

Copyrighting photographs critical to protect work

Photo artists should be very aware of their intellectual property rights, says Mariette du Plessis, a partner in the trademarks department at Adams & Adams.

"Many young photographers do not know when they do and do not own the copyright in their photographs and may allow third parties to make copies of their photographs without their permission and, more importantly, without receiving the required financial compensation."

According to du Plessis, the Copyright Act makes provision for the protection of specific creative and intellectual expressions. One category is called "artistic works" and photographs fall into this group. For a photograph to enjoy copyright protection, it must be original and the result of the photographer's own skills and efforts. Usually, the person who creates the artistic work, ie the photographer, will be the owner of the copyright. However, there are specific exceptions to this rule.

"If a photographer is employed by a magazine or newspaper and takes a photograph during the course of the scope of his/her employment to be published in the magazine or newspaper, the employer will be the owner, but only in so far it relates to the copyright in the photograph as published in the magazine or newspaper. The photographer will be the owner of the copyright of the balance of the copyright.

Change by agreement

"Another exception is when a client commissions a photographer to take a photo and pays him money, then the client will be the owner. Lastly, if a photographer is employed under a contract of service or apprenticeship and takes a photo during the course of his employment, the employer will be the owner of the copyright."

It is very important to know that any of these exceptions can be changed by an agreement between the photographer and the magazine/newspaper, or the client, or the employer. What is very important is that the photographer must make it clear upfront that he wants to retain the copyright in the photographs. Ideally, it should be incorporated in the photographer's agreement with any employers or clients (where possible).

It is always important to mark your photographs to the effect that you own the copyright in them e.g. ©2012 Eunice Driver, to alert customers and the public that you own the copyright and that they cannot be copied or used, without your permission.

Photographers should also be careful about how they display their portfolio on their websites. Ensure that you use watermarks, again to prevent unauthorised 'copying and pasting' by the public. Refer to your copyright prominently on your

website. Indicate clearly that the public can contact you for licenses, or authorised copies, but that you will not tolerate unauthorised reproductions.

"Young creatives are in effect promoting and selling their creativity. In today's digital world, extra precautions should be taken to protect their intellectual property. Adams & Adams supports young creatives and is again the proud sponsor of the Young Creatives Award for the 2012 Loeries," concludes du Plessis.

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