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## DO NOT MAKE AN EXHIBITION OF YOURSELF: PLAYING IT SAFE WHEN SEARCHING FOR IMAGES ONLINE



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Picture this. You are right on deadline and clicking frantically in far-flung corners of the Internet to find the picture you desperately need.

You suddenly stumble on the perfect image. One right-click, a quick paste, and your presentation is complete.

But wait. Can you really use that image, that picture, that copy of an Old Master, that photograph of a modern classic? Or are you crossing some legal line into a grey area or, perish the thought, downright unlawfulness?

One of the wonders of the Internet is the never-ending supply of images available at the click of a button. A simple Google search for a favourite artist can return thousands of images of art works and objects, all temptingly

available to be downloaded and reused. This raises a difficult issue. It is an issue that should draw the attention of any lawyer interested in art and the law - how can you be sure that images are safe to use without infringing someone's intellectual property rights?

### PHOTOS IN GALLERIES

Contemporary artists often feel strongly about photographic reproductions of their work. It is not uncommon for a gallery or museum to expressly prohibit

photography of their shows and exhibitions. But if the institution or artist has a website, it is likely to display some of the images that captured the audience's attention. From there, any image could be copied with surprising ease and recycled onto a Facebook page, a blog, or into a piece of advertising.

Our national museum, the Museum of New Zealand Te Papa Tongarewa, demonstrates this approach in their photography policy. Te Papa's policy allows photographs to be taken of the general building and museum visitors, for private and research purposes. Significantly, it expressly prohibits any photography of work on display within the museum, and for commercial use. Policies with this level of restriction are still common among art institutions. But in practice they can be difficult to enforce, guards and attendants cannot monitor every person in a packed room, making sure one is not taking photos meanwhile another sneaks up and touches a painting.

In this age of instant sending of images and words via digital devices and social media, it is a familiar experience to be standing in front of an artwork trying craftily to sneak a photo – with the sound turned off to avoid the shutter noise, of course – before hurrying to upload that photo to a Facebook or Instagram account. Art institutions often benefit from the buzz of awareness that visitors' use of social media can create on their behalf, but have to juggle that awkwardly with the reasons for banning photography (a rather long list which can include intellectual property issues, improving visitor flow, potential damage caused by camera flashes, ...). Though photo-taking rules are usually signposted clearly, visitors can end up confused by being allowed to photograph some things and not others, even within the same room.

### IT IS OLD SO IT MUST BE OK

Most people assume that older art, in which copyright no longer exists, must therefore be freely useable. But a new image of an 'old' work can add a layer of complexity to the issue of whether or not the image is actually free to use. A photographer may well have his or her own set of rights in the reproduced image, having created something new that is also sufficiently original. New versions of old works often pose problems in a commercial context. Take the situation when an employee finds an image online and incorporates it into business material without first checking whether it is subject to licensing restrictions. Depending on the nature of the image, and where it was taken from, the owner might identify that it has not been used in accordance with their prescribed licence terms. And trouble comes calling.

### WHAT SHOULD YOU DO?

A conventional approach, one that ensures lawful use, is to buy a licence for the image you want to use. Art institutions typically have a specific contact person for enquiries relating to image use, and can provide suitably high-quality copies. There is an emerging trend among art institutions to make some or all of their collections available online, openly accessible not only to view in digital form but also to download for reuse and reproduction. This is a seemingly concerted effort to stay abreast of the contemporary issues raised by the proliferation of photographs online. A few interesting and high-profile examples with open-access collections include:

- The Getty Center in Los Angeles
- The National Gallery of Art in Washington D.C.
- Yale University Art Gallery in Connecticut
- The Rijksmuseum in The Netherlands
- The National Portrait Gallery at the Smithsonian Institute

And earlier this year Te Papa made 30,000 high-resolution images from its digital collections available for free download without any copyright or Creative Commons restrictions. Te Papa signalled this significant step as a move to join 'the international pool of open access resources', and intends to continue adding to the number of images available.

A number of online resources exist which can help to make this area of the law more easily navigable. Wikimedia Commons is an online repository making creative content available in the public domain or through free licensing provisions. All Wikimedia content clearly identifies the licence conditions under

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which it can be used, the basic premise being that all content is free to copy, use and modify as long as the author's specified licence terms are adhered to. Normally this is as simple as attributing the content to its author and making any additions or improvements available for re-use under the same conditions. Similarly Flickr, a photo sharing website to which users can upload their own photographs, enables refined searches which look only for photographs licensed under a Creative Commons licence.

### HAVE YOU GOT YOUR LICENCE?

Anyone wanting to find images online for personal or commercial use is likely to encounter Creative Commons licences. They are a simple and recognisable way to ascertain the boundaries within which creative content can be used. A number of high-profile organisations including Flickr, Wikipedia (including Wikimedia), and Google employ them.

The licences come from Creative Commons (creativecommons.org), an American non-profit organisation whose aim is to allow more creativity and sharing than is possible under the traditional notions of copyright, without compromising on lawful protection of originality. They let authors choose conditions of use from a range of copyright licences that best suit the extent to which the author wants to restrict use of their work. There are six distinct Creative Commons licences, described as forging a balance inside the traditional 'all rights reserved' setting that copyright law creates. The broadest and most accommodating Creative Commons licence is the Attribution licence, which lets users do anything with the content provided they credit the original author. The remaining five licences increase in restrictiveness through to the Attribution NonCommercial NoDerivs licence, which is the most prohibitive. It allows users to download and share content as long as the original author is credited, but any form of change to the content or commercial use is proscribed. Creative Commons also enables authors to waive all rights to their work, or place it directly in the public domain.

### IF IN DOUBT, CHECK IT OUT

If you find that perfect image and you are eager to start using it straight away, and if you have searched through an online resource like Wikimedia or Flickr, you should have no trouble working out whether the image is safe to use or not. You can find out how the image is licensed, and understand what, if any, conditions you have to fulfil. Often that just requires a link to the original source and a citation of the author's name in full, though if it is for commercial purposes or you would like to change the image there may be a little more involved.

But if you are having trouble tracking down the right information to confirm how the image is licensed, it is time to abandon that image search and start your search again. Otherwise you are straying into uncharted territory, where the consequences of getting it wrong might just not be worth it. ■