

Copyright Becomes A Dive Industry Issue

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Used to be, only publishers of dive magazines had to be very concerned with copyright issues. The closest a small dive operation, reservation/marketing service, dive travel vendor or equipment vendor came to publishing was an every-other-year brochure or a periodic catalog.

Things have changed; practically every dive-related business is now a significant publisher with page upon page of information about their business on the Internet. And the pages are packed with photographs. More and more photography is being used to sell diving and related products and services. In this image-rich publishing environment, dive business owners now must have a working knowledge of U.S. copyright laws.

But, that shouldn't scare anyone, the rules are pretty simple.

Rule One: A publisher must determine ownership and obtain permission to use anything they publish BEFORE it's published. Ignorance is no defense in a copyright infringement lawsuit and it is not easier to get forgiveness than permission.

Rule Two: If you ignore Rule One using photography created by someone else, and the work was registered with the U.S. Copyright Office prior to the date of the infringement (or within a three month grace period), you might be ordered to pay either Actual Damages and Profit awards or Statutory damage awards, as well as the other side's lawyer's fee, by the courts.

Actual Damages and Profit awards may be less serious than Statutory Damages, which can be as much as \$150,000 per photograph. In addition, legal fees are likely to be running at \$150 to \$300 an hour and more, for both your lawyer and the other side's, and the courts may order you to pay both.

That is a serious liability for a small-to-medium size company. You may not even know anyone who's been involved in a Copyright Infringement Lawsuit. In the past, they have been rare, but there is smoke on the horizon. Photographers are finding more and more cases of image misappropriation and, in frustration, are out looking for intellectual property lawyers.

Now would be a good time for companies using photography to ensure their usage practices are on the right side of the copyright laws.

This is an area where an ounce of prevention is worth a pound of cure, and avoidance of trouble is simple and easy: Obtain written permission to use any photograph BEFORE it's used. Not from someone who has possession of the photo, but from the creator, the copyright holder.

In the old days, photographers would pass a duplicate slide to a dive business as a courtesy after some photography occurred. Some of this is still going on; mostly where the photographer is an amateur. But, no matter whether a photograph is taken by an amateur or a professional, the moment a photograph is created, it is protected by copyright laws, so the same rules apply.

Professional photographers still furnish the majority of the images needed by our industry, and, like everyone, they are faced with escalating costs and must generate enough income from their craft to stay in business. Many are being much more specific about image uses they authorize and fewer images are now passed for free. Important usage specifics are: WHO may use the photography, WHAT it may be used for, and for HOW LONG.

When you consider using a photograph in a brochure or on a web site, be sure to check the usage authorization on the slide mount, the delivery memo or some other written documentation that gives permission for use. If you have none of these, contact the copyright holder directly; don't take anyone's word for it. If you don't have written permission with the specifics of your use, you don't have permission to use an image.

For more information on Copyright Law, refer to the web site of the U.S. Copyright Office. Chapter 5; Section 504 would be a good section to read thoroughly. It is short and easy to understand. See it at <http://www.loc.gov/copyright/title17/92chap5.html>.

Chris Crumley is an advertising, editorial and stock photographer based in Virginia Beach, VA. See <http://www.chriscrumley.com> for additional information.