

Copyright

by Simon Brown

Disclaimer; Copyright law can vary between countries and can be complex. I am not a lawyer and have no legal training whatsoever, but the feature that follows is based on my experiences as a photographer. The following article does have a UK bias, but the general principles of copyright are governed by the Berne convention, to which most countries are a signatory. This is not meant to be an absolute guide to copyright law, but I hope it helps explain what copyright means in broad terms to photographers.

Copyright - What is it?

Copyright gives artists, authors, sculptors and photographers certain “rights” to protect their work from exploitation. Copyright does not protect an idea, but rather protects the expression of that idea; things like works of art, text (such as this piece), music, and television broadcasts, cinema and photographs. Generally speaking, the creator of the work is also the owner of these rights and for photographs, this is the person who pressed the shutter and froze the moment. The resulting image would



(Above) My eldest daughter Emily pressed the shutter on her dad's Nikonos V, freezing the moment in Pupu Springs. Copyright makes no judgment on age and therefore she owns the rights. Used with permission of Emily Brown
(Right) “What value to the client? How much is an image worth? A split level shot of a canoeist has many uses

not be owned by the camera owner, or whoever owns the memory card the image is written to. Employees such as staff photographers will find a clause in their contract that assigns copyright to their employer, but most photographers are freelance or employed outside of photography, and without a written contract to the contrary they own the rights. These rights can be valuable and last a considerable amount of time. In the case of photographs, copyright

protection exists for 70 years after the death of the creator. Finally, with a very few exceptions, it is a moral right to be identified as the creator of an image –whoever uses the picture must credit the photographer, unless you agree in writing to waive the right.

A few misconceptions

An image does not have to be registered to enjoy the benefit of copyright protection. Copyright does



not make any judgement as to the age or ability of the photographer, the subject, aesthetics or compositional choice or the size of sensor used to capture the image. It is not necessary to mark your images with © to enable protection (but for there are good reasons why you should – read on). It is safer to assume that copyright protection exists on all images in circulation today, and someone will own those rights.

What can I do with copyright?

Making money is the simple answer. When someone wishes to use your image, they require a license to reproduce it. The right to use an image can be as wide ranging or as clearly defined as the creator agrees to and the user needs. Whoever licenses the image does not own the rights to it, just permission to exploit its use. To prevent misuse, licenses should be clearly defined. Consider the following; editorial, one copy of XX magazine – printed media, English language, UK territory would grant the publisher of XX magazine the right to print the image once (one copy) in one territory (UK) and only in the magazine (printed media). They could not use it on their website (single use, printed media only), in an advert (editorial only) elsewhere in the world (UK only) or sell on the use to someone else. As another example, when I send this text to Peter at UWP the terms would be; single use, one copy of UWP magazine in PDF format for download from www.uwpmag.com. A good analogy would be to compare a license to reproduce to a hotel room. When you rent a hotel room you get the right to use the room for the duration of your stay. Once your stay is finished, you cannot re-use the room without paying for another night. You cannot turn

up at another hotel in the same chain and expect use another room without paying another fee, and you can't invite someone else to use the room.

How much money each image is worth depends on one thing; what is the value to the client and what use(s) do they need? I have seen the same image licensed many times, each time the amount of money I charged has varied. For example, the rights to use a single image across 1/8th of a page in a low circulation magazine in Uzbekistan would be considerably cheaper than a license to use an image in a billboard advert to support a multinational advertising campaign. The same image could be used for both purposes, but the context of its use and the value to the client is different, and so is the price.

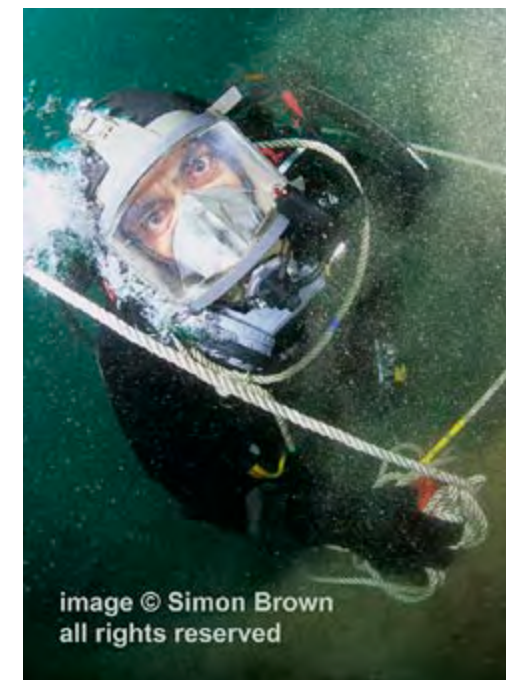
So copyright can be valuable?

