Can I Use That Image?

Sarah McGee
Assistant General Counsel

MINNESOTA STATE
Lessons Learned

Copyright Demand Letters
$350 – Stock Photo of Masks

Piclights International Inc, on behalf of Reuters News & Media Inc

August 9, 2021

HealthForce Minnesota
409 South Broadview, Suite 300
Rochester, Minnesota 55904
United States

HealthForce Minnesota
healthforce@research.edu
Research MN Health
health@research.edu

Unlicensed Use of Reuters News & Media Inc Imagery - Reference Number: 4017-0438-2617 - HealthForce Minnesota

If this matter has already been resolved, please disregard this communication.

Piclights provides licensing compliance services to third party content owners, including Reuters News & Media Inc. We recently sent you a notice that Reuters News & Media Inc’s imagery was being used on your company’s website.

According to Reuters News & Media Inc’s records, neither Reuters News & Media Inc nor any of its partners has issued a valid license to your company for the use of that imagery.

Copies of our prior correspondence are viewable at the following links for your reference:
July 2, 2021: https://secure.picsights.com/research-notice/templet/5F342078
July 29, 2021: https://secure.picsights.com/research-notice/templet/5F342078

A copy of the imagery, as well as a screen capture of the usage found on your company’s website are included at the end of this correspondence or can be viewed at: https://secure.picsights.com/401704382617/?Password=41435403

To Resolve This Matter - Reference Number: 4017-0438-2617:

We kindly ask you to take one of the following actions within 14 days of this correspondence:

- If your company holds a valid license or other authorization for the use of the imagery, please provide the corresponding documentation by visiting https://secure.picsights.com/401704382617/?Password=41435403 and clicking the “I have a license...” button. If such documentation is confirmed by Reuters News & Media Inc, the matter will be closed.

- If your company does not hold a valid license or other authorization for the use of the imagery, regardless of whether or not you were aware of the licensing requirements, please remove such imagery from your company’s website and remit the payment of $350.00 for your past usage by contacting us directly at 1-888-222-2212 or research@piclights.com, or through https://secure.picsights.com/401704382617/?Password=41435403.
$699 – Radio Station Website

January 30, 2019

Dear Mr. Davenport,

We are writing with regards to an unauthorized use of our client, Bernhard Kühnestorf’s, work on your website.

LAPIXA is a copyright compliance agent which represents visual artists internationally in matters of copyright infringement. Our image scanning software detected that our client’s work is being used on the Minnesota State University, Mankato’s website at the following URL:

http://theformount.com/category/musician/aapop/1

As the exclusive copyright holder to the image(s) exhibited in this letter, our client identified Minnesota State University, Mankato’s use as a copyright violation and submitted this case to LAPIXA to contact you with regards to this unauthorized and continued use of the work. Under U.S. Copyright Act, 17 U.S.C. § 501, et al., copyright holders are entitled to recover actual damages and any profits attributable to infringements, and should they file Copyright Infringement, before final judgement is rendered, are entitled to elect to recover an award of statutory damages of up to $30,000 per infringement.

Please see a copy of the original photo and a screenshot of use attached to this letter.

If you hold a valid license to this image, please provide this as soon as possible so we can update our records accordingly and close this matter.

In the interest of avoiding litigation we would like to offer you a retroactive license to cover the use which has already occurred on your website, subject to compliance with the following conditions by February 28, 2019:

1. Immediate and permanent removal of all unauthorized uses of our client’s work from your website(s), including any and all social media sites, accounts, products & marketing materials.

2. Payment in full for the retroactive license fee of $699.99 for the copyrighted works used without authorization as shown in the screenshot attached to this letter.

Please note that removal of the image alone does not rectify the matter. Our client deserves fair compensation at the very least, for the use which has already occurred.

We have calculated the above retrospective license using FotoQuote: the industry standard photo pricing guide. This is determined by taking into account elements such as image size, duration, market size and type of usage. The price also includes an $85 administration fee. Payment instructions are found on the invoice attached to this letter. If you would like to continue to use the photograph, we would be happy to recalculate a license fee accordingly.

LAPIXA operates within 12 different countries around the world alongside our network of lawyers. Failure to comply with the above conditions will result in the matter being referred to our US attorney at which point this offer will no longer stand.

