



January 13, 2022
Office of General Counsel

Can I Use That Image?

Sarah McGee
Assistant General Counsel

MINNESOTA STATE

Lessons Learned

Copyright Demand Letters



\$350 – Stock Photo of Masks



PicRights International Inc. on behalf of **Reuters News & Media Inc**
Hudson Bay Centre
2 Bloor St. East, Suite 3500
Toronto ON M4W 1A8 Canada
Telephone: +1 437 887 2294, <https://www.picrights.com/>

August 9, 2021

HealthForce Minnesota
400 South Broadway, Suite 300
Rochester, Minnesota 55904
United States

healthforcemn@winona.edu
vdefor@winona.edu
esabel@winona.edu

Unauthorized Use of Reuters News & Media Inc Imagery - Reference Number: 4017-0428-2427 - HealthForce Minnesota

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

PicRights 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:

Jul 1, 2021 <https://history.picrights.com/render/HistoryTemplate/45/15C31H5>
Jun 29, 2021 <https://history.picrights.com/render/HistoryTemplate/45/15AO2EC>

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://resolve.picrights.com/401704282427/>
Password: 414394601

To Resolve This Matter - Reference Number 4017-0428-2427:

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://resolve.picrights.com/401704282427/> / Password: 414394601 and clicking the "I have a license..." link. 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 +1 437 887 2292 or resolve@picrights.com, or through <https://resolve.picrights.com/401704282427/> / Password: 414394601.



\$699 – Radio Station Website



Richard Davenport
Minnesota State University, Mankato
730 Maywood Ave
Mankato
Minnesota, 56001

January 30, 2019

via Electronic Mail without prejudice

Case Number: 20782

Dear Mr. Davenport,

We are writing with regards to an unauthorized use of our client, Bernhard Kühmstedt'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/s:
<http://thefivecount.com/category/musicians/page/11/>

As the exclusive copyright holder to the images 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 this work. Under the U.S. Copyright Act, 17 U.S.C. §101, et al. copyright holders are entitled to recover actual damages and any profits attributable to infringements, and should they hold Copyright Registration, 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 20, 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 \$669.00 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 retroactive 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/s, 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 617-858-8400.

Kind Regards,

LAPIXA US Copyright Compliance Team.



\$750 – Use of Stock Photo

PIXSY

Pixsy Inc, 340 South Lemon Ave, Walnut, CA 91789 USA | resolution@pixsy.com

Minnesota West Community and Technical College
1450 College Way
Worthington, Minnesota 56167

By email: sue.lovell@mnwest.edu

October 6, 2021

Unauthorized Use of Image - Case Reference #002-138736

Attn: Sue Lovell,

Pixsy acts on behalf of Ivan Radic as their authorized licensing and copyright agent.

We have been notified by Mr. Radic that Minnesota West Community and Technical College has been using their imagery without permission or a valid license. Details of the unauthorized use are set out in this letter and the attached Evidence Report.

Full details of the case are also available via our Case Portal at:
<https://my.pixsy.com/resolve/61474671e000ee09167156c7>

We are contacting you to address the unauthorized use and to offer you the opportunity to purchase a valid license to cover the period of unlicensed use. Please note that removal of the image without the purchase of a license does not resolve the matter or negate the unlicensed usage.

Our Client's Copyright

Mr. Radic is a professional artist who takes significant steps to ensure that their imagery and its value is protected. It follows that our client takes any unauthorized use of their work very seriously, and that deliberate precautions have been taken to secure their legal rights in the event of unauthorized usage.

Pixsy Inc

Pixsy has been engaged and duly authorized by Mr. Radic as the exclusive agent for the purposes of managing and enforcing this copyright infringement case with Minnesota West Community and Technical College. Pixsy is acting upon the instruction of our client.

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

We take matters of our clients' 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., 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.

North America
340 South Lemon Ave
Walnut, California 91789 USA
+1 (252) 284-8404 (phone)
+1 (252) 284-8101 (fax)

United Kingdom
120 High Road, East Finchley
London, N2 6BQ
United Kingdom
+44 20 3607 4000

Europe
Hohenzollern 65
Berlin, 10247, Germany
+49 30 217 82950 (phone)
+49 30 722 82954 (fax)

Asia Pacific
L 38, Governor Philip Tower
1 Farnes Place, Sydney
2000, NSW, Australia
+61 2 8211 0665

\$750 – Nursing Training Powerpoint



Minnesota State University, Mankato
228 Wiecking Center
Mankato, Minnesota 56001-6062

By email: registrars-office@mnsu.edu

Unauthorized Use of Photograph - Case Reference: #002-049895

October 15, 2018

Attn: Richard Davenport,

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

We have been notified by Mr. Liebermann 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 Liebermann 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 Liebermann 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 pursue 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.

