

### What I think you should know about copyrights

As a commercial artist and sole proprietor of a small business, I am a proponent of copyright law protection and creator's rights. "Fair use" aside, you may not use any of the material on this site for any purpose, public or private, without permission. If you think you deserve to use one of my images for free, please contact me for permission. If you are in the advertising or communications business, this document will help you understand what "©" and "fair use" mean and will help you become more familiar with the law.



### The problem

There are some circumstances that arise regularly involving the use of images from clip disks and appropriation of photographs from web media that needs discussion. Art directors often use such images in comps. Even if it is legal to use a clip disk or online stock image for a comp, it isn't legal to make an essentially similar image with a different artist for the final work. This is however, a gray area. Successful pursuit of infringement of this kind is based on the knowledge by the copyright holder that their art was used in the comp and then copied by a different artist. It is possible that a similar piece of final art could have been executed in a vacuum. You can't copyright a concept.

Problem is, if I get a comp with a photograph that's been lifted from somewhere and I'm asked to copy it closely because the client wants that same thing, I'm in a predicament. Unless a purchase of the specific image has been negotiated in advance it shouldn't be promised to the client. To avoid plagiarism, there needs to be differences of execution and content. The emotion and concept of an image are

not copyrightable, the specific combinations of technique, content and composition are. To avoid such infringements, you should always give the photographer some leeway to execute an original image that will do a similar visual task for your client.

### Fair use

The doctrine of "fair use" only applies to news reporting and educational uses of copyrighted material and then only under limited circumstances. The concept is that copyrighted material can be used without permission or compensation as a reference in criticism, news reporting, education or research. As a general rule, if you are going to profit monetarily from the use of a copyrighted image you need to buy rights from the copyright holder. Copying the cover of a music CD for a newspaper review of the CD without permission is legal, but using a photograph from CD cover in a unrelated newspaper advertisement for a 3rd party without compensating the photo's owner is illegal. The chances of a photograph for advertising being in the "fair use" category is very, very low.

**Violators**

When I see one of my photographs being used without my permission I confront the parties involved. It happens more than you might think and I approach a resolution in a reasonable manner. I have never had a situation where I believed that the infringement was purely innocent, despite excuses to the contrary. Nonetheless, with an expression of regret and full disclosure of usage I will deliver an invoice at the normal rate. Should the infringing party become indignant or refuse to disclose the usage, I will bill at the industry standard of 300% of the normal rate for this unauthorized use. For the most part, when people realize they have violated the law they agree to pay me what I've asked.

**I encourage debate**

I understand that there are different views on these issues. I would like very much to know if I'm misinformed. Please contact me at [bruce@bruceashleyphotography.com](mailto:bruce@bruceashleyphotography.com)