



by Sharon Givoni

Copyright or wrong?

There is an old adage that says what is worth copying is worth protecting. Certainly a great line but in order to know whether you can protect and enforce copyright in your photographs, there's the question of whether you own it in the first place. This brief article by **Sharon Givoni** explores this topic in more detail.

Firstly, what is copyright? Copyright is a generic term that covers the rights of creators of 'works' including photographs, drawings, painting and artworks, literature, music, films and written works.

A clear distinction exists between the copyright in a work and the ownership of the physical article in which the work exists. For example, a photographer may own the copyright of a negative, even though the physical photograph might be owned by the person who has commissioned or purchases the photograph.

If you own the copyright in the work, such as a photograph, you have the exclusive right to 'exploit' the work.

This includes the right to reproduce it, post it on the internet (the *Copyright Act* describes this as the right to "communicate the work"), to publish the photograph and make an adaptation of it.

In terms of what you need to do to protect that copyright, copyright arises automatically – there is no need to register it as such. Having said that, in some circumstances, it is important to remind others that you own the copyright – particularly if you are selling the works or have been commissioned to take photographs for someone else, but it has been agreed that you, as the photographer, will retain the copyright.

A simple copyright notice can act as a good deterrent to would be copycats. Generally speaking, it involves displaying the © symbol (or the word 'copyright'), the name of the author or company that claims to own the copyright in the photo and the date that the photograph was taken (often just the year is used).

Idea versus expression

It is a crucial premise of copyright law that copyright protects the expression of ideas but not the ideas themselves. While this may seem simple in theory, it is not always so easy to apply in practice as the borderline between ideas and expression can be quite grey.

For example, there is no copyright in the idea of a painting a melting clock. Think of the style of well known surrealist artist Salvador Dali. However, if one was to paint something very similar to Dali's paintings and copy the composition, colours, positioning and other substantial features of his painting, this might amount to a copyright infringement.

In a photographic context, there can be no copyright in the idea of a woman sitting backwards on a chair per se, however if a photographer were to

copy the composition, lighting and other features of a photograph (including the way the model's feature), for example, an imitation of the famous Christine Keeler photograph (taken by Lewis Morley) using the same type of Jacobsen chair and also in black and white, this might amount to a copyright infringement. It is best to seek legal advice if you are unsure.

How long does it last?

Copyright is created when the photograph is taken and lasts for the life of the author plus 70 years. The term of copyright protection for photographs taken before 1955, regardless of whether the author has since died or is still alive, has expired. The life plus 70 years term for artistic works applies to all photographs taken after that time.

This time period has recently been extended from 50 years and has been known as the 'Mickey Mouse' exception. This is because the first Disney character, Mickey Mouse was protected by copyright since 1928 and was set to revert to the public domain in 2003. The extension was first put in place in the US, when movie corporations such as Disney and Warner Brothers lobbied Congress to extend the duration of copyright. Now, Disney can continue to keep Mickey till 2023.

What if the photographer has died?

In terms of photographs, when the photographer dies, his or her estate can enforce his or her copyright for the remaining time that it stays in force.

This is what happened in the US when the son of well known fashion photographer Guy Bourdin alleged a few years ago that Madonna's video (Hollywood) was full of re-enactments of his father's distinctively racy images (Bourdin died in 1991).

"It's one thing to draw inspiration," said Samuel Bourdin, in media statements, "but quite another to simply plagiarise the heart and soul of my father's works".

The dispute was settled out of court.

Commissioned works

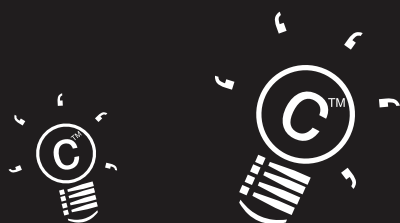
In the case of certain photographs, the photographer is the copyright owner, subject to any agreement to the contrary. Where the commissioned photographs are of a private or domestic nature, the commissioning party owns the copyright, subject to any agreement to the contrary.

However, if the person commissioning the work informs the artist of the purpose for which the work is required, then the artist can legally restrain the use of the work for any other purpose. More will be said about commissioned works in a future issue of this magazine.

Disclaimer: This article is of a general nature only and must not be relied on as a substitute for legal advice.

Do you have a legal question that you want Sharon Givoni to address? If so, send to drm@optusnet.com.au.

"Are you protecting your photography?"



For copyright or other intellectual property legal advice, call Sharon Givoni who has had ten years experience.

Mention this ad for a 20 minute consultation. On us.

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