



To All Broadcast Clients

February 12, 2007

Beware of Images Found on Internet

There are millions of images and photographs available for download from various Internet websites, and stations may be tempted to use these images in print advertising and/or on their websites.

You should be aware, however, that the easy accessibility of these images does not mean that they are in the public domain and available for your unrestricted use. Rather, unless explicitly stated otherwise, these images are protected under U.S. copyright law, and the right to reproduce and control how they are used rests exclusively with the individual creator of the work or a publisher. Unauthorized use of these images in any manner, most particularly in advertising or on your station's Internet website, will therefore likely constitute copyright infringement, for which your station can be held liable. This applies even where the image is not accompanied by the "©" symbol or other copyright notice.

These concerns apply also to images available from websites such as Flickr and Creative Commons, which permit free downloads of some images for *non-commercial purposes only*. These images may therefore not be available for use in connection with advertising and other forms of commercial promotion or exploitation without a fee.

To avoid being confronted by a claim of copyright infringement, all station staff responsible for promotional activities and website posting should be reminded that

all images downloaded from the Internet for use in advertising, on the station's website or in any other manner are subject to copyright, including images found through Google Images. Station staff should also be instructed to ascertain, to the greatest extent possible, the identity of the owner of the particular image through an Internet search and, where possible, contact the owner to request a license or other form of authorization to use the image.

Another option is to obtain a license from an online stock image service such as Comstock, BananaStock, or other image libraries, as well as online reseller services such as Jupiterimages. These services provide legal access to large catalogs of images for a comparatively minimal fee. The advantage of using such a service is that they eliminate the risk of a copyright infringement claim. Moreover, the fee charged by these services is far less than the cost of a typical settlement for a copyright infringement claim, and is negligible when compared to the potential liability for copyright infringement – potentially \$150,000 per infringement claim plus attorneys fees – should a claim be fully litigated.

If your station receives a letter or phone call from a copyright owner alleging infringement, we recommend that you contact our office immediately. In the event of a phone call, ascertain as much information from the caller as possible

about the alleged infringement and let them know you will respond as soon as possible.

Assuming the allegations have merit, and depending on the specific circumstances, it may be possible to reach a settlement with the owner of the copyrighted work. Such a settlement will typically involve payment of a fee to the copyright owner, in exchange for a license to use the image and a release of the station from all claims of infringement the copyright owner may have. As noted above, however, the cost of such a

settlement will far exceed the cost of using a stock image service or otherwise obtaining a license from the owner prior to use, and in some cases, the owner may not be willing to settle at all.

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If you have any questions regarding the legality of using images downloaded from the Internet, we encourage you to contact our office.

Leventhal Senter & Lerman PLLC

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact Louis Levy (202-416-6748), Suzanne Head (202-416-1082) or any other attorney in our office.