



COPYRIGHT INFRINGEMENT - THE THEFT AND PURSUIT OF MY INTELLECTUAL PROPERTY

by STEVE MASKER on JANUARY 11, 2016 in HOW TO, WRITTEN with 0 REPLIES

NOTE: I am not an attorney. The information on this website is for educational purposes only and does not purport to constitute legal advice.

I would suspect that if you're a photographer you can probably rest assured that at least one of your images is being used without your permission. This is known as copyright infringement. Whether the use of that image is beyond the scope of the original licensing agreement, or if it has just been lifted from it's original location - there is a good chance that there's probably at least one of your photos in use somewhere on the web or in some print media without your written authorization.

As a professional photographer I deal with copyright infringement very frequently. Almost every time I search the web I am guaranteed to find at least three infringement cases, and when I do locate them there are a couple of considerations that come to mind before I decide to engage the infringer. But before I get into all of that, I want to start by giving you the tools you need to register and locate your work. Then, I'll discuss when I choose to engage an infringer, how I engage them, common responses & rebuttals, and the professional resources I turn to when I am unable to resolve the matter alone.

Copyright Registration

The first piece of advice I can give is to register the copyright to your images with the U.S.

Copyright Office. Reference my [September 7, 2012 blog article](#) on how to do this for the basic steps. It's fast, easy, and you can create a template for future use.

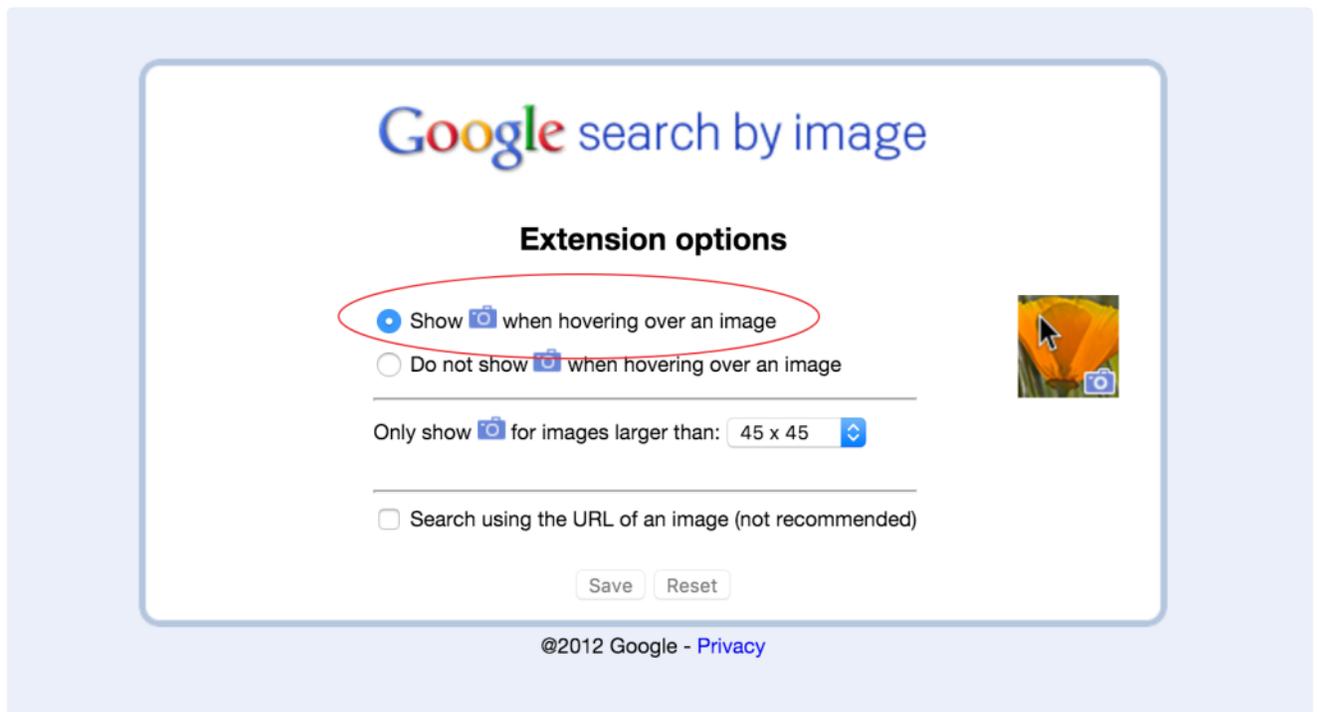
Pro Advice: Take this step and register your work. Yes, it's true: Copyright law does not legally require you to register, and the copyright to an image belongs to whoever depresses the shutter on the camera, creating the image. However, if you want to pursue a copyright infringement claim in court, you are *required* to have your image(s) registered with the copyright office due to the fact that your court case will be heard in Federal Court. You *can* register your image *after* infringement, but you will not be awarded the same types of damages as you would *before* the image was infringed.

