



Using other
people's content
and images

Legally

VDG

Your friend who is a lawyer

USING IMAGES TO COMMUNICATE YOUR BRAND MESSAGE?

Images are your brand's best friend! There is just one major rule of thumb to remember when you use images on your site. Once you commit this tip to memory, you can feel comfortable talking to your web and graphic designers about which images they can use- and you'll save yourself from an expensive mistake that is very easy to make.

Read on for the details, and get ready to be among the few who really “get” the legal side of using (and creating your own) images.

Images are more important than ever in making your brand instantly recognizable, and the perfect image is easier than ever to find if you're not a graphic designer, photographer, or artist yourself.

What's also increasingly common is the scary demand letter, which goes something like this:

“... your unauthorized use of the image blah blah blah citations to federal laws blah blah willing to settle for \$1,500 for past use of the image and immediate removal from your website...”

With the advent of many technologies, including the ability to upload an image to Google and search for anywhere it appears online, it has become incredibly easy to find unauthorized uses of photos- and believe me, people who make images their business are all over this, and rightfully so.

Many business owners are shocked to learn that choosing images is one of the most legally risky things they do in their businesses, but that basic knowledge of the rules can save a ton of money and grief.

“If you did not design, create, or photograph the image, you cannot use it without permission. The creator has the exclusive right to use that image, and that right is called a copyright.”



THE 3 TYPES OF PERMISSION

There are three types of permission, and each one can be paid or free depending on the creator. The ways to get permission are listed in order from easiest to most difficult.

1. Royalty free or public domain sources. A royalty is the fee you pay to use an image you did not create. Some creators make images available royalty free to the public. Make sure you check that you are also allowed to make commercial use- a use that furthers your business brand (as opposed to a personal use like on a family blog or in a scrapbook). If you're not sure, err on the side of caution and ask.

The creator of an image only has exclusive rights to it for so long (albeit quite a long time), and once that time period is over, the original image belongs to the public. The electronic version of the image may **not** belong to the public, so you want to be sure the source of the image clearly states that it is part of the public domain. There are great photos out there like this. Check out the US National Archives for instance, or search Google for "public domain images."

2. Image licenses: Stock photo sites are everywhere these days (and so are drool - worthy styled stock photos) and they are the best example of image licensing. For different (and often small) prices, you can pay for permission to use an image of any size and for any purpose as long as it fits the license you bought. By the way, license is just a fancy word for agreement with the creator. Check the terms of use on the website or on the image's page for more information.

3. Direct permission. If you see an image you love and must have, but that you do not see any indication of whether it is freely available or available for license, you can research the creator to request permission. Requesting permission is an art form in itself (especially if you do not want to pay for use), but remember, you are effectively asking the creator to borrow his or her valuable work. Imagine how you would respond to such a request for your area of expertise and proceed accordingly.

The second thing to remember is to ask the creator if he or she assigned (gave away) rights to the image to someone else already. If so, the creator cannot give you permission. Only the new owner can. Finally, negotiating directly means you can create a deal that works for you (and the creator), including price, number of uses, attribution, and alterations. Some creators will informally document this in an email, but others will require something more formal.

MYTHS AND COMMON QUESTIONS:

What about photos on social media?

There is an often – repeated myth on social media sites that once an image is posted, anyone can use it. This is not necessarily true (it depends on the social media platform), but it stems from a simple misunderstanding. In the case of every social media platform, you give a royalty free right to use your images to the social media platform only (which is how it has permission to publish your image). This does not usually extend to other people who use the social media site or see the image there.

The recent case of an artist selling someone else’s instagram image for \$90,000 has caused a lot of confusion in this area. Instagram clearly states that you maintain ownership of your images, and it’s legal representative even weighed in on the news about that case. The key is that the image owner did not pursue her copyright in that case, and no one but the image owner acts as the copyright police. Defend it or lose it (and watch someone else profit).

What if the creator’s logo is watermarked on the image? Do I need permission if I give the creator credit with a caption and a link?

These two questions confuse plagiarism with copyright infringement.

Plagiarism means you are pretending to be the creator of the image. Copyright infringement means you do not have permission to post the image, even if you let everyone know who created it. Good intent and giving credit do not relieve you of the obligation to get permission.

Am I really going to get caught?

Long before I was a lawyer, I sold clothes on eBay. I couldn’t get a good photo of a dress I was selling, so I searched the internet far and wide for a better one. I posted the listing, and about two hours later I had a nasty gram from the owner of the photo. The moral? You’d be surprised how fast it happens, even when it seems completely unlikely you’ll get caught. Fast forward twelve years, and it has only gotten easier for an image creator to find infringing uses.

What's the harm, anyway?

Images are content just like the programs you write or the videos you create. Having someone take your content can cut to the heart of your business—especially when the thief turns around and makes money from it or builds a brand on it. The law protects content, and images are equally entitled to protection.

My web or graphic designer of VA found me an image that I'm not sure I can use.

Don't use it. And include a note in your contracts with the people who work with you that they cannot give you infringing images. If it's on your site or your social media, you are responsible for it.

Images are a big part of brand and social media strategies. Finding a workable solution to creating or licensing images that will keep you out of expensive legal battles from the start is the best way to protect your profits and your sanity from demand letters!

Now you know the ins and outs of using images online, here is one more tip. Your program content and blog posts get the same kind of protection as the images we just talked about.