

LibraryCrunch

Service for the Next Generation Library - A Library 2.0 Perspective by Michael Casey

Creative Commons, Copyright, and the Murky Middle

by MICHAEL CASEY on APRIL 20, 2008

I know from the number of emails I've received that quite a few readers are following the Creative Commons issue I've been having with the image titled "[50 Reasons Not to Change](#)". I reposted this image several weeks ago here on my blog and also in [my Flickr stream](#). I saw the image [here](#), though the writer on that site admitted that it was not their creation (the blogger says, "*I first ran across this in New Mexico in 1991 very apropos at that time RE: women in the highway and environment departments. The specific source is in deep storage (still) but I'm hoping the creator will recognize it and let me know*"). Regardless that the image was not theirs, they claimed a [Creative Commons BY-NC-SA](#) license, which simply means you cannot use the image for commercial purposes but you can alter or change it, so long as you attribute back to the image owner and do not change the use license. I also like CC's statement regarding the required attribution: "*but not in any way that suggests that they endorse you or your use of the work*".

So, I received a notice from Yahoo (owner of Flickr) that the image had received a copyright challenge and Yahoo [removed the image](#) from my Flickr stream. Following their guidelines I submitted a counter-notification, stating that the copyright challenge had been mistaken and my use of the image was proper. After submitting the claim in its correct format I received this notice:

Hello,

Please be advised that pursuant to 17 U.S.C. § 512(g)(2)(B) of the United States Copyright Act (the "Copyright Act") Yahoo! has timely provided the counter-notification submitted by you to the complainant (or, if applicable, to the complainant's designated agent) in this matter.

Provided Yahoo! does not receive notice that the complainant has filed an action seeking a court order to restrain you and/or your company, as applicable, from engaging in the allegedly infringing activity, Yahoo! intends to advise you that the material may be reposted, as appropriate on or about May 2, 2008.

Regards,

Copyright/IP Agent, Yahoo! Inc.

copyright@yahoo-inc.com

c/o Yahoo! Inc.

701 First Ave.

Sunnyvale, CA 94089

band night

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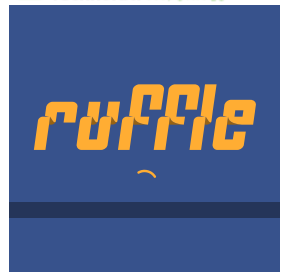
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What is this?

Search for an item in libraries near you:

Enter title, subject or author

Now I will wait to see if a restraining order is issued regarding use of the image. I have also asked Yahoo/Flickr to please repost the image with the

comments and hits that were already present, though I will be surprised if they can do this.

There have been several frustrating things about this episode. First and foremost seems to be the complainant's misunderstanding of CC licensing. Attribution can simply be a link back to the source, though the complainant seems to want to control hosting, claiming several times that I should have only linked to the original image and not my reposted copy. Yet the Attribution-Noncommercial-Share Alike 3.0 license clearly permits me to "*copy, distribute, display, and perform the work*" and "*to make derivative works*".

Watching all of this has forced me to conclude that I don't particularly care for the Creative Commons license right now. I think I'll either need to claim full copyright on my works, or I'll do what Lori Reed and Tony Tallent have started doing, which is to permit [full and free use](#) of some of my works — I'll have to do this on an image-by-image basis as there are many photos that I do not want reposted or reused.

By claiming full copyright I require any re-users to ask me before proceeding. That way I'll know who is using my photos and how they are being used, yet I will still be able to permit reuse. I come to this conclusion because I see a lot of images out there with CC licenses but I also see a lot of complaints about use — "you didn't attribute it to me" or "you didn't attribute it properly".

I'm not so sold on this middle ground of Creative Commons anymore, which is frustrating because I really had high hopes for it as an alternative to straight copyright. I think CC creates a murky legal middle that seems designed to give flexibility but ends up creating confusion. If I want credit for a work then I will permit reuse under current copyright law but require attribution as I decide fit — you ask me and I say yes and here's how... If I want it to be usable by *anyone* then I make it public domain and I don't have the right to come back and say "but you didn't stroke me enough with a great big bold attribution".

And maybe that's what it comes down to. I don't make any real money off of my photos but I wouldn't want any of them used in a negative way — especially the many photos I have posted of family and friends. Yet I have many other photos that I could see being useful for anything from poster design or signage to the "before" images for photography students looking to improve their work. I've even had several of my photos used for history books, online advertising, and greeting cards. The publishing houses and companies contacted me via email and we discussed how the images would be used. But each and every time I got to see *exactly* how my photo was going to be used and I had the final word on use. I don't see a lot of my photos in that middle area — images that I'd be happy to see used elsewhere without my approval. Ego? Sure. But it's also about my work and how I want it used. Creative Commons lets me say noncommercial but it doesn't (and cannot) have a requirement that permits uses that only I deem proper. But old fashioned copyright does.

So, as time permits I will be moving more of my photos over to Lori and Tony's great new [Free Use Photos](#) group. But many of my other photos (whether they can be considered good or not) will remain under traditional copyright. If someone wants to use them then they can ask me (and I thank the many people who have taken the time to ask).

