



Virtuoso Legal

Intellectual Property Specialists

31 Harrogate Road
Leeds, LS7 3PD
England

Tel: +44 (0) 844 800 8871

Fax: (0) 844 800 8872

Web: www.virtuosolegal.com

“Intellectual Property lies at the centre of the modern company's economic success or failure”

Lester Thurow : Economist

Trade marks & Brands

Patents & Inventions

Copyright

Designs

Database rights

Data Protection

Licensing and Franchising

Intellectual Property agreements

New Media Agreements such as directors and authors rights

Transactional Intellectual Property

Principal: Elizabeth M Ward BSc (Hons)
Associate solicitor Kirsten Toff BSc (Hons)
Associate solicitor Deborah Niven LLB (Hons)
Practice Manager Elizabeth Lock BSc (Hons)

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Photographs on the net - avoiding licence fees

by Deborah Niven
28/01/2009

Photographs can be downloaded from the Internet for use by the public which are free of charge. Perhaps the most well known source for this is Google "Images" which leads you to a variety of other websites where you can download photographs for free. This is very helpful for businesses which might want to put images on marketing and promotional literature, or use images on their corporate website.

However, beware not all photographs are free to download. Certainly just because an image appears on the Internet, doesn't mean it can be used by anyone. All photographs are governed by the intellectual property right of copyright under the Copyright, Designs and Patents Act 1988. The copyright in the photograph is owned by the author of that photograph i.e the photographer (unless the photographer is an employee, in which case it will be owned by the employer or if the copyright has been assigned to a third party.) The owner of the copyright has the right to restrict others from copying the work or issuing copies of the work to the public. This negative right includes copying or reproducing the work in any material form, including copying to a computer memory.

There are websites which offer photographs for payment of a royalty fee. If you want professional quality photographs often it is better to pay the royalty fee to these companies than download free images. However, a word of warning, there are companies who are using the law surrounding copyright to make money from unsuspecting people. Some websites offer photographs which are advertised as "royalty free" images when actually a fee to use the image is payable. We now have numerous clients who have contacted us after they believed that they (or their website developer), had downloaded photographs from the "royalty free" section of a website, only to find weeks or even months later that they received a letter requesting payment of a large licence fee.

We advise clients to be very careful in selecting images from any website purporting to offer royalty free photographs and to always read the small print. If you do find yourself in the position of receiving a

demand for a licence fee, there are arguments you can make. For instance the company pursuing the licence fee will have to prove that it owns the copyright in the photos or has a contract with the owner to exploit the photographs; rarely can it do this if it is not an honest business. In addition we have found the royalty figure requested is far higher than any reasonable royalty rate which would be paid for the photographs or would be awarded by any court.