

Stock Photography Scare

Using Copyrighted Images & Photos without Authorization

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Recently we have had a couple of colleagues **burdened with a large, unexpected bill**. This article is both a warning and an educational resource to explain what's up. Please continue reading if you have a presence online or in print for your business, organization, or side job.

Getty Images, a large stock image agency, is cracking down on anyone using unauthorized images from their image libraries, and they are sweeping the web diligently. If they find one of their images on your website (that you did not pay to use), you will receive a bill, and it's not just a couple of bucks. We're talking about 3 to 4-digit bills with no warning and very little wiggle room.

After reading that, you're probably thinking, *'holy crap, these guys are jerks'*. They aren't, however. The photographers and artists that create these pieces are the rightful owners and are trying to make a living off of their efforts; agencies like Getty Images help them sell their work. In other words, if you use an image Joe created and it helps you sell your product, Joe deserves a cut of your profits. If you made the first double cheeseburger, wouldn't you be mad that McDonald's took your idea?

So who is responsible for payment? Getty's bill states that the website owner is the party responsible for payment, not the website developer. As a website owner, this can be frustrating because there are a few scenarios to consider:

1. **Did you or your team create your website in-house with images you found? You are responsible.**
2. **Did you or your team send images to your web team to use on your website? You are responsible.**
3. **Did your web team magically find those images? Then the web team is responsible.**
4. **Did your previous web team provide those images to your new web team? Then the previous web team is responsible.**

No matter what scenario you fall under, Getty says YOU have to pay. The four scenarios above are based on my opinion.

Now that the moral part of my article is finished, let me elaborate. Getty represents the cream of the crop. Their library of images is copyrighted with the government (learn more at www.copyright.gov). Why is this important?

"Copyright is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works." www.copyright.gov. If you have used a stolen image that is copyrighted, the owner (or Getty as the representative of the owner) has the right to bill you up to three times (3x) the standard usage fee. In addition, you would be responsible for both your legal fees and the other parties legal fees should the matter go to court.

What do you need to do to avoid this? First, be careful where you take your images from. Second, become educated on the subject. If you see the word "free", it doesn't always literally mean "FREE".

Very few photos are free; only PD photos (explained below) have no copyright attached. In other cases, the original photographer usually owns the copyright of the image as the creator. To use a copyrighted image, you need to purchase a license. In the case of free and creative commons images (explained below), the license is free. On the other hand, paid "stock photography" requires that you pay for the license. This license defines the expected use of the image (usage refers to a number of factors including but not limited to how large the image is, where/how it is used, how long it is in use, and the expected size of the audience or geographic region). It's important to understand that buying a stock image does not make you the owner or copyright holder of the image - you are buying a license to **use** the image. The following buyers glossary was borrowed from www.budgetstockphoto.com.

Stock Photo - A stock photo is simply an "off the shelf" image that was taken with the intention of being reused in a design, web site etc., this compared to having someone take a custom photo for you. Stock photos can be obtained either free or by purchase. The term "stock photo" is used to differentiate these images from those which were taken as artworks, or for documentary or editorial purposes.

Public Domain (PD) - Public Domain images are images that have been made available for free use and have no terms attached. Typically the choice of subjects and image resolution or quality is limited.

License - A license describes the terms which you agree to when you 'buy' an image for use. These conditions typically prohibit you from reselling the image or using it in certain predefined ways. When you 'buy' an image you are in fact buying a license to use it, you are not buying the copyright of the image, a common misunderstanding amongst amateur image buyers. Licenses vary from site to site, so always check to be sure you can use the image in the way you intend. There are two main license types in stock photography: Rights Managed (RM) and Royalty Free (RF).

Creative Commons - Creative Commons is a system of licenses which allows photographers to provide their work for free under certain well defined conditions. These conditions typically exclude the image from being used in commercial applications and ALWAYS stipulate that the photographer be attributed where the pictures are used. Many photographers use creative commons as a way of promoting their work in front of a wider audience.

Microstock - Microstock is a term applied to Royalty Free stock photo agencies who source their images from not just professional photographers, but also amateurs via a strictly controlled review process. Microstock sites are a marketplace for thousands of photographers to sell their work to you, but buyers only need to deal with the agency itself. Most sites allow you to buy credits that afford you a number of downloads of varying resolutions. Most also Microstock agencies sell vector illustrations and some sell stock footage (video).

Resolution - Strictly speaking, the term Resolution refers to how many pixels (the smallest elements of a digital image) are displayed or printed in a defined area (i.e. 300 dots per inch - 300dpi), but the term is often used to refer to the dimensions of an image in pixels (e.g. 1200x1600 pixels). The higher the number of pixels, the larger you will be able to print or display the image without losing quality.

Subscription Images - Subscription Images allow you to pay a monthly or annual fee to access a pre-defined number of photos as you need them. This is a lower-cost option if you need images on a regular basis.

Editorial Photo - The term Editorial Photo is usually applied to images of events or celebrities. Editorial Photos have special license terms applied to them; they normally cannot be used in advertising or promotional material.

Extended License - Extended License is a term used by stock agencies to allow images to be used in more applications than normally allowed. For example, to resell a photo as a derivative product like a framed print, website template, poster etc., you need to buy an extended license or merchandise license. These types of licenses cost more than standard royalty free licenses.

Royalty Free (RF) - Stock photos which are supplied for unlimited use (within the license terms which do sometimes include restrictions) are called Royalty Free because you do not pay a royalty each time the image is used or for how many times it is displayed. Microstock images are sold as RF.

Rights Managed (RM) - Rights Managed is usually the most expensive way to buy stock photos, but has some key benefits in exclusivity, as rights managed images are strictly controlled. With Rights Managed, you pay to use the image or images on a per use basis. For example, you may use a RM image on an internal page of 10,000 copies of a magazine, or on the front page of a web site for 1 year.

Attribution / Credit Link - An attribution or credit is piece of text or web link displayed alongside an image when you use it. Unless used in editorial applications paid stock images almost never require a credit. Conversely a large majority of free stock photo licenses stipulate some kind of 'credit', as do all creative commons licenses. In this case, you can think of the attribution being made in lieu of payment to the photographer. If you use the images without giving the credit, then you will be breaking the terms of the license leaving you open to legal action. Many people find themselves in this situation when they simply download a photo they see in the internet and use it.

Thank you to www.budgetstockphoto.com for this excellent description of the stock industry terminology!

Just two more terms to cover and then you will know the basics regarding the use of online images:

Non-Exclusive - Non-Exclusive images can be sold to others and be used elsewhere. This is important to note if you do not want a competitor or another business using the same imagery as you. McDonald's, for instance, would be silly to buy a non-exclusive image of a juicy hamburger because Burger King could swipe it up too. Imagine the damage this would have on both companies' reputations. Non-Exclusive images should not be used in your organization's branding where image recognition should cause one to automatically think of your organization, product or service.

Exclusive Images - Exclusive Images cannot be sold to others, only the one buyer is granted usage rights. It costs a lot more, but is good for brand identity.

In Conclusion

If you find free clip art online, make sure you read the license agreements. They are very much like agreements on any website... very easy to look over and click "I agree to the terms" without taking a glance, but they contain very important information. Every website, agency and individual photographer/artist has their own licensing rules, so take care in checking each image.

Finally, we recommend you check your website and any online media (print media is also something to double-check). Question any images in which their source locations are not accounted for and consider replacing them.