If you have any questions, please email copyrightprotection@lapixa.com or call 917-858-8400.

Kind Regards,

LAPIXA US Copyright Compliance Team.
$750 – Use of Stock Photo
$750 – Nursing Training

Powerpoint

Minnesota State University, Mankato
220 Wabasha Drive
Mankato, Minnesota 56001-0062

By email: registrar-office@minnesota.edu

Unauthorized Use of Photograph - Case Reference: #820-045995

October 15, 2015

Attn: Richard Davenport,

Pixsy acts on behalf of Mr. Martin Liebmann as his authorized licensing and copyright agent.

We have been notified by Mr. Liebmann that Minnesota State University, Mankato has been using his imagery without permission. Details of the unauthorized use are set out in this letter and the attached Evidence Report.

Our Client's Copyright

Martin Liebmann is a respected photographer who takes significant steps to ensure that his imagery and its value is protected. It follows that our client takes any unauthorized use of his work very seriously, and that deliberate precautions have been taken to secure his legal rights in the event of unauthorized usage.

Pixsy Inc.

Pixsy has been engaged and duly authorized by Martin Liebmann as the exclusive agent for the purposes of managing and enforcing this copyright infringement case with Minnesota State University, Mankato.

Pixsy is an international licensing and copyright agent, with offices in California, Berlin, London and Sydney, and acts on behalf of photographers in 72+ countries to protect and enforce their intellectual property rights. Pixsy, together with our global network of 26 law firms and legal partners, pursues matters of unauthorized use of our clients' work including licensing, legal action, and related copyright infringement litigation.

We take matters of our photographers' copyright seriously, and will take every effort to ensure that their intellectual property is protected.

Copyright Infringement

Use of images without a valid license is in direct violation of Title 17 U.S.C.S., the Copyright Act of 1976. Keep in mind that copyright is a strict liability offense, and you are liable for the infringement regardless of your knowledge of the infringement or your intent. Penalties and damages can range up to $150,000 not including expenses and costs.

Please refer to the enclosed FAQ for additional information.
May 28, 2013

VIA Priority Mail with Delivery Confirmation
and E-Mail: [jboden@theswimmingtrunk.com; Jessica.boden@mnsu.edu]
Jessica Boden
TheSwimmingTrunk.com
2687 North Riviera Drive
White Bear Lake, MN 55110

Re: Vincent Tyler’s Copyright Infringement Claim

Dear Ms. Boden,

If you are represented by an attorney, please forward this letter immediately to your attorney and provide the attorney’s name and contact information to me.

This firm represents Vincent K. Tyler [Client], a very well-known Hawaiian landscape photographer. He operates from the website at www.HawaiianPhotos.net. It has come to our attention that you have used our client’s photograph shown below (“Photograph”) without permission.

of the Photograph. This duty extends to your employees and agents. We request that you notify your employees and agents of this retention request immediately.

Sanctions for violating any of the foregoing duties can be severe and include substantial monetary sanctions, adverse inferences in evidentiary rulings, and the entry of judgments by default. We remain hopeful that we can resolve this dispute short of litigation. The above duties, however, must be satisfied during any settlement or other discussions that we may have.

OFFER TO SETTLE OUR CLIENT’S CLAIMS

Our client is willing to provide you an opportunity to settle claims against you and end this matter immediately if you send certified funds in the amount of $2,500.00. This offer will remain open until June 11, 2013, at which time it will be withdrawn. If you would like to try to resolve this matter prior to litigation, please contact me before June 11, 2013. Our client is willing to provide you an opportunity to settle claims against you and end this matter immediately if you send certified funds in the amount of $2,500.00 payable to the following:

Law Office of Carolyn E. Wright, LLC, Trust Account
PO Box 430
Glenbrook, NV 89413-0430

on or before June 11, 2013. Please note that this amount represents an offer of settlement but does not reflect the damages that our client can and will seek in a court proceeding, including attorneys’ fees pursuant to 17 USC 505 and 1203. Rather, this settlement offer reflects what our client will accept if no further actions against you are necessary. If you do not accept this offer, our client reserves the right to seek the maximum available damages under the law, which far exceed this amount.