For an extra step, register your images individually. If you don't, it may be possible for the defense to argue that they did not damage the entire body of work that the image in question was registered with – and in that case, they may have a valid argument. But if you register the image individually, then there is no question. In either case, the registration fee is \$35. Register within 3 months of the date of creation *OR* before the infringement occurs, and save the paper receipts the U.S. Copyright Office will mail to you.

Locating Infringement

The best tool that I have found to locate copyright infringement is the [Search By Image \(By Google\) Google Chrome extension](#). The extension description reads, "This extension allows you to initiate a Google search using any image on the web. By the Google Images team." With this plugin installed you can essentially search any image anywhere on the web by right clicking on the photograph in question and selecting 'Search Google with this Image.' However, there's an even *faster* way to search using this extension.

Navigate to the Google Chrome extensions pane and locate this extension. Then, choose 'options' and enable the first radial option: "Choose [blue camera icon] when hovering over an image." With this option selected you can now hover your mouse over an image, click the blue camera icon that will appear in the bottom right corner, and a new Google image search results window will open with all of the results. Easy!



Bear in mind that this search process is done image by image. In other words you cannot upload a batch of images to be processed all at once, and in my opinion you really wouldn't want to search this way anyway. There are normally going to be a lot of websites that are going to be returned when you run a search, and many of the sites hosting your image are legitimate (like 500px, Flickr, etc.). The infringement sites are going to generally be mixed in with the legitimate sites, so you really have to do a thorough job scanning through the results for every image you upload.

Pro Tip: If you upload your images to a stock photo agency like Getty, or if you keep bad records, you're going to be SOL, and here's why.. Lets say you upload a picture of a city skyline to Getty Images, and a client (or many clients) purchase a web license to use it on their respective website(s). Unless you maintain accurate receipts of your sales to Getty, how are you going to know that the client you're engaging hasn't legally purchased a license to use that image? You're going to look very foolish engaging someone who was completely within their legal right to use your image simply because you didn't do your research and verify their license to use it. My advice: Pull your images off of Getty. You get peanuts for the sale of your images there anyway, and it's going to become increasingly difficult to monitor infringement cases the larger your stock library grows on their platform (or any stock photo agency). And while we're on the topic of Getty and the web license system, consider this: When your client goes to purchase a web license of your photograph from the archives at Getty for, say, 6 months – who at Getty Images is going out

to that client's website to verify the web license has been renewed or the image removed from their website? No one. That's who. In other words: A client might pay to use your image for 6 months, but in reality they're using it in perpetuity – and a perpetual use license is much more than a limited term license. You're losing across the board, in this case.

Infringement Considerations

Here's the thing.. Ignorance is not a defense. This matters because, often times, I hear from infringers that they didn't know using my image without a license was illegal. And, I imagine from the sheer number of cases I've worked on, this excuse is probably sincere at least some of the time. So, you have to make a few decisions: 1) Whether or not you're going to engage an infringer, 2) What is the outcome you're seeking if you do engage, and 3) What are you willing to do if the outcome of engagement is unsatisfactory. Here is some guidance when it comes to this point in time:

Consider Intent – Did the infringer display a reckless disregard for your copyright by lifting, altering, using, and/or publicly displaying your intellectual property without your written authorization? Did the infringer crop out, alter, or remove your watermark? If you can answer yes to these questions, especially the second, then I would suggest engaging the infringer.

By the way, if the infringer did remove your watermark from the image, there's a specific section of the Copyright Act ([Section 1202](#)) that deals with specifically this.