Pixsy Inc.
340 S Lemon Ave
Walnut, CA 91789
(323) 284-9404
resolution@pixsy.com



\$2,500 Student Class Project

Page 5 of 5

PHOTO ATTORNEY

For Settlement Purposes Only, Subject to F.R.E. 408

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 Tylor'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. Tylor (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,

/s/ Earl R. Richardson

Earl R. 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
c/o Mankato Foundation, Inc
Attn: Timothy Huebsch, President
224 Alumni Foundation Ctr.
Mankato, MN 56001

Re: Violation U.S. Copyright Law
Case Number: YBM2019154

To whom it may concern,

Please be advised that our Firm represents Yourbrain Media Inc. with regard to potential violations of U.S. copyright law, Title 17 of the United States Code¹. Yourbrain Media owns and operates the website vectortoons.com and is the owner of all copyrights in the artistic work displayed for licensure on vectortoons.com. This includes the artistic work entitled "Where Y'all Sittin'" (hereinafter referred to as the "Work").

It has come to our attention that you are using the Work owned by Yourbrain for your own promotional and/or commercial purposes. Yourbrain 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 vectortoons.com watermarks still appear visible on the Work as used by you. However, vectortoons.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 Yourbrain Media to reproduce the Work and your use of the Work therefore constitutes infringement of Yourbrain Media's rights. In terms of the Copyright Statutes, Yourbrain 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.

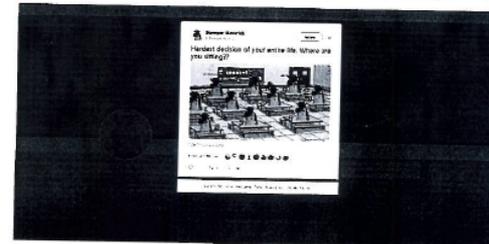
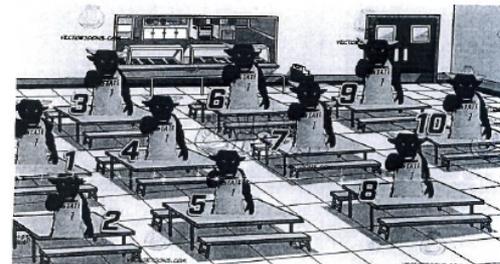
Under the circumstances, we demand that you immediately (within 14 days) provide one of the following:

- (1) If a valid license was purchased *prior* to the use of the Work, please provide us with the vectortoons.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; or

¹ 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.

CREED & HALL

SCREENSHOT OF VIOLATION



<https://twitter.com/StomperMaverick/status/1159655153680695296>

Damages for Unauthorized Use: \$8000.00

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



\$23,300 Study Abroad Website



Masterfile Corporation 416 929 3300 tel masterfile.com
 3 Concorde Gate, 4th Floor 800 387 9016 toll free
 Toronto, Ontario, Canada M3C 2K7 416 929 2104 fax

May 21, 2013

VIA FEDERAL EXPRESS

Richard Davenport
 MINNESOTA STATE UNIVERSITY
 309 Wigley 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. The images that were used on your website are rights-managed images that were assigned exclusively to Masterfile by the artists who created them. Masterfile needs to carefully track and control the use of rights-managed images so that our clients can know if their 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 embarrassment and damage our reputation if the unauthorized use conflicts with a legitimate use, because we are expected to provide complete usage histories to our clients; (b) prevent us from licensing an exclusive use of that image after the infringing use comes to light resulting in a significantly lower license fee; and (c) cause a claim for damages against Masterfile by the exclusive licensee 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 livelihoods 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 claim for copyright infringement under the *Copyright Act*.

