

beginners

Online Guide to Copyright, Art Law and Fair Dealing

A filtered selection of online material to begin your investigations into copyright and fair dealing ...

CREATIVE DIRECTIONS

http://www.tki.org.nz/r/media_studies/creative-directions/index_e.php

Creative Directions is an intellectual property (IP) resource for media studies teachers developed by the Ministry of Education and the Intellectual Property Office of New Zealand (IPONZ).

ART LAW: IMAGE RIGHTS

http://www.law.harvard.edu/faculty/martin/art_law/image_rights.htm

A concise primer to the Art Law Rights in images by Harvard Law School with plenty of links to illustrative cases.

THE COPYRIGHT WEBSITE

<http://www.benedict.com/Default.aspx>

This is a great website for real world, examples and practical copyright information. It provides general copyright information for educators, students, re-mixers, mash-uppers and confused citizens.

TEACHING COPYRIGHT

<http://www.teachingcopyright.org/curriculum/hs>

EFF's Teaching Copyright curriculum was created to help teachers present the laws surrounding digital rights in a balanced way by getting students to think about Copyright rather than intimidating them.

AN ALTERNATIVE PRIMER ON NATIONAL AND INTERNATIONAL COPYRIGHT LAW

<http://www.copysouth.org/portal/copyright-primer>

What are the basic nuts and bolts (and traps and dead ends) of copyright law? Who owns copyright? What rights do users have? Do international copyright conventions work in the interest of the peoples of the world, and, if not, why not? The intended audience: librarians, musicians, downloaders and book readers, information activists, students, and others who want to know how the copyright system actually works in practice. You will NOT find this primer on the list of texts recommended by the World Intellectual Property Organisation (WIPO) but it is written by lawyer, Alan Story. Published by the CopySouth Research Group.

digital image rights can I use this image?

There are different rules for different countries and different formats
There are different rules for published and digital content
There are different rules if you have entered into a licensing agreement

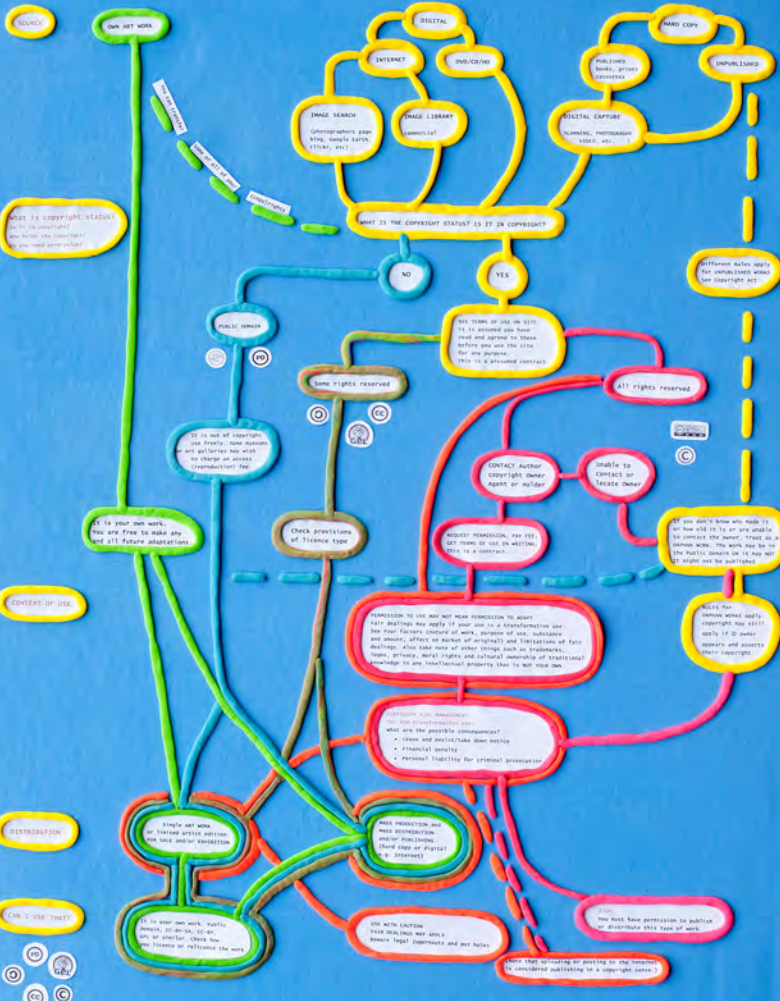
ASK....