"Section 1202 of the U.S. Copyright Act makes it illegal for someone to remove the watermark from your photo so that it can disguise the infringement when used. The fines start at \$2500 and go to \$2500 *in addition to* attorneys' fees and any damages for the infringement." – Carolyn E. Wright, Attorney

Consider Profitability – Is the infringer profiting from your image? When you consider this, think about how you personally define profit. Normally, when I consider if an infringer is profiting from my work, I think about monetary profit. But that too many not be as straightforward as you might think. Ad revenue is often based upon clicks, for example. How about the use of your image to market and promote an event? Are tickets being sold for this event? Will the infringer earn revenue from the event, wherein your photograph played a direct role in the marketing or

advertising of the event?

Consider the Infringer – Does the infringer have a propensity to be knowledgeable of copyright law? Like I said earlier, ignorance is not an excuse. And legally, yes – you can go after anyone who is using your image without your permission. But morally, should you engage them? That's up to you. I've seen my images used before on personal blogs or in some other capacity, and I generally let it go. The reason I do is because the infringer is just a kid, or maybe an adult (it doesn't really matter to me either way), who's just looking to use an image to highlight something they're talking about, and to me that's harmless. If I would choose to engage, the tone of my email would be much softer than I use with corporate infringers, and I would explain that the image belonged to me and ask at the very least if they wouldn't mind giving me credit. Quite honestly I have bigger fish to go after, and just to compose the email and figure out who to send it to, and who I am, and that it belongs to me – all in the pursuit of credit just really isn't worth my time. So normally I let it go.

On the flip side: If it's a corporation or a website offering services, etc. etc., I usually engage seeking monetary relief. These infringers, in my opinion, should have a more established respect for copyright law. Often times you'll find mid-size to large corporations have an IT department, which is even more reason to hold them accountable. Employees in the capacity of web development or IT should know, based on their profession and the professional network of their employment, that copyright infringement exists and that images appearing on their client's websites need to be licensed appropriately.

Issuing a Copyright Infringement Claim

As a general rule, people *really, really* don't like it when you accuse them of intellectual property theft. And they *really, really* don't like it when you copy their supervisor, department head, PR manager, IT department and other related parties on the email. But guess what? I *really, really* don't like it when people steal my work. Be prepared for a lot of push back in the response communication (I'll get to common excuses and how to overcome them in the next section). But stand by your claim with some room to flex on your rate, and there's a good chance that you'll be in a position to win. Here's how it's done:

My personal communication preference is through email, so I've created a standardized template

([download it here](#)) that acts as the body of my email. Below is an example with a subject line Intellectual Copyright Infringement Claim.



Stephen Masker <info@stephenmasker.com>

Intellectual Copyright Infringement Claim

Stephen Masker Photo <info@stephenmasker.com>

Wed, Jan 6, 2016 at 11:39 AM

To: [REDACTED]

Mr. [REDACTED],

My name is Stephen Masker and I am a commercial photographer based in Dallas, Texas. I am writing you with respect to one of my photographs, specifically an image of the Dallas skyline photographed on May 17 2015. The image depicts Dallas skyline at dusk with the skyline's reflection in the Trinity River.

It has come to my attention that you are using the above referenced photograph on your company website [REDACTED] without my written authorization.

For reference, the infringement can be found at: [REDACTED]

(Accompanying screen-capture(s) attached in this email).

The image in question is registered with the Library of Congress U.S. Copyright Office, and the unauthorized use of this image is a violation of the Copyright Act of 1976. Further, such copyright infringement is a direct violation of the Digital Millennium Copyright Act and International Copyright Law.

The purpose of this communication is twofold:

- i. Observation of the attached invoice in the amount of \$450 for the unauthorized past use of the image, and;
- ii. Immediate removal of the image from your website.

For reference, the original image is located at my website: <http://www.stephenmasker.com/HERO-PORTFOLIO/18>

(Accompanying screen-capture attached in this email).