In a word, yes. For 70 years after I die, whoever inherits my pictures will also enjoy the revenue from licensing their use. Whoever owns the copyright can also sub-license or sell the copyright to someone else, and earn money in the process. Only once have I sold the copyright to an image. Even though the fee was four figures and enough to buy quality camera housing, I regret it to this day. Over the life of an image (who knows – 100 years from now perhaps,



A rights managed image. Each publication resulted in a royalty payment

assuming I die at 70) I would bet I could have earned more by licensing its use. Still not convinced? Then consider this; Annie Liebovitz raised a 7 digit fistful of dollars by mortgaging the copyright to every image she has created. Few are in the same league as Ms Liebovitz, but it helps establish a value for copyright from which the rest of us can benchmark ourselves. Think about it for a moment. If someone wanted to buy the copyright of every image you had taken.....



This image was used on the front cover of Soldier magazine. Given as a print to the Royal Engineers thanking them for their assistance

what value? Would you cut them a discount deal for bulk?

How do let people know I am the owner of the image?

Slapping a big © symbol across the image works well for web images, but can be a little distracting. An alternative is to apply “©Simon Brown. All rights reserved” (assuming your name is “Simon Brown”!) in one corner of the image reminds the



Not in the same league as a Liebovitz portrait, but the rights to an underwater chainsaw image are valuable.

viewer who owns the image. But images can be downloaded and cropped to have the text removed, and publishers do not want to reproduce images with a copyright notice, so it's important to ensure that any image that leaves the safety of your computer has your contact details and copyright notice embedded in the metadata. I use Adobe Lightroom to apply the following to the copyright field;

“Copyright Simon Brown. The Artist hereby asserts his moral right to be identified as the author of this work in accordance with section 78 of the Copyright, Designs and Patents Act 1988”.

In the rights usage field I also put;

“All rights reserved. Reproduction rights must be agreed in writing with the copyright holder prior to use/reproduction and, where applicable, any payments made in full before such rights are granted”.

This is alongside my name, address, website,



Simple steps to protect your work. Embed metadata in every image and include your contact details

email and other contact details in the rest of the fields. Whoever wants to use my work has been given as much information as possible to contact me before use, and they get a small reminder. Any image opened in Photoshop that carries copyright metadata will display a © symbol in the top left corner.

What about “Fair use”?

It's difficult to critically appraise a photograph without being able to show the viewer an example. Fair use allows the art critic to discuss the aesthetic use of creative blur, but not to discuss the content. For example, if the image was used to promote a book about puffer fish then this would be outside of fair use, but we are at liberty to comment upon the camera angle, choice of subject etc without the need for permission or a license.

Rights grabs

Copyright is a valuable commodity, but something only has a value when its use or desire is understood. Many competitions and social networking sites can have some rather photographer-unfriendly terms and seek to secure copyright from the photographer in all but name. These are known as rights grabs. By submitting images to rights grabbing competitions you have, in effect, given the organiser carte blanche to do whatever they like with your images. Here's an example:-

“You will retain full ownership rights in your submissions, but in submitting your submission to us, you agree to grant to us a worldwide, exclusive, royalty-free, transferable licence (including the right to sub-licence to any user of the Website or otherwise) to use, reproduce, distribute, prepare derivative works of, display or otherwise manipulate your submission including for the purposes of the submission. In submitting your submission to us you agree to waive all moral rights in your submission.

The key words to look for are; royalty free (no payment), worldwide (wherever we like), transferable (sell it to someone else), use (exploit might be better), reproduce (says it all). These terms not only take your rights to the image, but you waive your moral right to be identified as the creator. So when a large corporation uses your image in a worldwide advertising campaign, they get the image for nothing and no one will know you took it. Who benefits? Buying a license represents a cost to their business. By running a rights grabbing “competition” images are free. Only their shareholders gain.

What can I do?

