

Access rights and copyright for photographers – November 2009

The photographer, who has taken an image, owns the copyright to that picture. However, if you want to sell the photographs you must check the copyright of the subject and the circumstances in which the picture was taken:

Copyright and Trademarks

Original 'works' (including creative, intellectual, scientific and artistic forms) that qualify for copyright are protected by law, which gives the creator exclusive right in relation to that work, which includes its publication, distribution and adaptation. For most works, copyright lasts for the life of the author plus either 50 or 70 years after their death (the duration may vary from country to country), after which time the work enters the public domain and is no longer protected.

Copyright is infringed by making a copy of an original work, without the consent of the copyright owner. In many cases it is therefore an infringement to photograph a copyright work, however, copyright is not infringed by the incidental inclusion of a copyright work in a photograph. For example, it may be an infringement of copyright to photograph a Coca Cola bottle, but if the main subject of the photo is a café which happens to have a Coca Cola bottle on a table, then the bottle can be seen to be incidental and copyright would not be infringed.

Buildings

It is not an infringement of copyright to photograph buildings in the UK, however the position is slightly different in the US and France.

In the United States many architectural works have copyright (particularly, but not only, those created after 1st March 1989) (*see list at end of this document*).

It is permitted to photograph a property or building in a public place, but permission is required to photograph and publish images of a building protected by copyright and not visible from a public place. In France, the architect (of whatever nationality) is entitled to fees when buildings designed by that architect are photographed. The French Collecting Society ADAGP (www.adagp.fr) may be able to offer authorisations for some architects.

Unfortunately, they represent only about 100 architects in France so in many cases you will have to seek authorisation directly from the architect.

To protect a buildings appearance some owners use trademark law. If a distinctive looking building is used to signify a brand, then images of that building cannot be used in a way that would confuse consumers. For example, the Sears Tower in Chicago functions as a trademark and permission is required if an image is intended to be used in an advert.

However, use of the buildings image for informational purposes such as editorial use, would usually not need the owners permission.

Artwork/graphics

Artists cannot accept photographs of copyright protected artwork and offer them for sale unless you are the artist, or have a signed release form from the artist permitting you to sell the photograph.

We may consider representing pictures that capture works of art, if the piece of art appears in the photo 'incidentally'. For example, when photographing an art gallery the emphasis of the photograph is on the gallery space and not the work of art contained within it.

In the UK it is not an infringement of copyright to take photographs of sculptures and works of artistic craftsmanship that are permanently situated in a public place or in premises that are open to the public.

Logos

Arcaid will accept images that feature logos if they are 'incidental' to the picture. For example, we would accept images of a Gucci shop with its signage, but we would not accept an image taken specifically of the trademark Gucci logo (*but see list at end of this document*).

A photograph of a trademark may infringe the rights of the owner of the mark, but generally only where the photo might give the impression that it was created by or belongs to the trademark owner.

Old photographs

On a case-by-case basis, Arcaid may accept old photographs where the copyright has expired. Copyright lasts for 70 years after the end of the year in which the photographer died. If the photographer is anonymous, the copyright expires 70 years after the end of the year in which the work was published.

Photographing from a public place

If you take a photograph of something from a public place (such as a public street), then that photo can be sold as long as no privacy laws have been broken. If a person incidentally appears in a picture (even if taken from a public place), then you may be violating that person's privacy. For example, photographing a picture of a house from a street, when a person is on their balcony or visible through a window, could perhaps be seen as a violation of that person's privacy.

Prohibited places

Land and properties owned by English Heritage, UK National Trust and the Royal Parks are private property and there are restrictions on the sale of pictures featuring these subjects. We therefore cannot accept pictures taken within the private land or property of such places, unless written permission for potential commercial publication has been granted by the owning organisation. If a photo is taken of such subjects, from a public space (e.g. a public road) then we may accept it, albeit with some commercial sale restrictions.

Photography is generally prohibited in cultural establishments such as: museums (including outdoor museums and exhibits), art galleries, theatres, concert halls stately homes, etc. In almost all cases you must enter into a contract with the owner before being permitted to take photographs. The terms of the contract often state that you cannot make commercial use of the pictures. If you are granted permission to take photographs (intended for commercial use) in a private property then you should ask the owner to sign a Property Release form, to avoid any later claims of breach of contract.

Seemingly public places often also have legal restrictions against taking photographs for commercial purposes. Trafalgar Square, Parliament Square, Covent Garden and Canary Wharf in London, are good examples, as they seem to be public property but are in fact privately owned. Many of these types of spaces have the restrictions displayed on a notice, however if you do not see one, please be vigilant and check before submitting the pictures to Arcaid

We cannot accept pictures of a private property where the property is the main subject of the photograph, unless the images are accompanied with a Property Release Form signed by the owner of that property.