A WRITTEN RESPONSE TO THIS COMMUNICATION IS REQUIRED WITHIN 10 BUSINESS DAYS TO AVOID LEGAL ACTION. YOUR RESPONSE MUST ACKNOWLEDGE THAT [REDACTED] HAS NOT BEEN AUTHORIZED TO USE THE WORK AND THAT THE WORK HAS BEEN REMOVED FROM YOUR WEBSITE AND THAT YOU AGREE TO PAY A LICENSING FEE IN THE AMOUNT OF \$450.00 FOR THE PAST UNAUTHORIZED USE OF THE WORK.

Attachments in this email include:

- • Screen captures of the intellectual property in question
- • W9 Form

- • Settlement Agreement and Release
- • Stephen Masker Photography, LLC Invoice

If I have not received proof of compliance from you within ten business days, I will seek the full legal remedies available to me. This communication, including the time and location this email is opened, is being monitored and recorded. Should you fail to comply with the demands above, such failure will be used as evidence pursuant to federal law.

Sincerely,

Stephen Masker



Stephen A. Masker
Photographer

Tel: [972.372.4933](tel:972.372.4933)
Email: info@stephenmasker.com
Web: www.stephenmasker.com
Mail: [Stephen Masker Newsletter](#)

Stephen Masker Photography, LLC.
2221 Justin Rd., #119-409
Flower Mound, TX 75028

This message may contain confidential and/or privileged information. If you are not the addressee or authorized to receive this for the addressee, you must not use, copy, disclose, or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by reply e-mail and delete this message. Thank you for your cooperation.

5 attachments



Dallas skyline with reflection at dusk.png
1897K



Screen Shot 2016-01-06 at 2.20.12 AM.png
641K

 **Settlement Agreement and Release (Stephen Masker Photography).pdf**
2008K

 **Stephen Masker Photography, LLC. - Invoice 36.pdf**
153K

 **W9 Form - Stephen Masker Photography, LLC.pdf**
166K

Another option is to engage over the phone, and sometimes this method can be effective as well. It's an abrupt, immediate confrontation to a presumably unsuspecting infringer and, sometimes, that immediateness and perceived hostility can compel someone to pay you for the infringement. Recognize that anytime someone is uncomfortable on the phone they're going to try their hardest to end the call. Your goal is to seek a monetary resolution to the claim, and to maintain professionalism in the process.

If it's a very large corporation and you cannot figure out who to email about the infringement, calling is sometimes a better option. The phone call usually goes like this:

***Operator:** Hello thank you for calling ABC XYZ, how many I direct your call?*

***Me:** Hi, my name is Stephen Masker and I'm trying to figure out who to contact for an invoice (purposefully vague as to the purpose of the invoice).*

***Operator:** Oh, absolutely. What is the invoice in regards to?*

***Me:** I'm a commercial photographer and it has come to my attention that one of my images appears on your company website without my written authorization, and I need to submit an invoice for its use.*

***Operator:** (pause) ...I see.. (pause). That's probably going be [whomever]. Let me transfer you to his/her line. Just a moment...*

*This is where the operator is usually informing [whomever] of the incoming call regarding the claim.

Whether the respondent answers or not, you now have a source for direct communication with respect to your claim. Since you've put the effort in to call *and* since you're being transferred to the appropriate party, it might be a good idea to go ahead and try to resolve the issue then and there. Whether they answer or you get their voicemail, explain who you are, what you're calling about, how they can help you, and in the case of their voicemail, when you need to hear back from them.

Pro Tip: Follow-up all phone communications with a written email recapping what was discussed. This is why I prefer email communication, because it helps to eliminate ambiguity and

forgetfulness (and/or willful negligence).

Know the Law

Be prepared for every excuse and every response in the book. Here are some of the most common:

"We're a nonprofit."

"We had someone else build the website. We're not liable."

"This is a fair use exception."

"We've removed the image from our website. Thank you for bringing this to our attention."

One of the most thrilling responses I've ever received just came in a few days ago. The respondent's first email began with the sentence "I'm not paying you a dime." I later received a phone call and an apology with an offer to resolve the matter for a lot more than the dime I wasn't going to be paid.

It's important to know copyright law because if you do, you'd know, for example, that nonprofits aren't excused from copyright infringement. While they might not be for profit, you definitely are. If they're a nonprofit that you support, consider reporting the financial value of your image as a charitable contribution on lines 16-19 of Schedule A (IRS Form 1040).