Firstly, value your work. If someone wants to use one of your images, no matter how poor in your eyes, always ask yourself “What is the value to the user of my image?” Under the banner of advertising and PR, businesses and charities alike want to raise awareness for their products, to take market share from their competitors or encourage more donations to the cause. Used wisely, images can convey a highly persuasive message and have a positive effect on the profits. Nothing wrong with profit – we all need it – but in my view it is unacceptable to exploit an image for nothing in return. Photography can only have a value when its practitioners realise what their images can achieve. Look around you and see how many images exist on billboards, newspapers and magazines. Those who consume images but choose not create them clearly attach value to a photograph.

Secondly, check carefully the terms and conditions of photographic competitions. There is a campaign run by Pro-Imaging called The Bill of Rights for Photography Competitions and they maintain two lists; the Rights-On list (good, photographer friendly) and the Rights-Off list (not so good). Their website can be found at <http://www.pro-imaging.org/>

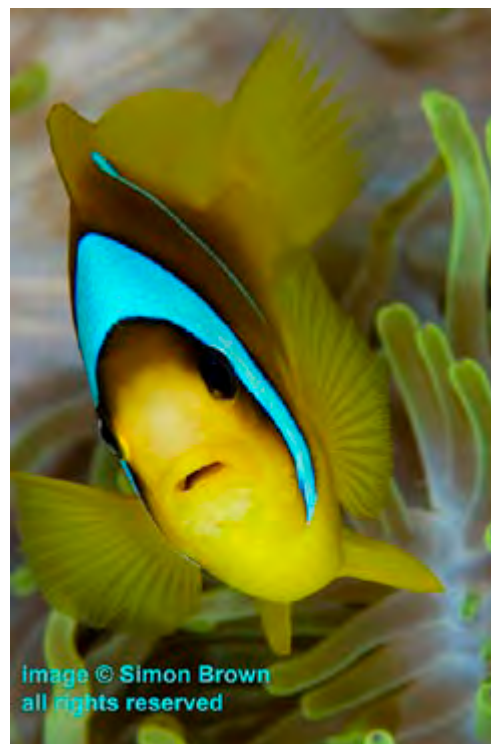
www.uwpmag.com

[content/category/19/61/154/](http://www.pro-imaging.org/content/category/19/61/154/) so before submitting, check if the competition is listed. If not, check the terms yourself before submitting and look for anything that seeks to take the rights to an image. The Bill of Rights has some guidance as to what makes a friendly competition, and what does not (see <http://www.pro-imaging.org/content/view/164/154/1/4/> for guidelines). If you find a competition with terms – both good and bad – report them to Pro-Imaging for assessment.

Thirdly, if you are asked to judge a photographic competition, ask to see a copy of the terms and conditions before agreeing. High profile photographers are used as an endorsement by competitions, both those that grab rights and equally by those who don't and remain a true “competition”. A big-shot name raises the profile and encourages entries. But when it comes to protecting our rights as creative individuals every photographer regardless of skill, amateur and pro alike, should not endorse anything that undermines the copyright of others. If the competition grabs photographers' rights, decline to participate and explain why.

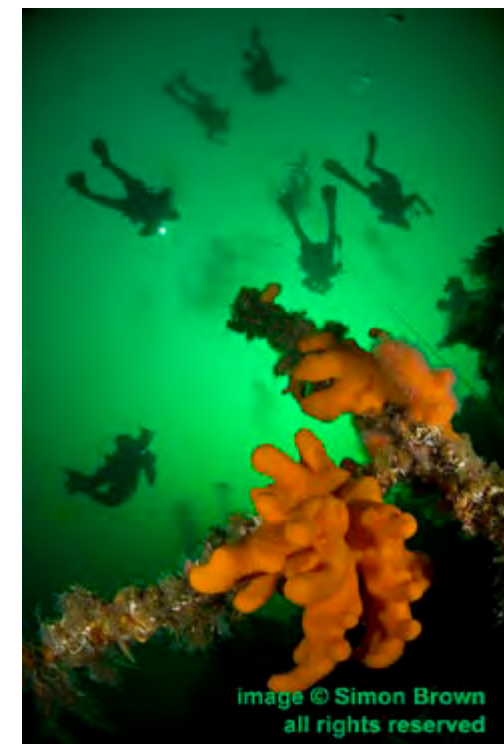
Royalty Free

Strictly speaking, images labelled royalty free are neither free



You can't copyright an idea, just its expression. Everyone can take a anemone fish portrait but anyone who uses an image needs a license to reproduce

or without a license to reproduce. Royalty free is a one-price-fits-all way of licensing an image for a fixed (often cheap) fee, no matter what use it's put to. In my view, this is a very lazy way of making minimal returns, but it may suit some. Every single one of my images are rights managed and although I have nothing to directly compare with, remain confident the bank balance is higher as a result.