- Who made it?
- Is it in copyright?
- How can it be used?
- When was it made?
- What is your source?
- What is your purpose?
- Who is going to see it?
- Where did you 'find' it?
- What is your intended use?
- How do you want to use it?
- Does this fall under fair dealings?
- What is the market for your work?
- What do you want to use? Sound? Picture? Video clip?
- What are the requirements and responsibilities of use listed in the terms and conditions?

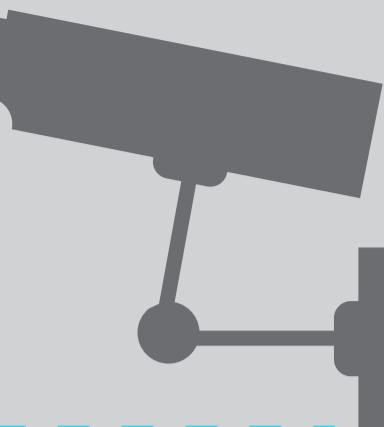
*All content has © unless it states otherwise.
The © in an underlying representation of a
work is not always the same as the original.
Some works have layers of copyright.*

*Try The Digital Image Rights Computator (DIRC)
which guides users through digital image rights.
It includes a summary of when an image may be used
with permission, without permission, and under fair use.
The Digital Image Rights Computator (DIRC) is
hosted by the Visual Resources Association of America.
http://www.vrweb.org/resources/ipr/dirc/page_33.html*

CAN I use That



What's Fair? People Watching People



What consents are necessary for filming or making any art in public spaces?

SURVEILLANCE

From the French for "watching over", surveillance "is the monitoring of the behaviour, activities, or other changing information, usually of people and often in a surreptitious manner." Wikipedia (6 July 2010). The work of French theorist Michel Foucault influences the way we approach the problem of people watching people. Thinking about surveillance and privacy in art practices involves a set of questions around how we behave in public space and how data is collected. We include some examples of artists who are resisting and subverting these tools.

TYPES OF SURVEILLANCE

- Covert surveillance
- Covert human observation: infiltration / informants
- Direct observations: watching / following / listening
- Concealed devices: electronic "bugs" and software
- Computer: data / hacking / cookies / robot takeover / trojans
- Telephone + communications
- Remote/ removed/ automated monitoring (recorded or in real time)
- Postal
- Overt
- Human observations from the public or operatives in public spaces
- CCTV and other recordings
- TV / photo / video / audio
- Biometric fingerprinting, retina, DNA

USES OF SURVEILLANCE

- Broadcast News
- Entertainment
- Interactive play
- As a deterrent to criminal and anti-social behaviour
- Police use surveillance to follow or trace people
- Surveillance stops traffic congestion and speed
- We get a better idea of the urban environment through Google Earth aerial mapping and Street View
- Government / Armed forces use it for military intelligence and espionage. For example at Tangimoana, Waihopai (NZ) is part of the "Echelon" Project a global intelligence gathering programme
- Businesses monitor the behaviour of staff and customers
- Businesses monitor customers choices
- Data collection

WHY SURVEILLANCE?

- Deterrent to criminal and anti-social behaviour (future tense)
- Ability to respond to incidents (present tense)
- Visual and Biometric evidence (past tense)

SURVEILLANCE IN PRIVATE SPACES

- Home security for private property and inhabitants takes two roles:
 - SECURITY – the protection from trespass or access and entry of uninvited persons
 - MONITORING – the actions of baby, children, teenagers and/or elderly

SURVEILLANCE IN PUBLIC SPACES WHO DOES IT?

- Businesses
- Banks
- Shops
- Galleries
- Schools
- Hospitals
- Civic security – CCTV inside and outside buildings
- Surveyors + city planners
- Private investigators
- Thieves / blackmailers / voyeurs / stalkers

How has our idea of public space changed over the centuries?

Is it ok to listen in to a celebrity's cell phone conversation in a coffee shop?

WHAT AND WHERE ARE THE BOUNDARIES OF PUBLIC AND PRIVATE SPACE?

Public Space has historical associations with the Agora in Greece and the Forum in Rome and therefore an association with "free speech" for citizens. A public space refers to an area or place that is open and accessible to everyone. We expect that public spaces have a collective ownership and set of behaviours.

In Nineteenth Century France there was the persona of the flaneur described by Charles Baudelaire as "a person who walks the city in order to experience it." Street (documentary) photography is an outshoot of this philosophy of detached observation.

IS PRIVACY A LEGAL RIGHT?

