



THE VISUAL IMAGE IN COPYRIGHT

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ABSTRACT: Written works, musical compositions, or motion picture works frequently come to mind when we think about copyright law. However, the visual image—a less well-known protagonist—is concealed within the legal framework. These artistic creations, which range from classic paintings to modern digital art, are likewise protected by copyright. We explore the subtleties of visual image protection in this essay. We examine the eligibility requirements for copyright, focusing on originality and fixation. Artists immediately obtain the exclusive rights—the ability to duplicate, distribute, and develop derivative works—as they work with their brushes or capture pixels. What about exceptions, though? We will also discuss those.

INTRODUCTION

“Do we tend to see what we believe, or do we tend to believe what we see?” ((Ruth Bernhard, Nathan Lyons, Minor White, Ansel Adams & Henry Holmes, *The Workshop Idea in Photography*)).

The concept of copyright has been around for centuries. However, the law surrounding copyright became formalized in Europe during the Renaissance. At that time, printed books and paintings were becoming more and more commonplace. Authors and artists began to register their works with the governments to ensure they received proper compensation. Essentially- they were creating a visual image that could be copied and sold. Over time, the courts have dealt with numerous issues regarding copyright and visual image. Through that knowledge, one can understand how important it is to protect creative ideas. Without that protection, anyone would be free to use any creative work without permission.

Under the Berne convention, it is illegal to create a copy of a copyrighted work without the author's permission. For example, if Pablo Picasso wanted to protect his artwork, he needed to file a lawsuit against anyone who created a copy of his painting without his permission. In addition to protecting individual authorship, copyright laws protect publishing companies as well. A copyright owner can file a lawsuit against anyone who steals their ideas and makes a profit off of them without licensing fees. Essentially- stealing someone's intellectual property is much more serious when it involves profit generation.

In order to determine when an image has been plagiarized, one must first identify the image's purpose. For example, when did Leonardo Da Vinci first create the famous Madonna with Child? He did so in 1485- at which point, he was 31 years old. Based on that information, one could surmise that Da Vinci created his most famous work when he was very young. This is where knowing the laws surrounding copyright comes in handy. Many laws exist regarding when an image has been plagiarized and can be sued for it. Some of those laws require that the image be created at an early age for maximum similarity between the two entities. Other laws focus on identifying what the original creator intended his work to represent- something called 'browsing rights.' When an image is copied, it loses its originality and value; yet courts have done little to protect this while an artist is still alive.

The legal system surrounding intellectual property should be flexible enough to protect creativity while still supporting creators. Protecting images creates an incentive for people to create new ideas without fearing lawsuits from previous owners of such ideas. It's important to always think globally when creating any piece of intellectual property or copyrighted material. That way, you'll be sure everyone who gains access to such material does so legally and with the proper intent toward said material.

HISTORY OF VISUAL IMAGE

The history of the visual image is long and complicated. For centuries, artists have been creating images that capture the world around them. These images have been used for everything from storytelling to advertising. In recent years, however, the use of visual images has come under increased scrutiny from copyright holders. Copyright law prohibits the unauthorized use of copyrighted material. This includes visual images. When someone creates an original work, they automatically own the copyright to that work¹.

Copyright law gives creators the right to control how their work is used and reproduced. However, it can be difficult to enforce these rights when it comes to visual images. There are a number of challenges associated with copyright law and visual images. First, it can be difficult to identify the creator of an image. Second, even if the creator can be identified, they may not be aware that their work is being used without permission. Finally, even if the creator is aware of the unauthorized use, enforcing their copyright can be costly and time-consuming.

Despite these challenges, copyright law remains an important tool for protecting the rights of creators of visual images. By understanding the history of the visual image and the challenges associated with copyright law, we can better appreciate how important it is to respect the rights of those who create our world's most beautiful images².

LEGAL DEFINITION OF VISUAL IMAGE

In US Law, Visual Image: **10 USC § 917a(b)(7)**³. The term “visual image” means the following:

- (A) Any developed or undeveloped photograph, picture, film, or video.
- (B) Any digital or computer image, picture, film, or video made by any means, including those transmitted by any means, including streaming media, even if not stored in a permanent format.
- (C) Any digital or electronic data capable of conversion into a visual image.

In India, **Section 2 in the Copyright Act, 1957**⁴: Interpretation. —In this Act, unless the context otherwise requires,

¹ <https://www.gov.uk/government/publications/copyright-notice-digital-images-photographs-and-the-internet/copyright-notice-digital-images-photographs-and-the-internet>

² <https://www.arthistory.udel.edu/resources/vrc/copyright>

³ <https://www.copyright.gov/title17/>

(s) “photograph” includes photo-lithograph and any work produced by any process analogous to photography but does not include any part of a cinematograph film;

COPYRIGHT LAW AND VISUAL IMAGE

The vast majority of images on the web are likely to be copyrighted, so using them is only safe if you have express permission through a license; or your particular use is expressly permitted in the terms and conditions of the website providing the image, i.e. copyright the owner's site or other sites where the image is permitted to be used by others with the permission of the copyright owner; or if you determine that the copyright has expired; or if you use the image in a manner that falls within the permitted practices/copyright exceptions (see above). Using licensed images is generally much safer than using unlicensed images, which offer no protection against copyright infringement⁵.

Works of the type described above automatically receive copyright protection; therefore, when using images, please be aware that all images may be subject to copyright protection⁶. You are responsible for using images ethically and respecting any copyright restrictions. Simply because they are accessible via social media or other online platforms does not mean that visual images enter the public domain.