Be advised that if you are unwilling to resolve this matter as noted above, our client may initiate formal litigation at any time without further notice to you. If you carry business insurance, now may be an appropriate time to contact your carrier to determine whether my client’s claims are covered under your policy. This letter is without prejudice to our client’s rights and claims, which are expressly reserved.

We look forward to receiving your timely response.

Sincerely,

[Signature]

Earl Richardson, Esq.
Phone: 816-210-1013
Email: earl@photoattorney.com
$8,000 for Re-posting a Meme

CREED & HALL

December 5, 2019

Minnesota State University
600 University Avenue
Attn: Timothy Hessburg, President
224 Alumni Foundation Ctr
Mankato, MN 56001

Re: Violation U.S. Copyright Law
Case Number: YHM2017124

To whom it may concern,

Please be advised that our Firm represents Youbrain Media Inc. with regard to potential violations of U.S. copyright law. Title 17 of the United States Code. Youbrain Media owns and operates the website vectoroons.com and is the owner of all copyrights in the artistic work displayed for license on vectoroons.com. This includes the artistic work entitled “Where Y'All Sitting” (hereinafter referred to as the “Work”).

It has come to our attention that you are using the Work owned by Youbrain for your own promotional and for commercial purposes. Youbrain has searched its records and has not been able to locate a valid license for the use of the Work under your company’s name. Attached is a copy of the Work in question along with the usage found on your company’s Twitter.

In addition, as shown in the attached copy of your use of the Work on your Twitter, the vectoroons.com watermarks still appear visible on the Work as used by you. However, vectoroons.com provides consumers that license the Work with copies of the Work with these watermarks removed. Accordingly, it appears that permission was neither asked for nor granted by Youbrain Media to reproduce the Work and your use of the Work therefore constitutes infringement of Youbrain Media’s rights. In terms of the Copyright Statutes, Youbrain can be entitled to an injunction against your continued infringement, as well as to recover damages from you for the loss it has suffered as a result of your infringing conduct.

Under the circumstances, we demand that you immediately (within 14 days) provide one of the following:

1) If a valid license was purchased prior to the use of the Work, please provide us with the vectoroons.com sales order, invoice number or other license information. If the Work was licensed in the name of a third party, such as an advertising agency or web designer, please advise us of their name and ask them to contact us directly to determine if there is a valid license in place. Please note that as the end user of the Work, you are ultimately responsible for resolving this issue;

http://twitter.com/StuMaverick/status/1159655153386683976

**Damages for Unauthorized Use: $8,000.00**

Note: This settlement demand does not represent an approval on the part of Youbrain Media for the unauthorized use or use of this Work identified to date and referenced herein. The payment of this settlement demand together with your immediate license of the use of the Work (unless you have separately licensed the Work for further use), including use by your owner, director, employees, agents, clients and/or licensees, in any and all media, will release you from any legal claims by Youbrain Media relating solely to this identified past infringement.

*This communication is solely for the purpose of communicating an offer of settlement and will not be admissible for any purpose at trial pursuant to the provisions of Fed. R. Evid. 408.*
May 21, 2019

VIA FEDERAL EXPRESS

Richard Davenport
MINNESOTA STATE UNIVERSITY
320 Wching Administration Center
Mankato, Minnesota
USA, 56001

Dear Mr. Davenport:

Re: Notice of Copyright Infringement – www.mnsu.edu

Masterfile Corporation (“Masterfile”) is in the business of licensing rights-managed images for commercial reproduction and publication by clients around the world.

It has come to our attention that you have published nine (9) of Masterfile’s images on the above noted website. A copy of the Images and a printout of the respective pages on your website are attached to this letter for your reference.

The Images are represented exclusively by Masterfile and registered in the Copyright Office of the United States Library of Congress. You may verify Masterfile’s ownership by visiting www.masterfile.com and entering the respective image code in the search engine.