- This doesn't just effect celebrities chased by the paparazzi. Rights of privacy include protections against:
 - intrusion
 - embarrassment
 - being shown in a false light
 - appropriation

SOME WORDS ASSOCIATED WITH PRIVACY:

privacy / identity / autonomy / anonymity / confidentiality / intimacy / candid / unguarded / paranoia / defamation

There are two overarching LIMITATIONS to the use of any material from public space:

- the MEDICAL imperative – medical information is private at all times in all spaces
- the ETHICAL imperative – stay away from the vulnerable and the young

INTERSECTIONS BETWEEN PUBLIC AND PRIVATE SPACE

- interpersonal communications
- entering private property
- photography
- communications to the public

BREACH OF PRIVACY:

The NZ Broadcasting Standards Authority says "that the person [must] be identifiable beyond their intimate friends or family before it will find that the privacy standard has been breached."

Do we have public space personas?

Is it ok to photograph strangers on the street?

Have inhibitions increased or decreased?

TRESPASS

Public and Private space are "property" issues so there are social and legal limitations to what we can do.

- There are two types of trespass
 - against chattels
 - against property

Trespass against property includes infringements such as nuisance and interference. These are decided by a "restatement" test which assesses the seriousness of the infringing action.

Trespass against chattels includes electronic trespass. Historically electronic trespass related to spam. Under trespass law the requirement for trespass against chattels is for some physical contact to the chattel. Electronic signals qualify as "contact" especially if the action was intentional.

Factors important in trespass

- Intent
- Negligence
- Misrepresentation

ELECTRONIC TRESPASS

These days electronic media mean that public and private spaces overlap each other in spaces we can't even see like the wireless network. What are the legalities of accessing 'open' wireless networks? Wi-Fi services advise customers to treat all transmissions as if they were a public broadcast. They advise customers to take responsibility for encryption security. We might intercept wireless:

- accidentally and incidentally (hot spots)
- purposefully (trolling/scanning for Wi-Fi)

This means that use of your neighbour's Wi-Fi qualifies as trespass to their chattels, or as Ned Snow puts it: "Failure to protect property does not imply consent to use property."

WORDS USED TO DESCRIBE INTERCEPTION:

Unauthorised access / exploration / exploitation / attack / intrusion / invasion / theft

INTERCEPTION OF COMMUNICATION

Eavesdropping requires the consent of one or more parties to be recorded. You can only capture people's communications if they are within normal range of hearing and only if speech is unprotected in public spaces.

Cell phones can be intercepted remotely and even turned on remotely and used to record face to face conversations. However, electronic interception and Privacy Acts place limits on the collection and use of data. The Privacy Act NZ and PATRIOT Act in United States lift restrictions on government interception of private communication in transit and subsequent storage and outline the limits around these exceptions.

Communications containing written text, including txtng and email, have "authors" and depending on the length and quality of communication may qualify for Copyright, therefore forwarding or using without permission is an infringement, especially if doing so contravenes privacy rights.

"When you go out in public you give up some of your rights of privacy. This can be a wonderful thing for an artist, but not so much if you are on the other side of the lens." (Elsa Lankford, 2007)

ARTISTS

INSTITUTE FOR APPLIED AUTONOMY "Routes of Least Surveillance" (2001). The IAA invented a programme called isee where visitors could map their journey around New York to avoid CCTV cameras.

KEN GOLDBERG "Demonstrate" (2004). Goldberg installed robotic web-cameras over UC Berkeley's plaza, the camera and its controls were accessible to anyone on the internet.

DENIS BEAUBOIS "ATM Family Portraits" (1996). Beaubois invited his family to pose in front of an ATM machine and then asked the bank for the photograph.

JEROME SCEMLA "Citizen Cam" (2009). A movie about a fictional tv-channel in Reykjavik which broadcasts sequences taken from surveillance cameras throughout the city.

SURVEILLANCE CAMERA PLAYERS "Waiting for Godot" (1996). Surveillance camera players staged performances via subway CCTV that they recorded and redistributed.

JULIA SCHER "Welcome to Securityland" (1995). Scher places art galleries under surveillance.

SOPHIE CALLE "La Filature - The Shadow" (1981). Calle asked her mother to pay a private detective to track her every move.

GUY BEN-NER "Stealing Beauty" (2007). Ben-Ner filmed a family sitcom in IKEA stores.

