

Business beware: the price of copyright violation

The internet can sometimes feel like the Wild West, but when it comes to downloading and repurposing content you don't own, it's business beware. Copyright infringement is a serious matter. Ignorance is not a defence you can rely on should the owner of the content decide to sue.

The internet has made it easy for photographers to showcase their work, and it has also made it easy for people to steal it to post on their websites or social media pages, [Forbes](#) reports.

One of the challenges for businesses, especially smaller ones, is a lack of understanding about copyright.

"Myths abound: for example, if there's no contact information visible, then the image isn't under copyright," London-based photographer [Paul Clarke](#) tells *Forbes*. "A lot of people also believe they can use photos of themselves freely. While this makes emotional sense — we think of our images as 'ours' — it has no legal basis."

What is copyright infringement?

According to the [Canadian Intellectual Property Office](#), copyright applies to all original literary, dramatic, musical and artistic works provided the conditions set out in the *Copyright Act* have been met. Each of these categories covers a range of creations, including:

- literary works such as books, pamphlets, computer programs and other works consisting of text
- dramatic works such as motion picture films, plays, screenplays and scripts
- musical works such as compositions with or without words
- artistic works such as paintings, drawings, maps, photographs, sculptures and plans

In this column, I'll explore copyright infringement related to images, videos and photos found online. In a nutshell, copyright infringement is taking content you don't own and using it for your purposes — commercial or non-commercial — without the owner's consent.

Whether you find it through a Google search, a stock photo site or on social media, every image and photo gains copyright as soon as it's created. Unless you obtain express permission from the content owner, you don't have a legal right to use the image. Under Canada's [Copyright Act](#), the consequences of violating copyright, even unintentionally, are serious.

Company receives more than \$400K in damages

In a recent legal [case](#), a group of defendants found out just how serious copyright infringement can be when it was ordered to pay a dealer of automotive components \$357,500 in statutory damages plus an additional \$50,000 in punitive damages after a judge found it had unlawfully reproduced the dealer's images.

The punitive damages are an award that aims to punish bad actors. In this case, the defendants acted maliciously by repeatedly infringing multiple items and ignoring cease-and-desist letters.

Our firm frequently represents artist clients and other businesses whose original works have been repurposed by other companies or individuals. We had a case last year where our client, an artist, had the copyright for some of her paintings displayed on a website. The photos were scraped from the site and turned into cards, which were being sold at Canadian bookstore chain Indigo Books & Music. We wrote a cease-and-desist letter to Indigo, and they removed the cards immediately. The cards were produced and distributed by U.S. company who did not respond to our cease-and-desist request, so we sued.

In another infringement case, our client owned the copyright to several slides depicting train images. The slides were donated to a museum that intended to promote the history of trains, but the venture never got off the ground. Instead of returning the slides to the owner, the museum either sold them or gave them to a third party, which was selling the images. The third party responded to our cease and desist, the parties reached a settlement without litigating and the slides were returned to our client.

Cease-and-desist letter first

If a business has been accused of copyright infringement by way of a cease-and-desist letter from an alleged copyright owner, I would review the allegations and compare the work in question to see if there is, in fact, a violation of copyright.

If it's clear the image didn't belong to my client, I would advise them to remove it, whether it's on their website, social media, marketing material or elsewhere. By acting quickly, you may avoid litigation, but the copyright owner may still request damages or financial compensation for the violation.

If I'm representing an artist whose images are being used without permission, again, I would compare the images and make sure there's evidence to prove my client owns them. Once that's done, I write a cease-and-desist letter to the individual or company infringing on my client's copyright, advising them that if they continue to use the images past a certain date, we will sue for damages, such as loss of profit, but that's often difficult to prove. The other option is to elect to be awarded statutory damages under the *Copyright Act*. In the case of an infringement for commercial purposes, those damages could vary between \$500 to \$20,000 for each work.

It's important to note that demonstrating provenance of the work is critical in these types of cases. For a lawsuit to be successful, you would have to provide evidence to show when, for example, the image was created, whether or not it's formally registered anywhere (such as a stock photo site), and also to provide details around the improper use of those images.

What's 'fair use' under the Copyright Act?

As with all rules, there are some notable exceptions when unauthorized copying may be permitted. The *Copyright Act* allows for the use of material from a copyrighted work without permission for eight purposes: news reporting, reviews, criticism, satire, parody, education, research and private study. This is known as "[fair dealing](#)," which recognizes that certain uses of copyright-protected works are beneficial for society. It also explains why the creators of satirical memes, which frequently rely on copyrighted material, aren't served with cease-and-desist letters on the regular.

To ensure your copying is fair, you need to consider several factors: the amount of material you're copying, whether the copies are being distributed to others and if the act of copying might have a detrimental effect on the potential sales of the original work, according to Fair Dealing in Canada, a website created by staff and librarians at the [Scholarly Communications and Copyright Office](#) at the University of Toronto Libraries in collaboration with other Canadian universities.

Safe, legal alternatives

Businesses that want to remain on the right side of the law have a host of alternatives available to them when it comes to no-cost or low-cost photos, videos and images. Stock photography [sites](#) have exploded in recent years. For reasonable fees, users can licence images for use on their website and marketing material.

What's most important for businesses and individuals to understand is that it's your responsibility to determine if and how you can use an image, photo or other original work without violating copyright.