Rather than initiate a legal action for copyright infringement, Masterfile is proposing, on a without prejudice basis, the following: Masterfile is willing to arrange for a retroactive 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

Image Number:	700-0099668	Size:	mult sec pages	Rate:	US \$	3400.00
Caption:	Blue-footed Booby					
Artist:	David Nardini					
Property Release:	No					
Model Release:	No					
Image Number:	700-00158941	Size:	1 x sec page	Rate:	US \$	1940.00
Caption:	Running of the Bulls					
Artist:	Peter Christopher					
Property Release:	No					
Model Release:	No					
Image Number:	700-00163776	Size:	mult sec pages	Rate:	US \$	3400.00
Caption:	Mexican Souvenirs					
Artist:	Brian Sytnyk					
Property Release:	No					
Model Release:	No					
Image Number:	700-00608937	Size:	1 x sec page	Rate:	US \$	1940.00
Caption:	Brandenburg Gate					
Artist:	F. Lukasseck					
Property Release:	No					
Model Release:	No					
Image Number:	700-00634490	Size:	mult sec pages	Rate:	US \$	3400.00
Caption:	Andalucia, Spain					
Artist:	Frank Krahmer					
Property Release:	No					
Model Release:	No					
						Payable Upon Receipt - TOTAL: US \$ 23300.00

\$65,000 for a Retweet!

Dr. Keith Bell
3101 Mistyglen Circle - Austin, Texas 78746 - (512)327-2260

July 15, 2019

Gary Cunningham, General Counsel
Minnesota State University
30 East 7th Street
St. Paul, MN 55101-7804
651-201-1676
Amanda.Bohnhoff@minnstate.edu

Via Email: Amanda.Bohnhoff@minnstate.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 claims for copyright infringement against Minnesota State University (herein after: "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 - Reg. No. TX0002672644). This copyrighted literary work is from my *Winning Isn't Normal*® series of literary works that are sold online through various outlets and distributed nationwide. For example, the *Winning Isn't Normal*, book as well as posters and t-shirts with representations of page 8 are sold via Keel Publications (see www.keelpublications.com). As emphasized by the posters and t-shirts, *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 transcends competitive sports and other fields in which success is desirable. I also have a separate registered copyright for the abridged text used in the posters and t-shirts (see Exhibit C - Reg No. TX8503571.) Keel provides 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 July 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_needer (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 Leppke, who had physically posted page 8 of *Winning Isn't Normal* in his office. See Exhibit E, which clearly indicates that Coach Leppke 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 Steven Monk was credited for authoring the post. The misattribution of my work causes confusion as to the real copyright owner and author.

- 7) Deliver all paper and other fixed copies of any unauthorized excerpts or representations that are identical or substantially similar to any portion of the copyrighted literary work *Winning Isn't Normal* or any of my other works to me for destruction;
- 8) Enter into a signed settlement agreement and remit \$65,000.00 to me by July 25, 2019 in exchange for releasing you from liability for copyright infringement associated with the actions described above: Payable to: Dr. Keith Bell, 3101 Mistyglen Circle, Austin, TX 78746

For settlement purposes, and in order to avoid the delay of litigation, I will settle this copyright infringement claim against you for the known infringements by issuing a release for the infringing past uses identified above only, for a payment of \$65,000.00 paid in full before close of business on July 25, 2019 and performance of the other demands listed above.

I have invested significant funds and time in the development and authorized dissemination of my copyrighted literary work. As such, I am prepared to take aggressive legal action to protect my *Winning Isn't Normal* copyright. If you do not take the steps enumerated above by July 25, 2019, I shall be forced to seek all remedies provided by law, including injunctions; actual damages; statutory damages; full costs; and reasonable attorneys' fees.

If you would like to schedule a phone call to discuss these terms, please let me know by July 23, 2019.

Nothing contained or omitted from this letter will be deemed to be an admission of any fact or waiver of any rights or remedies with respect to the subject of this letter, all of which rights and remedies are expressly reserved.

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/>
- 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>
- 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