PRIVACY and the DIGITAL IMAGE

Privacy protects individual rights and information. Any use of the following could lead to infringement of a person's rights to privacy:

- *Disclosure of private correspondence or personal finances (income, tax returns, etc)*
- *Disclosing sexual relationships*
- *Making public others' family disagreements or details of someone's home life*
- *Recording (from a public space) using high tech equipment which enables sight and sound beyond the normal range, ie. shot-gun microphone or cameras with telephoto or zoom lenses. (This does include the paparazzi)*
- *Taking photographs on private property (trespass may also apply)*

intrusion

Intrusion is an activity which occurs in a private place or where there is an expectation of privacy, hence, hidden cameras and microphones cannot be used in situations where there is an expectation of privacy (for example a public telephone booth). The activity must also be considered "highly offensive" to the average person. Expectations of privacy extend to certain elements of accident scenes such as when the accident victim is discussing their condition with the medical personnel at the scene but if the accident has occurred in a public place there are still no general expectations of privacy.

media

The NZ Broadcasting Standards Authority says "that a person [must] be identifiable beyond their intimate friends or family before it will find that the privacy standard has been breached." For example, you may not like me telling my friend that your grandmother was a pirate with sexual health problems. If I did this, your grandmother is within her rights to sue me. Privacy Law also applies to individuals and to the media. When covering news events, the media must be careful not to disclose embarrassing private facts or place people in a false light. Privacy law also covers the area of misappropriation, which protects a person's right to control public uses of his or her name, image and likeness.

facebook

FaceBook operates a buy out privacy policy, which means that by default FaceBook privacy settings are open and NOT private at all. As these settings change daily, our advice is to be very careful about what information is uploaded to FaceBook and to treat ALL information you upload as public.

facts

You may disclose 'facts' in the public sphere which are legally obtainable, e.g. within the phone book or an electoral roll.

workplaces

Non-public areas of the workplace are "private". Some private spaces such as supermarkets are considered to be a public environment.



DIGITAL sources for all MEDIA

1.

Learn how to read copyright statements and terms of use agreements

Net Know-How is a good place to start: <http://www.netknowhow.ca/nkhcrimg.html>

all rights reserved

The general rule for all images found online is learn the conditions under which the original photograph or image was licensed and follow the provisions or terms of use associated with it. For example, was the image from a commercial image library or professional photographer's site? "Free" in "Royalty Free" is not so, often it means you have to pay a one-off fee.

public domain

In theory Public Domain images are those which can be adapted, translated and derived from. Art works and other public domain objects or material often reside in cultural heritage institutions which often have a reproduction by fee policy. Sometimes this will be a payment to cover the costs of the reproduction. In some instances the fee may be waived if permission is requested and subsequently granted.

creative commons

Creative Commons licences offer an open and viable alternative to all rights reserved copyright options. In addition the flexibility and range of potential licences offered by Creative Commons allows for future engagements with digital media forms we cannot even anticipate. The Creative Commons collection of videos and comics offer simple introduction to licences.

2.

find your image

Many images are available via photo-management sites. Flickr, for example, automatically gives its community CC options for assigning to their images when they are uploaded. Remember a "public" photo, in Flickr, is not the same as an image in the Public Domain. This has to do with privacy settings and Flickr protocols; who the photographer allows to either share or view their photo. As a sign of courtesy you can use the Flickr comments field to tell the photographer how you have used their image. There are sites that allow use for educational and non-commercial uses in their Terms and Conditions, plus specialised sites that deal with specialist areas in art history.

sources of "free" images

- **Flickr Commons** – <http://www.flickr.com/commons> (check the licence of the contributing group or individuals)
- **Creative Commons** have a page of search services – <http://search.creativecommons.org>
- **Wikimedia Commons** – <http://commons.wikimedia.org>
- **Morguefile** – <http://www.morguefile.com>
- **Wikipedia Public Domain Images** – http://en.wikipedia.org/wiki/Wikipedia:Public_domain_image_resources
- **Pics4learning** – <http://pics.tech4learning.com>
- **Web Museum** – <http://sunsite.nus.sg/wm>
- **Electronic Frontier Foundation** "Public Domain Frequently Asked Questions" – <http://www.teachingcopyright.org/handout/public-domain-faq> This page also has links to sources for image libraries and other public domain materials such as Library of Congress.
- **Tama Leaver** "Sources of Legally Reusable Media" – <http://tamaleaver.pbworks.com/Sources+of+Legally+Reusable+Media> Includes links to a lot of sound material.
- **Bigfoto** – <http://www.bigfoto.com/>

3.

create a customised image search

follow these four easy steps for creating your own advanced search of Google for free media

1. Click on "Advanced Search" next to or below the Google Search Box.

2. Click on the "+ Date, usage rights etc" link. This will open up a further set of choices.

3. The box you are most interested in is the "Usage Rights" one. Choose one of the "free to use" options. For more assistance, double click on "Usage rights". This will take you to a help page.

4. Fill in other boxes with the information regarding the images/content you are searching for.