National Security and sensitive locations

Under the Official Secrets Act 1911 it is an offence to take photographs in a 'prohibited place' where this 'might be useful to an enemy'. Such prohibited places include:

- Any military base or defence site
- All munitions stores
- Factories, dockyards, ships and aircraft owned by the Crown

- Any place owned by the Crown that the Secretary of State has provisionally declared as a prohibited place
 - Any road, railway, waterway, gas or electricity work that the Secretary of State has provisionally declared as a prohibited place
 - Any place owned by the Civil Aviation Authority
 - Any telecommunications office belonging to a public telecommunications operator
- Photographs can legitimately be taken of such prohibited places as long as they are for innocent purposes and are not useful to an enemy. However, the photographer may have to prove this in court if summoned.

Prevention of Terrorism legislation may also be an issue when taking photographs of potentially sensitive locations. The Terrorism Act 2000 makes it an offence to take or possess a photograph containing information likely to be useful to a person committing or preparing an act of terrorism. The Act gives the police wide powers to stop, search and detain anyone they reasonably suspect of committing such an offence and it is therefore in a photographers best interest to co-operate if approached by the police, when photographing potentially sensitive locations.

Court proceedings

It is illegal to take photographs in a law court and an additional offence to publish the images. This restriction extends beyond the inside of the building to the surrounding area, or 'the precincts of the court'. The extent of the 'precincts of the court' is not defined anywhere, making it difficult for photographers to judge whether or not they are breaking the law. The authorities often turn a blind eye to photography outside the court building; however, there could be serious consequences if images of someone involved in legal proceedings were to be published even if they were taken outside of the court.

Trespassing

It is illegal to trespass on private land and property; therefore you must seek permission if you wish to photograph from such places.

Harassment

It is a criminal offence to harass another person and you should not harass anyone into taking their picture or whilst photographing another subject.

Wildlife

Under the Wildlife and Countryside Act 1981, it is an offence to 'disturb' some species of animal, bird and insect when they are at or near their nesting place or place of shelter. Please be aware of this when finding a viewpoint to photograph your subject and be particularly considerate when photographing in a Site of Scientific Interest. English Nature, Scottish Natural Heritage or the Countryside Council for Wales may be able to offer advice if in doubt.

Copyright Education - Special Release List

As a service, PACA members have compiled a list of properties and objects that may cause problems if shown photographically. Some of the properties and objects are alleged to be covered by trademark, others by contract (i.e. the terms by which a photographer was granted access to the property). PACA does not have a position as to whether the use (either commercially or editorially) is in violation of any applicable laws, but merely advises users to seek advice from their own legal representation to determine if any additional permissions are required under the circumstances. The list is not intended to be a complete listing of all subjects, but merely those that particular members have brought to our attention.

1. The Cadillac Ranch (sculpture of Pink Cadillac's sticking out of ground like Stonehenge)
2. Interiors of New York Stock Exchange (OK from street- maybe see below), The Pacific Exchange, The mercantile Exchange, Commodities Exchange and Chicago Board of Trade
3. Rolls Royce Car and logo/hood ornament
4. Disney's Epcot Center and Disneyland—including any depictions of the Disney characters
5. The Lone Cypress tree at Pebble Beach, California
6. Hollywood Sign
7. Mystic Marine Museum
8. Williamsburg and it's re-enactment actors/performers
9. Newport Mansions
10. Coca Cola World
11. Rock & Roll Hall of Fame
12. The Mississippi, Delta Queen and Natchez paddle steamers
13. Rockefeller Center – all buildings and sculptures
14. Olympics Athletes, Logo and torch
15. Hollywood Walk of Stars, Chinese Theater
16. Pro Sports teams and insignias
17. Maserati Car
18. Porche Car
19. McDonald's Arches
20. NASCAR images
21. Biltmore (Virginia house) and San Simeon Estate
22. Beverly Hills Sign
23. Busch Gardens
24. Sea World, Florida & California)
25. Universal Studios
26. Oscar award statue
27. The British Concord
28. The Louvre & IM Pei's Pyramid
29. Major league sports
30. Indy 500 race
31. The Grand Ole Opry
32. The TGV (French high-speed train)
33. Chevrolet logo/hood ornament
34. Mustang Horse Logo
35. Thunderbird Logo
36. Barbie – the dolls, name and any product
37. Dartmouth College and the "tower"

38. San Diego Zoo
39. Eiffel Tower at night (the lighting design is copyrighted)
40. Japanese Bullet Train
41. Exterior of NY Stock Exchange (we have heard the exterior is now problematic)
42. Vehicles with recognizable designs (Jaguar, Porsche, Lamborghini, etc...)
43. Emmy and Grammy award trophies
44. Swan Boats in Boston's Public Gardens
45. The Flatiron Building, NYC
46. The Chrysler Building, NYC
47. The New Orleans Superdome
48. Land and properties owned by English Heritage, UK National Trust and the Royal Parks

Possibly also - German Diesel locomotives

Disclaimer: Please note that the information provided in this document is of a general nature and mostly based on UK laws. Legislation varies from country to country so please check the laws relevant to the country in which you are photographing. This document is not intended to be legal advice and is provided without any warranty as to the information contained within it.

References:

- BAPLA
- PACA
- Linda Macpherson