Feel free to differ — many will. I'm even open to changing my opinion on the matter. But for now I'll just wait and see how *this* whole Creative Commons

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problem resolves itself.

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Michael Casey 04.20.08 at 5:32 pm 1

Also, you may be interested in this Flickr group:
<http://www.flickr.com/people/publicresourceorg/>

Kurt Johnson 04.20.08 at 9:38 pm 2

So, I need a point of clarification. Is the copyright claim from
Yahoo/Flickr regarding your 'reworked/recreation' of the original work
OR the original work?

If it is your work, I understand your frustration. If it is the original work,
then the copyright claim seems valid. Meaning, the source of the original
work is unknown to your source.

*I saw the image here, though the writer on that site admitted that it was
not their creation (the blogger says, "I first ran across this in New
Mexico in 1991 very apropos at that time RE: women in the highway and
environment departments. The specific source is in deep storage (still)
but I'm hoping the creator will recognize it and let me know").
Regardless that the image was not theirs, they claimed a Creative
Commons BY-NC-SA license*

The point being, despite now knowing the original creator of the image,
they claimed CC for the image. Not appropriate. Their inappropriate CC
licensing of 'stolen' image does not give you any more validity for a CC
licensing claim on Flickr.

I assume by the tone of your posting, the image in question is a derivative
work, based on the original image but created by you. Assuming this is the
case, I wish you luck in sorting out the frustration.

**Creative Commons, Copyright, and the Murky Middle
: Stroke** 04.20.08 at 9:51 pm 3

[...] Continue Reading [...]

Michael Casey 04.21.08 at 7:06 am 4

Hi Kurt,
The image which I copied and displayed was not changed from the
version I saw on the other website. I provided a link back to the site from
which I found the image (attribution). At that point, the other site owner
filed a copyright violation claim with Flickr/Yahoo.

My point is that I complied with CC licensing requirement and that
Flickr/Yahoo should not have pulled the image from my stream.

My other point was that the person making the copyright violation claim
was not the originator (and had not altered) the image — it would be like
me going after you for reposting the image I reposted! The person making
the copyright claim had simply reposted an image she found elsewhere

and she had not added any value or altered the image in any way and therefore she had no basis to even claim a copyright violation.

andrew 04.22.08 at 11:54 am

5

This is an interesting case. For me I like CC because I could care less if someone uses my photos for their own entertainment or for non-commercial use. While I'd like credit for them I don't even really concern myself with that. The only thing I don't want is a commercial/for-profit organization using my work. I don't think your new source would have any protection against that but maybe I'm misunderstanding.

Kurt Johnson 04.22.08 at 7:09 pm

6

Michael-

I agree. Your use of the photo is very appropriate. You should have no problem with your use and attribution.

The only one who could claim copyright infringement from your use would be the original creator of the picture. It sounds like this is not who filed the complaint.

It looks at this point, the problem is not CC, but the lack of integrity and/or knowledge from the person who filed the claim. It seems silly they even posted a CC license for a work he/she did not create.

Episode 39 tonight | Uncontrolled Vocabulary 04.22.08
at 11:16 pm

7

[...] Creative Commons, Copyright, and the Murky Middle [...]

Jason Griffey 04.23.08 at 1:21 pm

8

Michael: has the post that you took the photo from been altered? In looking at it, I don't see any creative commons license anywhere. Right now the site says "Please note that this image has a copyright, for non-commercial distribution with attribution. ", but that's NOT the same as a CC license...indeed, that is barely a license at all.

That said, they don't appear to even be able to justifiably claim copyright on the image either, so they are STILL clearly in the wrong. I'm just curious if it has changed, or if I missed something.

Michael Casey 04.23.08 at 1:23 pm

9

Hi Jason,

If you go to the link and scroll down you'll see she has a CC image posted with the CC wording.

<http://13c4.wordpress.com/2007/02/24/50-reasons-not-to-change/>

Uncontrolled Vocabulary #39 - It works, but who cares? | Uncontrolled Vocabulary 04.23.08 at 11:06 pm

10

[...] Creative Commons, Copyright, and the Murky Middle (Library Crunch) Of Librarians, Photography, Copyright & Creative Commons (Travelin' [...])

My mistake...Ad Block was removing the image!

In _that_ case, I think you're completely in the right, Michael. The original blogger of the image had no right to assert ANY license, copyright or CC on the work they did not create. You were acting in good faith, and are legally in the right. IANAL, but I play one in my library.

A 04.24.08 at 11:43 am

12

Personally, I like to have control, so I don't put much out on the web-ernets. Why? Because really it's just one big, electronic Wild West where almost anything goes, and I don't have the time or money to fatten a lawyer's pockets over valuable, but mostly inconsequential content. Copyright laws, which have been re-written by Congress under the watchful eye of various industry lobbyists, are to blame because they aren't flexible enough. Additionally, the amount of time it takes for them to expire is ridiculous! I think copyright should last 30 years, maybe with an option to extend that by 10 years. That gives a person and/or decendants enough time to make money off of their creations.

nirak.net - Musings of an LIS Student » Too much on my mind, not enough about what I need to write about

13

04.24.08 at 9:09 pm

[...] people have posted about Creative Commons and the murky space it occupies between public domain and [...]

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