Masterfile can find no reference to these Images having been licensed for reproduction on your website. These Images were used on your website without the authorization of Masterfile or the respective artists who created them. Masterfile needs to carefully track and control the use of rights-managed Images so that our clients can know that competitors have used the same (or even similar) Images by providing usage histories for rights-managed Images. When a rights-managed Image is used without authorization, it may (a) cause Masterfile’s embarrassment and damage our reputation; (b) cause our clients to lose money; and (c) cause our Image owners to lose money. Thus, we are unable to provide complete usage histories to our clients, which could prevent us from licensing an exclusive use of that Image after the infringing use occurs. To prevent resulting in a significantly lower license fee and (c) cause a claim for damages against Masterfile by the exclusive license if the Image has previously been licensed exclusively to another party. Please also note that our contributing artists rely on royalties from the licensing of their Images to earn their livelikelihoods and Masterfile has a commitment to ensure that they get paid.

Under the Copyright Act, your use of our rights-managed Images without authorization violates Masterfile’s exclusive rights to reproduce, adapt, display, distribute, and/or create derivative works. Any entity that violates these exclusive rights of the copyright owner is an infringer of the copyright and is thus liable, regardless of prior knowledge of the unauthorized usage. Moreover, the Copyright Act provides for individual liability for all those actively involved in the infringement as well as corporate liability. Please refer to the enclosed FAQs for additional information about Masterfile and our data for copyright infringement under the Copyright Act.

Rather than initiate a legal action for copyright infringement, Masterfile is prepared, on a without prejudice basis, the following: Masterfile is willing to arrange for a retrospective license in accordance with Masterfile’s terms and conditions published at www.masterfile.com, provided that you: (a) cease and desist from any and all
$65,000 for a Retweet!

July 15, 2019

Gary Cunningham, General Counsel
Via Email: Amanda.Behnke@minnesotastate.edu
Minnesota State University
20 Kent St. SE
St. Paul, MN 55101-7094
651-201-1676
Amanda.Behnke@minnesotastate.edu

Re: Unauthorized Copying and Distribution of Winning Isn’t Normal by Minnesota State University

Dear Mr. Cunningham,

My name is Dr. Keith Bell. I am writing in connection with my claim for copyright infringement against Minnesota State University (hereafter “you,” “your,” or “MSU”).

I am the author and owner of the copyright for a literary work entitled “Winning Isn’t Normal” (see Exhibit A – Fax No. 7169257264). The copyrighted literary work is from my “Winning Isn’t Normal” series of literary works that are sold online through various outlets and distributed worldwide. For example, the Winning Isn’t Normal book as well as posters and webinars with representations of page 8 are sold via law publications (see www.lawpublications.com). As emphasized by the poster and webinars, Winning Isn’t Normal and the content of page 8 (see Exhibit B) reflect the thesis for an approach to motivate winning (i.e., success) that transmutes competitive sports and other fields in which success is desirable. We also have a separate registered copyright for the abridged text used in the poster and webinars (see Exhibit C – Reg No. 156992872). I have provided my contact information for those interested in obtaining permissions and/or licenses authorizing copying and distribution of the copyrighted literary works.

I am concerned that MSU or perhaps an associate has engaged in unauthorized copying and distribution of a representation or representations of page 8 of Winning Isn’t Normal, thereby infringing my copyright.

On May 8, 2018 a textual representation of page 8 of Winning Isn’t Normal was posted on Coach Chris Needham’s social media page: https://twitter.com/coach_reader (see Exhibit D), which remains up as of this writing. No attribution was given for the passage. It is mentioned in Needham’s post that the passage was received from another MSU employee, Mitch Lappie, who had physically posted page 8 of Winning Isn’t Normal in his office. See Exhibit E, which clearly indicates that Coach Lappie had access to the passage.

On February 26, 2018, a textual representation of page 8 of Winning Isn’t Normal was posted on Assistant Coach Blake Bosch’s social media page: https://twitter.com/BlakeBosch28 (see Exhibit F), which remains up as of this writing. Not only does the post lack proper attribution, but it seems that Stassen Monks was credited for authoring the post. The misattribution of my work causes confusion as to the real copyright owner and author.

Sincerely,

Dr. Keith Bell
512-327-2260
drkeithbell@gmail.com
Be Careful What You Post

If you have not cleared a copyright, the owner may find the material and bring a lawsuit for infringement (or demand a large settlement in lieu of the suit).

This applies to all media everywhere.