The copyright statement does not detract from the impact of the image, but reminds anyone who might want to use it that someone owns the rights. And removing the copyright data by cropping is a criminal offence

Be wary of any website offering to sell your images under the term microstock or novel use. Sites offering to sell images under the microstock banner offer royalty free images for as little as \$1 per download. By the time they have taken commission you end up with 50c. If anyone is making a living, or even justifying their camera



It might be a common-as-muck nudibranch image, but use it without permission and the creators rights have

Impossible to miss. A copyright statement like this is useful to apply on any large image (such as those used for print sales) used on the web

setup with 20-40,000 downloaded microstock images, please contact me.

Is that it?

Not quite. Legislation is being considered to allow the use of orphan works. Orphan works are images where the copyright holder cannot be identified. This is only proposed legislation, but is not welcome, unless

you happen to be a large corporate with lots of images you would dearly love to use but can't risk being sued when the owner turns up. Just because an image is "found" why should it be used without permission and payment? Orphan works legislation only benefits the shareholders, and the talent of the creator remains unrewarded. There has never been a time in the past where adding

metadata and © notices to any image posted on the internet has been more important.

Infringement

When someone uses an image without permission they infringe your commercial rights and can have the added issue of infringing your moral right to be identified as the creator. Countless images are used on the web without permission, each use is an infringement and the creator entitled to damages or fees. Actually tracking them down and recovering the money is another matter, but I have successfully pursued a company for infringement. The process is worthy of an entire feature to discuss the techniques and pros and cons, but it is not difficult to recover damages and its worth remembering that ignorance of the law is no defence. Some choose to blame their website designer, but it's the end user of the image that is ultimately responsible. It's not a hard rule I apply, but recovering damages is only worthwhile if the infringer has any money, otherwise I treat it as an educational matter, explaining to the infringer what they have done and helping them understand more about copyright. Some take the view that asking "for the image to be removed" is sufficient. I disagree with this strategy and for one simple reason;

the infringer will simply remove my image and search for another "free" image and steal from someone else, thereby perpetuating the crime. Unless the true value of online image use is appreciated, the infringer will simply continue to steal.

If anyone is in any doubt as to the value of a web image, then a recent success by Getty is worth mentioning. Via the courts, Getty recovered nearly £2000 in damages plus legal fees from an infringer, a company that had used a solitary Getty image on their website without permission.

And finally....

I do get approached by individuals and companies asking to use my creative endeavours for free but almost all are declined. I do give my work away, but most of my "freebies" are select individuals or organisations that have helped or assisted the image creation process in some way. Direct and measurable help such as space on a dive boat, or indirect assistance such as granting access to an otherwise unobtainable subject like a military diver qualifies for something in exchange, often in the form of a print. This may seem harsh, but until the world is a cash-free utopia I have to charge for image use rights, and keep a close



We are at liberty to critique and discuss the use of creative blur, the composition or the choice of subject under 'fair use' but we cannot use this image to illustrate a blog on pufferfish.. Image © JP Trenque

image © JP Trenque. All rights reserved

eye on how much money is earned in exchange for the rights acquired. Occasionally I'm offered a credit or byline in exchange for a picture, sometimes with the claim of "its good exposure". Sadly credits or bylines are not recognised as a valid currency at my bank ...remember, it's a moral right to be identified as the creator and offering to add a credit in exchange for image use is a joke.

Protect your work and ensure it carries a copyright notice, either in the metadata or on the image itself.

Above all, value your work, and the work of others. If you don't value your creative endeavours, why expect anyone else to treat your work in the same way?

Some useful resources:

Fees guide from the London Freelance Guide:-

www.londonfreelance.org

Copyright action:-

www.copyrightaction.co.uk

Simon Brown

www.simonbrownimages.co.uk

Simon runs individual one-to-one courses teaching photographers the business of selling their work. If you would like to start earning money from your creative endeavors but are unsure where to start, then this course may help.

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