Consider Professional Resources

Lets assume that you're having difficulty resolving the matter on your own. Thankfully there are a few very handy professional resources you can turn to when it comes to reporting a client for intellectual property infringement.

Engaging Lawyers

To practice law in the United States, lawyers must be admitted to the bar by passing a bar examination. If a lawyer is exercising unethical behavior in his or her practice, you can report that attorney to the Chief Disciplinary Counsel's Office using the grievance form found on the CDC web

portal [here](#), or in its print version, [here](#). Usually just the act of threatening a lawyer with an investigation from the state bar investigative committee is enough to get them to change their mind about paying you for the theft of your intellectual property. But if not, it's a resource you're welcome to investigate.

Engaging Businesses

The **Better Business Bureau** (BBB) is a nonprofit organization focused on advancing marketplace trust. The BBB serves as an intermediary between consumers and businesses, and apart of what they do is investigate and handle consumer disputes. Their dispute resolution process will not handle complaints that have gone to court or that are in the process of going to court as the complaint is already being handled by an alternative entity. The BBB will also not handle complaints regarding the practice of law and medical professions as associations exist to regulate those professions. However, a business does not need to be a member of the BBB to use its mediations services, and the mediations services are free to all business and consumers. If the BBB can verify that your complaint is legitimate, it will be a permanent public remark against that business you're engaging.

Pursuing Litigation

If all else fails and you have exhausted all other appropriate forums, you may consider legal counsel. Try to find a decent lawyer specializing in Intellectual Property and discuss the situation with them. There are many legal and professional resources available to them and copyright infringement will certainly be an area that they are very adept in.

Pro Tip: Try not to engage an IP lawyer regarding the unauthorized use of your image on the web. You can write a demand letter yourself; you don't have to be an attorney. The benefit of going to an IP lawyer in this instance is for a Cease and Desist letter & maybe a demand letter. Again, you can write both of these yourself – the only difference is that it's coming from the office of an attorney on officiated letterhead, so it's probably going to bear a little more weight. Know that, with respect to copyright claims regarding the web, your case is not going to go to Federal Court. Federal Courts are way too busy hearing major cases involving drug trafficking law, etc. etc. Yes – the law is the law and you have been wronged, but reserve a federal court case for a very large infraction – not the unauthorized use of your image on a website.

Conclusion

I know that this has been a lot of information to digest, especially for photographers who are new to copyright infringement claims. My hope will be that this is a resource you can reference as needed. Feel free to print this for easier reading, or share it with other photographers who might find it useful. There is so much information I just didn't have time to cover, including DCMA takedown notices and additional rebuttals to common arguments. I hope this was enough to get you started, and I wish you success in the pursuit of your copyright claims.

As always thank you for reading. If you have questions or comments about the content of this article just leave them for me in the comments section below. As always, feel free to contact me on Twitter [@stephenmasker](#) or on Instagram at [MaskerPhoto](#).

Tagged with: [Copyright](#) [Copyright Claims](#) [Copyright Infringement](#) [Intellectual Property](#) [Photo Infringement](#)
[Photographer's Copyright](#)

Previous Post

**PHOTOGRAPHERS: WHY YOU DON'T
DESERVE SUCCESS**



STEVE MASKER

Stephen Masker is a commercial photographer based in Dallas, Texas. He received dual B.A. degrees from the University of North Texas where he studied photojournalism and political science before starting a career as a freelance photojournalist in 2008. After several years of

editorial freelancing across Texas, he returned to Dallas where he established his own photography business in early 2012. In addition to editorial assignments with The Fort Worth Star-Telegram, The Tyler Morning Telegraph, and The Dallas Observer, Stephen also trained under UNT alum and staff Getty Images photographer Chip Somodevilla based in Washington, D.C. and assisted staff National Geographic photographer Michael Yamashita as a photo editor where he processed, archived, and prepared work for publication in National Geographic magazine. Mr. Masker currently resides in the North Texas area and can be contacted at info@stephenmasker.com.

REPLY

Logged in as [Steve Masker](#). [Log out](#)

COMMENT

POST REPLY

NOTIFY ME OF FOLLOW-UP COMMENTS BY EMAIL.

NOTIFY ME OF NEW POSTS BY EMAIL.