• Photos on a website
• Photos embedded in a conference talk in a PDF on the conference host’s website
• On Twitter (as tweets or retweets) or any other Social Media
• Songs in Videos
Copyrighted Material on the Web

Preventative Considerations

• Who controls your website?
• Who can add content?
• Is anyone reviewing the content currently on your site? Google Lens and TinEye can help you locate an original image.
• Do you subscribe to a stock photo service? Are the right people aware of this service? Do you understand the license terms of your service(s)?
• Where can you find free content?
Why Does it Matter?

The Federal Copyright Act has Statutory Damages
Statutory Damages

- The range of damages is set by the Copyright Act, not a judge or jury’s discretion
  - Creator can opt not to prove actual damages (e.g. lost profits)
- Statutory range is between $750-$30,000 per work
  - Can be lowered to $200 if no © notice
- Can be increased to $150,000 per work if infringement was intentional or willful
- Each photo is a work
  - Damages can multiply quickly
- Attorneys fees can be awarded on top of damages
Copyright Basics
Copyright Fundamentals

What is a copyright?
- The exclusive legal right to publish, print, perform, sing, record, literary, artistic, or musical material
- Includes the right to authorize others to do the same

Protects only the fixed expression of original ideas
- “Captured in a sufficiently permanent medium such that the work can be perceived, reproduced, or communicated for more than a short time.”

Goals of Copyright Law
- Balance the interests of creators with that of the public
- Encourages the sharing and access of work by creating limited exclusive rights

Governed by the Federal Copyright Act
- Copyright automatically exists upon creation of work, but registration provides additional benefits
Copyright Fundamentals

- Copyrights exist automatically upon creation of work
- What’s included with a copyright? A bundle of rights:
  - Reproduction
  - Derivative works
  - First distribution
  - Public performance
  - Public display
  - Action for infringement
- Can use © mark with or without registration
- Registration, not necessary, but desirable
Copyright Registration

• A copyright exists as soon as a creative work is fixed in a tangible medium, but registration provides additional advantages
  • Ability to file a lawsuit for infringement
  • Eligibility for statutory damages

• [https://www.copyright.gov/registration/](https://www.copyright.gov/registration/)

• Length of term? It’s complicated
  • No renewal required
  • Currently Life of author + 70 years
  • May be different for older or anonymous works
  • [https://guides.library.cornell.edu/copyright/publicdomain](https://guides.library.cornell.edu/copyright/publicdomain)

• Most things published in 1926 and earlier (1923 for sound recordings) will be public domain
What type of works are eligible for copyright protection?

- Literary works (words, numbers, or other symbols regardless of the media, includes computer programs)
- Musical works (and accompanying lyrics)
- Dramatic works (and accompanying music)
- Choreographic works
- Pictorial, graphic and sculptural works (includes maps)
- Audiovisual works (motion pictures and television)
- Sound recordings (whether musical, spoken or other sounds)
- Architectural works
- Compilations (assembling select preexisting materials in a way that the resulting work as a whole is an original work of authorship)
What type of works are not eligible?

- Ideas, procedures, methods, systems, processes, principles or discoveries
- Titles, personal or business names, short phrases, slogans, domain names
- Mere listing of ingredients or contents or simple set of directions
- Works not fixed in a tangible form (improvisation or other live events not recorded)
- Typeface, fonts, layout or design
- Blank forms (scorecards, graph paper, diaries, calendars, rulers)
- Familiar symbols (punctuation, common patterns, peace sign and gender signs, hazard symbols, religious symbols)
- Duplications of public domain works
- Federal government works
Who Owns a Copyright?

• The author who created the work
  • Unless there is a contract stating otherwise

• Two authors are joint owners with an indivisible interest in the whole if they:
  • Created a single work with the intent to merge their contributions into inseparable or interdependent parts of a unitary whole (versus a collective work, where each author’s contribution is separate and distinct from the ownership in the collective work as a whole)

• The employer or contractor if the work is a “work made for hire.”
  • Made as part of employee’s regular duties or
  • If contractor, entered into an express, written agreement to consider the work as a “work made for hire” and it is an eligible work (collective work, audiovisual work, a compilation, instructional text, etc.)