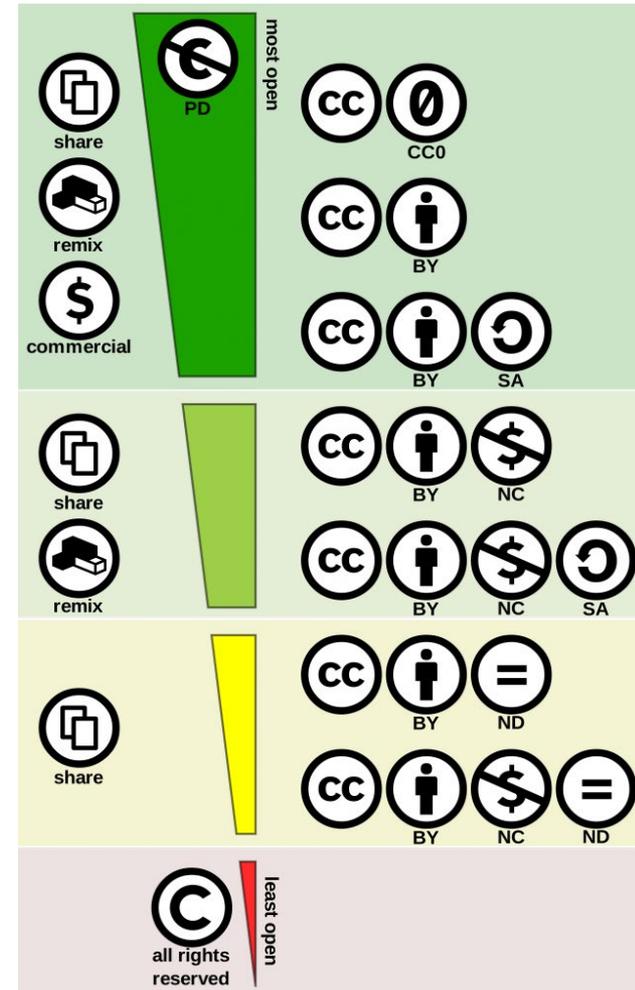
Creative Commons is a type of license that the creator has applied to the work in advance.



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



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- You must follow the license conditions
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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
 - *Universal City Studios v. Sony Corp.*, 464 U.S. 417 (1984)
- 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.minnstate.edu/system/asa/academicaffairs/policy/copyright/docs/Fair Use Checklist.pdf](https://www.minnstate.edu/system/asa/academicaffairs/policy/copyright/docs/Fair_Use_Checklist.pdf)

Fair Use Checklist

If works are not protected by copyright (copyright expired, work dedicated to public domain, federal government created document), this checklist is not necessary. When determining whether you may use copyrighted works in teaching, scholarship, and student works, the law permits some uses for nonprofit educational purposes, including *fair uses*. Fair uses do not require permission from the copyright owner. You must make a reasonable and good-faith determination that your proposed use is a "fair use". This checklist helps make that determination.

Check all boxes that apply; retain a copy of this form with the corresponding materials. Remember, you do not need all the factors in your favor to justify fair use of a copyrighted work. If the factors appear evenly split or you have questions, please contact your College/University Intellectual Property Coordinator for assistance.

Name: _____ Date: _____

Class or Project: _____

Title of Copyrighted Work: _____

PURPOSE AND CHARACTER OF THE USE

Supports Fair Use

- Educational
 - Teaching (including multiple copies for classroom use)
 - Research
 - Scholarship
 - Criticism
 - Comment
- Transformative Use (change work to serve a new purpose)
- Nonprofit use
- Restricted Access (to students or other appropriate groups)
-

Opposes Fair Use

- Commercial activity
- Entertainment, etc.
- Non-transformative, verbatim/exact copy
- Profit-generating use
- Bad faith behavior
-

NATURE OF THE COPYRIGHTED MATERIAL

Supports Fair Use

- Factual, nonfiction, news
- Important to favored educational objectives
- Published work

Opposes Fair Use

- Creative (art, music, fiction), or
- Consumables (workbooks, tests, quizzes)
- Unpublished work



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
 - <http://www.copyright.gov/circs/circ21.pdf>

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?

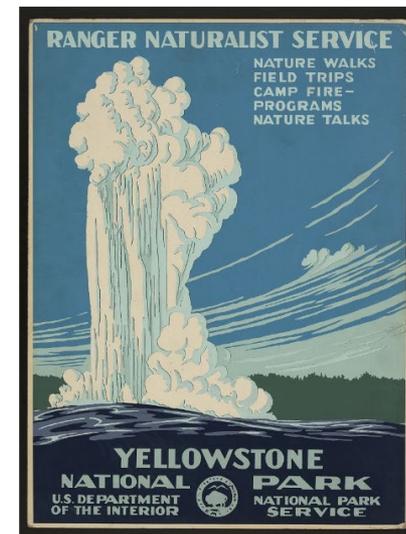
- Works in the public domain have no exclusive intellectual property rights.
 - Expired, Waived, or Inapplicable
- Public Domain works can be legally shared & performed without permission or licensing fees.
- Works can be re-mixed and adapted. You can turn a book into a film, write a song from a poem, use a cartoon character in your advertisement, etc.

What works are in the public domain?

