves the right to place advertisements in the Embedded Viewer or otherwise monetize its use without any

compensation to you." The data collection may relate to benign purposes. However, the opportunity exists for targeted advertising over which a business may not be in a position to exert much control. Accordingly, use of a free image may require allowance for uncontrolled third-party images and advertisements.

Overall, while the release of these photos by Getty is certainly a great opportunity for the enhancement of web content for businesses without breaking the budget, it is important to use the images with caution. Businesses should keep in mind the restrictions on use as well as the possibility of the placement of future ads when determining how and where to use the new free images.