• A third party upon assignment.
  • If using a contractor and the work will not fall into one of the enumerated categories eligible for “work for hire”, must get an assignment (e.g., website design, photography, custom software) to ensure ownership.
Copyright Ownership at Minnesota State

• By law, most works made during the course and scope of employment are “works for hire” and owned by the employer.
  • Rule is more complicated for independent contractors – best practice to put ownership in the contract.

• Board Policy and the collective bargaining agreements approach modify what would be standard. Policy 3.26, Part 4 sets forth basic ownership categories and default expectations:
  1. Institutional works
  2. Scholarly works
  3. Personal works
  4. Students works
Copyright Infringement vs Plagiarism

• Copyright infringement is the unauthorized copying of a photo (or other work subject to copyright) or any other unauthorized use
  • Against the law (damages, injunctions, criminal penalties)

• Plagiarism is using someone else’s ideas without giving proper credit or attempting to pass someone else’s work off as your own
  • Unethical, but not necessarily illegal
  • Applies to ideas (copyright must be fixed)
  • May also be infringing
What Can I Use?
Copyright Clearance

The act or process by which a person ensures a proposed use of materials is in compliance with copyright law. The act or process involves (1) obtaining permission from the copyright owner, (2) conducting a fair use analysis, (3) determining whether any other copyright exemption applies and/or (4) determining that the materials are in the public domain or are not eligible for protection under copyright laws.

Required by System Procedure 3.27.1 “Employees and students are responsible for clearing the copyright of materials before use.”
Obtain Permission
How is Copyright Ownership Transferred or Shared?

• All of a copyright owner’s bundle of rights can be transferred to another person
  • Or just a small subset of rights

• Transfer of copyright ownership is called an ‘assignment.’
  • Copyright owner retains no rights.

• Formal permission without transfer is called a ‘license.’
  • Copyright owner retains their rights, while giving another person permission to use some of them.

• Copyright assignments and licenses are legal agreements that need to be reviewed under Board Policy.
  • Assignments must be in writing.
What Does a License Do?

• A copyright license is a formal document or contract clause that spells out which rights are being granted, the extent the materials can be used, and the length of time the materials can be used.

• A copyright license may grant all or part of the copyright bundle of rights:
  • Reproduction
  • Distribution
  • Making Derivative Works
  • Public Performance
  • Public Display
  • Digital transmission
Copyright License Types

Copyright licenses can be:

- **Exclusive or Not-Exclusive** – if the contractor is granting Minnesota State a license, can they also grant a license to other colleges and universities?
- **Royalty Free or Rights Managed** – Do you owe the contractor money for each additional use of the materials (royalties) or is the fee for the development of the materials the only fee?
- **Transferable or Non-Transferable** – Can you transfer the license to another party?
- **Sublicensable or non-sublicensable** – Can you grant another party all or part of your rights?
- **Worldwide or geographically limited** – Does the license give you worldwide rights? Or only rights in Minnesota or the US?
- **Perpetual or time limited** – Does the license expire?
- **Revocable or irrevocable** – Can the creator terminate the license in the future?
Obtaining a License

- Buy stock imagery that comes with a license
  - Review terms carefully to ensure it meets your needs
  - Use beyond the license will be considered infringement
- Contact the publisher or author
  - May have a standard form (will require review)
  - Will likely have to pay (and that’s ok!)
- Contact OGC for a custom document
- Copyright licenses must be in writing
- Attribution is not a substitute for permission
Using Photos from Students or Members of the Public

• Use of “user-generated” content is increasingly popular on social media
  • You may have seen brands or news stations asking to use Instagram photos or Facebook videos and for the creator to reply that they agree.
  • Other campaigns ask people to tag their photos with a unique tag to be shared by a brand or collected into a larger display
• OGC has a license for you to use to re-publish student works in social media
  • https://www.minnstate.edu/system/ogc/dataprivacy/toolbox.html (last link)
  • Must require users to log in with StarID
Find Creative Commons-Licensed Materials

Creative Commons is a type of license that the creator has applied to the work in advance.