POOH GOES VISITING

29

- 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

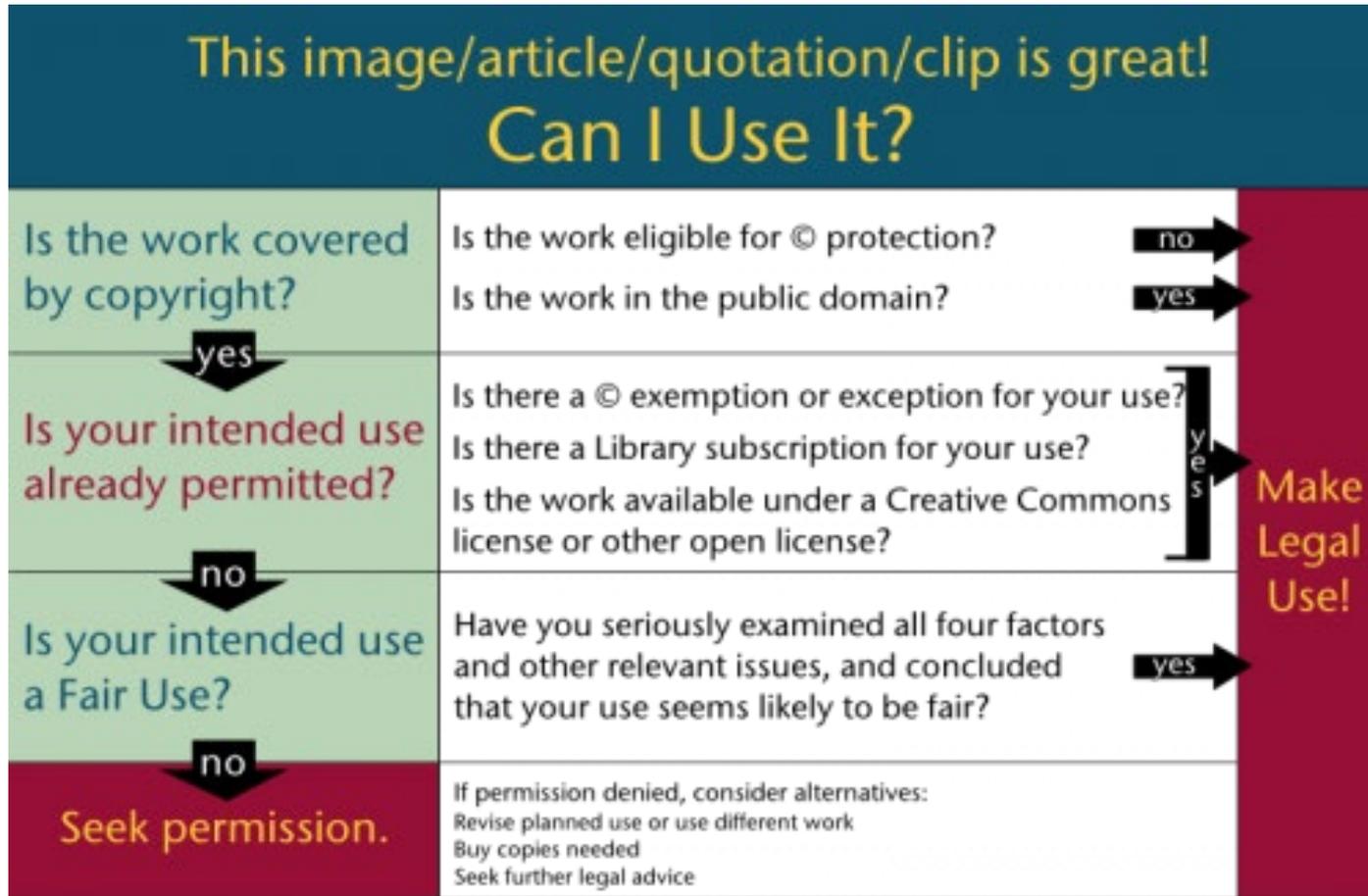


How to find Public Domain Materials

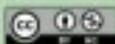
- Library of Congress Free to Use
 - <https://www.loc.gov/free-to-use/>
- Noun Project
 - <https://thenounproject.com/>
- Flickr Commons
 - <https://www.flickr.com/commons>
- Met Museum Open Access Initiative
 - <https://www.metmuseum.org/about-the-met/policies-and-documents/open-access>
- Creative Commons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



In Summary



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



MINNESOTA STATE

30 East 7th Street, Suite 350
St. Paul, MN 55101-7804

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