A federal judge in the Southern District of New York applied these terms in the case of *Agence France v. Morel* (2011)⁷ after the French wire service Agence France Press, Getty Images, CBS, and CNN used images of the Haitian earthquake that a professional photographer had uploaded without his consent to Twitter and Twitpic.

Despite the fact that any licence agreement only applied to Twitter and its partners, not the third parties named in the action, the judge declined to throw out the infringement claim. After a jury found that the news organisations knowingly violated the photographer's copyrights by disseminating eight photographs, it ultimately awarded the photographer \$1.2 million in damages.

All images in the Visual Resource Center are copyrighted. These images are for teaching, academic, and research use at the University of Delaware only, and may not be used for commercial purposes⁸. No images in the Visual Resource Center may be reproduced or transmitted in any form or by any electronic, mechanical or similar means⁹. Users are solely responsible for obtaining all permissions from the appropriate copyright holders before posting images or using them for any non-charitable, educational purpose. The Visual Resource Center does not own the copyright in the materials in its collection, nor can it grant any permission requests to reproduce them.

Photographs, illustrations and other images are protected by copyright as works of art. This means that if a user wants to perform certain actions, for example, they usually need permission from the copyright holder. B. Copy the image or share the image on the Internet.

Copyright law protects a wide range of photographic works. This category includes photographs created with a camera and captured as digital files or other visual media such as film. Examples include color photographs, black and white photographs, and similar types of images.

⁴ Indian Copyright Act, 1957

⁵ Erickson, C. (2013, February 15). The social psychology of the selfie. Mashable. Retrieved from <http://mashable.com/2013/02/15/social-media-andthe-selfie/>

⁶ Rebecca Tushnet, *Worth a Thousand Words: The Images of Copyright*, 125 HARV. L. REV. 683, 691 (2012); Mary D. Fan, *Justice Visualized: Courts and the Body Camera Revolution*, 50 U.C. DAVIS L. REV. 897, 956–57 (2017).

⁷ *Agence France Presse v. Morel*, 2011 WL 147718 (S.D.N.Y. 2011).

⁸ Elizabeth G. Porter, *Taking Images Seriously*, 114 COLUM. L. REV. 1687, 1699 (2014).

⁹ *Supra* n.3 at 4

Most images you find in print or on the internet are protected by copyright. There are educational exceptions to copyright law that allow you limited use of copyrighted images in course presentations or educational papers. Also, non-commercial user-generated content for non-commercial purposes is an exception¹⁰.

CHALLENGES OF COPYRIGHT LAW AND VISUAL IMAGE

Creative work is an important part of everyone's life, especially for artists. All creative works are under copyright law, which gives the creator the right to control how his work is used¹¹. Not only does copyright law protect creative works, but it also promotes creativity by ensuring that anyone who creates can profit from his work. Without copyright law, many of our most beloved creations would be free for the public to use and copy without permission.

Under copyright law, each person owns his own original works- even if someone else created the work first¹². For example: George Lucas created Star Wars in 1977 as a film, but he also owned the film's copyright. This means he had the right to decide how Star Wars was used. Not all original works are created by famous artists; anyone can create an original work with the help of copyright law. For example: an architect who creates a building for a company might also own the copyright for that design.

Therefore, it is important to respect each person's right to control the use of his work. When using another person's work, you must ask for that person's permission. Not only does this respect the rights of the creator, but it also promotes fairer business practices by allowing companies to profit from their creations. For example: if a company uses an artist's song in an ad without permission, that artist can sue them and profit from it himself. In fact, many musicians do just that- they create music and then profit by licensing it to TV shows or video games. Not having copyright law would make business transactions much less equitable and profitable for both parties involved.

To determine if a work is under copyright, you must first determine the type of work it is. Works can fall into one of four categories based on their creation method: - Fixed in material form - A sound or image - Derived from an image - A computer program To make this determination, you will need to look at each factor listed above. Here are some examples of each type of work: - A painting- a tangible item - A song- an intangible expression of ideas - An advertisement featuring music- a sound or image transmitted electronically - A videogame- a sequence of instructions that you interact with To further complicate matters, there are four factors that affect whether or not a creative work falls into one of these four categories: technical feasibility, economic value, public accessibility, and moral rights.

As you can see, determining if a work is under copyright law can be complicated- but it's very important to understand these rights. Creators deserve to be compensated when their creations are used; plus, everyone benefits from free creative works that encourage innovation and creation. The laws surrounding copyright protect these works and give creators reason to innovate within their fields¹³.

¹⁰ <https://www.gov.uk/government/publications/copyright-notice-digital-images-photographs-and-the-internet/copyright-notice-digital-images-photographs-and-the-internet>

¹¹ Supra N.4 at 4

¹² Ibid

¹³ Ruth Bernhard, Nathan Lyons, Minor White, Ansel Adams & Henry Holmes, The Workshop Idea in Photography, 9 APERTURE 143, 163 (1961)

CONCLUSION

When it comes to copyright law and the visual image, many different case studies can be looked at to better understand the subject. For instance, one famous case study is that of the Monkey Selfie, in which a monkey took a selfie with a camera and the resulting photograph was later published without the monkey's permission. This case study is often cited when discussing whether or not animals can hold copyright over their images. Another well-known case study is that of the Streisand Effect, named after singer Barbra Streisand. In this case, Streisand attempted to have an aerial photograph of her home removed from an online database because she felt it invaded her privacy. However, attempts to remove the photograph only resulted in more people viewing and downloading it, thus illustrating the Streisand Effect. This case study is often used to show how attempts to censor information can often have the opposite effect.

In conclusion, it is important to understand the visual image in copyright law to protect your work. By understanding the basics of how copyright law applies to images, you can ensure that your work is protected and that you can take action if someone uses your work without permission.

REFERENCE

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