Many platforms allow you to search for creative commons licensed materials (Flickr, YouTube)

Types of Licenses
- CC: Creative Commons
- CC0: Public Domain
- BY: Attribution Required
- NC: Non-Commercial
- SA: Share Alike
- ND: No Derivatives

“Creative Commons License Spectrum” by Shaddim (CC BY 4.0)
Creative Commons Conditions

• You must follow the license conditions

• Generally attribution is required including:
  • Title
  • Author
  • Source with link to the original
  • License with a link to the license deed

“brooklyn bridge” by smcghee CC-BY-NC 2.0
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a. This License and the rights granted hereunder will terminate automatically upon any breach by You of the terms of this License. Individuals or entities who have received Derivative Works or Collective Works from You under this License, however, will not have their licenses terminated provided such individuals or entities remain in full compliance with those licenses. Sections 1, 2, 3, 5, 6, 7, and 8 will survive any termination of this License.

b. Subject to the above terms and conditions, the license granted here is perpetual (for the duration of the applicable copyright in the Work). Notwithstanding the above, Licensor reserves the right to release the Work under a different license or to stop distributing the Work at any time; provided, however, that any such election will not serve to withdraw this License (or any other license that has been, or is required to be, granted under the terms of this License), and this License will continue in full force and effect unless terminated as stated above.

8. Miscellaneous

a. Each time You distribute or publicly digitally perform the Work or a Collective Work, the Licensor offers to the recipient a license to the Work on the same terms and conditions as the license granted to You under this License.

b. Each time You distribute or publicly digitally perform a Derivative Work, Licensor offers to the recipient a license to the original Work on the same terms and conditions as the license granted to You under this License.

c. If any provision of this License is invalid or unenforceable under applicable law, it shall not affect the validity or enforceability of the remainder of this License, and without further action by the parties to this agreement, such provision shall be reformed to the minimum extent necessary to make such provision valid and enforceable.

d. No term or provision of this License shall be deemed waived and no breach consented to unless such waiver or consent shall be in writing and signed by the party to be charged with such waiver or consent.

e. This License constitutes the entire agreement between the parties with respect to the Work licensed here. There are no understandings, agreements or representations with respect to the Work not specified here. Licensor shall not be bound by any additional provisions that may appear in any communication from You. This License may not be modified without the mutual written agreement of the Licensor and You.
Determine Fair Use
Fair Use

Certain limited use of copyrighted materials for teaching, criticism, commentary, reporting, scholarship, and research is considered a "fair use" and does not constitute an infringement of copyright. The law sets forth the following four factors to be used in determining whether a particular use is a fair use:

- The purpose and character of the use, including whether such use is of a commercial nature;
- The nature of the copyrighted work;
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- The effect of the use upon the potential market for, or value of, the copyrighted work.
Fair Use Examples

- Home taping of a television broadcast
- Search engine thumbnails even if subscription-only
  - *Kelly v. Arriba-Soft*, 336 F.3d. 811 (9th Cir. 2003)
  - *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007)
- Commentary, parody, reporting, research and scholarship will generally be fair use
  - But just because we are an institution of higher education does not mean all uses are fair use
Fair Use

• Fair Use will always be a balancing test
  • Best analyzed looking at the checklist
  • https://www.mnstate.edu/system/asa/academicaffairs/policy/copyright/docs/Fair_Use_Checklist.pdf
Other Copyright Act Exemptions
Exemption For Teachers

Single Copying for Teachers

• A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:
  • A chapter from a book
  • An article from a periodical or newspaper
  • A short story, short essay or short poem, whether or not from a collective work
  • A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper
The Classroom Use Exemption

Multiple Copies for Classroom Use

- Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the faculty member giving the course for classroom use or discussion provided that:
  - The copying meets the tests of brevity and spontaneity;
  - The copying meets the cumulative effect test; and
  - Each copy includes a notice of copyright.
- Codified at 17 U.S.C. §110(1)
The Classroom Use Exception cont’d

Brevity. When copying materials from books and periodicals for classroom use, *brevity* means the following with regard to these selected works:

- **Poetry:** A complete poem if less than 250 words and if printed on not more than two pages, or an excerpt of not more than 250 words for a longer poem.
- **Prose:** Either a complete article, story or essay of less than 2,500 words, or an excerpt of not more than 2,500 words from any longer prose work.
- **Illustration:** One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue.
The Classroom Use Exception cont’d

Spontaneity. When copying materials from books and periodicals for classroom use, *spontaneity* is indicated by the following with regard to the selected works:

- The copying is at the instance and inspiration of the individual teacher; and
- The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.
The Classroom Use Exception cont’d

Cumulative Effect. When copying materials from books and periodicals for classroom use, *cumulative effect* is indicated by the following with regard to the selected works:

- The copying of the material is for only one course per semester taught by the faculty member.
- Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- There shall not be more than nine instances of such multiple copying for one course during one class term.
- The limitations in (b) and (c) above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.
Technology, Educational and Copyright Harmonization (TEACH) Act

Transmission of Copyrighted Works (Distance Education)

- The amount and type of work that may be broadcast or otherwise transmitted in a distance education setting are dictated by a recent revision (2002) to copyright law called the TEACH Act.

Pursuant to the TEACH Act, the following types of work may be broadcast or otherwise transmitted:

- the performance of a non-dramatic literary work (poetry, novels, textbooks);
- the performance of a non-dramatic musical work;
- reasonable and limited portions of other works (such as films, videos or dramatic musical works like opera, musicals and music videos); and
- other copyrighted works (such as still images) as long as the display of such works is in an amount comparable to that which is typically displayed in the course of a live classroom session.
TEACH Act cont’d

• Broadcasting or otherwise transmitting the above described works is subject to the following conditions, all of which must be complied with:

• The performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the "systematic mediated instructional activities" of the college or university.
  - "Systematic mediated instructional activities" refers to the activities educators would engage in during the course of actual class time instruction, as opposed to activities educators might assign as part of the students' work outside of class;
  - The performance or display is directly related and of material assistance to the teaching content of the transmission;
  - The transmission is made solely for students officially enrolled in the course and, to the extent technologically feasible, is limited to such students; and
  - The transmitted material is not material specifically marketed for classroom use for digital distance education; has been lawfully made or acquired; and is not the type of material typically purchased by students (such as textbooks or coursepacks) for their review outside the classroom or class session.
Public Domain
What Does Public Domain Mean?

• Works in the public domain have no exclusive intellectual property rights.
  • Expired, Waived, or Inapplicable

• Public Domain works can be legally shared & performed without permission or licensing fees.

• Works can be re-mixed and adapted. You can turn a book into a film, write a song from a poem, use a cartoon character in your advertisement, etc.
What works are in the public domain?

- Expired copyrights
  - As of January 1, all published works from 1926 and before.
  - All unpublished works from authors who died in 1951 and before
  - Sound recordings from pre-1923
- Owner dedicated the work to the public domain
- Ineligible works
  - Facts, Recipes, Titles,
- US Government works
How to find Public Domain Materials

- Library of Congress Free to Use
  - https://www.loc.gov/free-to-use/
- Noun Project
  - https://thenounproject.com/
- Flickr Commons
  - https://www.flickr.com/commons
- Met Museum Open Access Initiative
  - https://www.metmuseum.org/about-the-met/policies-and-documents/open-access
- Creative Commons OpenVerse
  - https://wordpress.org/openverse/
In Summary

This image/article/quotation/clip is great! Can I Use It?

- Is the work covered by copyright?
  - yes
  - no
- Is your intended use already permitted?
  - yes
  - no
- Is your intended use a Fair Use?
  - no
  - yes

Make Legal Use!

- Is the work eligible for © protection?
  - yes
  - no
- Is the work in the public domain?
- Is there a © exemption or exception for your use?
  - yes
  - no
- Is there a Library subscription for your use?
- Is the work available under a Creative Commons license or other open license?

Seek permission.

Have you seriously examined all four factors and other relevant issues, and concluded that your use seems likely to be fair?

If permission denied, consider alternatives:
- Revise planned use or use different work
- Buy copies needed
- Seek further legal advice

These questions are often not easy to answer. For more info, visit http://www.lib.umn.edu/copyright

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Suspected Copyright Infringement

Institutional Works?

- Call the Office of General Counsel
- Send cease and desist letter
- Refer to Attorney General’s Office for potential litigation

Scholarly, Personal or Student works?

- Consult an attorney.
- Ask them to stop.
  - Not a cease & desist
  - Polite request
- DMCA takedown
  - For websites that host user-generated content
- Don't wait too long!
  - 3 Year Statute of Limitations