

# COPYRIGHT SEMINAR

Colorado Broadcasters  
Association

November 10, 2022



LAW OFFICE OF  
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# AGENDA

1. Copyright ©

2. Fair Use

3. Q & A



# COPYRIGHT ISSUES

*We the People* of the  
insure domestic Tranquility, provide for the common defence  
and our Posterity, do ordain and establish this Constitution

*Article I. All legislative Powers herein  
granted shall be vested in a Congress of the  
United States, which shall consist of a Senate and  
House of Representatives.*

*The Congress shall have Power...  
To promote the Progress of Science  
and useful Arts, by securing for  
limited Times to Authors and  
Inventors the exclusive Right to their  
respective Writings and Discoveries.*

## 17 U.S.C. § 106

A copyright owner has the ***exclusive right*** to do and authorize others:

- (1) to **reproduce** the copyrighted work in **copies** or phonorecords;
- (2) to **prepare derivative works** based upon the copyrighted work;
- (3) to **distribute** copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to **perform** the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to **display** the copyrighted work publicly; and
- (6) in the case of sound recordings, to **perform** the copyrighted work publicly by means of a digital audio transmission.

## Copyright Infringement

Exercise of any of the exclusive rights of the copyright owner without either:

- Permission (“license”), or
- Justification under a recognized defense (i.e., fair use)



# Real Con\$equences

## 17 U.S.C. §504

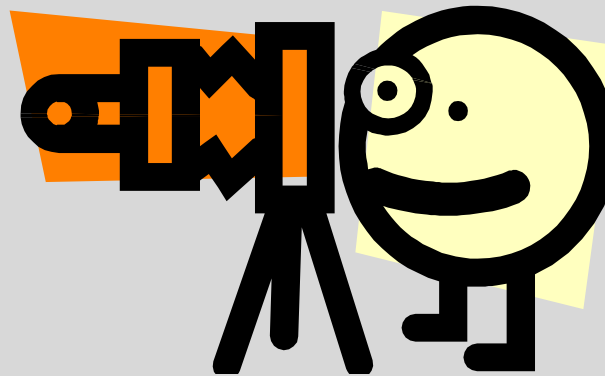
[A]n infringer of copyright is liable for either

- (1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or
- (2) **statutory damages**, as provided by subsection (c).

### (c) **Statutory Damages**

- (1) . . . a sum of **not less than \$750** or **more than \$30,000** . . . .
- (2) In a case where . . . the court finds, that infringement was **committed willfully**, the court in its discretion may increase the award of statutory damages to a sum of **not more than \$150,000**.

## Pitfall: Photographs







Copyright is automatic upon creation.

With photos, usually the photographer owns the copyright (*not* the subject of the photo).

## Using another's content

**facebook**



Instagram

**flickr**



TikTok

**tumblr.**



“No permission? Pay me.”

**twitpic**  
Share photos on Twitter

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## Fierce Earthquake Strikes Haiti

Haiti's strongest earthquake in more than two centuries rocked the Caribbean nation, causing dozens of deaths and fears that many people have died. (See related article.)

Jan. 13, 2010 1:59 pm ET



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### Earthquake hits Haiti

The impoverished nation is shaken by a powerful, deadly temblor

106 of 121

Jan 13 2010 7:15AM LISANDRO SUERO / AFP/Getty Images

A Haitian woman is helped from the rubble of a damaged building in Port-au-Prince after a huge earthquake measuring 7.0 rocked the impoverished Caribbean nation of Haiti, toppling buildings and causing widespread damage and panic, officials and AFP witnesses said. A tsunami alert was immediately issued for the Caribbean region after the earthquake struck at 21:53 GMT. **Details: 3 million are affected.**

Image from [www.washingtonpost.com](http://www.washingtonpost.com), downloaded 4/14/10

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http://www.washingtonpost.com/wp-dyn/content/gallery/2010/01/12/GA2010011203712.html

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### Major earthquake hits Haiti

This gallery collects all of our photos of the crisis in Haiti, starting with the most recent images and going back to the first photos that emerged after an earthquake hit the impoverished nation Jan. 12.

Jan. 12

A Haitian woman is helped from a damaged building in Port-au-Prince after a huge earthquake rocked the impoverished Caribbean nation.

Lisandro Suero/AFP/Getty Images

**Related Content:**

- Gallery: World reacts to Haiti earthquake
- Special Report: Earthquake devastates Haiti
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
AGENCE FRANCE PRESSE,

Plaintiff,

-v-

DANIEL MOREL,

Defendant,

-v-

GETTY IMAGES (US), INC., et al.,

Counterclaim Defendants.  
-----X

**USDC SDNY**  
**DOCUMENT**  
**ELECTRONICALLY FILED**  
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**DATE FILED: AUG 13 2014**

10-cv-2730 (AJN)

MEMORANDUM &  
ORDER

ALISON J. NATHAN, District Judge:

On November 22, 2013, following trial, a jury found that Agence France Presse (“AFP”) and Getty Images (US), Inc. (“Getty,” and together with AFP, “Defendants”<sup>1</sup>) had willfully infringed Daniel Morel’s copyright in eight photographs taken in the aftermath of the January 2010 Haiti earthquake. The jury awarded Morel \$303,889.77 in actual damages and infringers’ profits and \$1.2 million in statutory damages. The jury also found that Defendants had



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## Why?

02-21-18

**Here Come The Copyright  
Bots For Hire, With  
Lawyers In Tow**

**Do you know where your images are  
being used online?**

Start monitoring your images in less than 5 minutes



# The Fair Use Defense

17 U.S.C. § 107 factors:

- The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- The nature of the copyrighted work;
- The **amount and substantiality of the portion used** in relation to the copyrighted work as a whole; and,
- The effect of the use upon the potential market for or value of the copyrighted work.




Was publication of this photo fair use?

## The XENA Series Reboot Was Happening, Then It Wasn't, But Now It Is...Is It?

by Lee B. Golden III — July 8, 2018 in News

21 VIEWS / [Share on Facebook](#) [Share on Twitter](#) [t](#) [e](#) [r](#)



If you watched television a lot and grew up in the 90's, there's a good chance that co-star of **Marvel's Agents Of S.H.I.E.L.D.**, and the upcoming STARZ series horror reboot, **Ash VS. The Evil Dead**, Kiwi actress **Lucy Lawless** came under your radar then. Playing the landmark television title role for the hit series, **Xena: Warrior Princess**, **Lawless** was integral in establishing a female presence in action entertainment as an original villainess/anti-hero in an epic story that culminated Greek mythology with a worldly scope of fantasy, action and spiritualism.

The series was created and developed by Renaissance Pictures executives Robert Tapert and Sam Raimi at the time, in the company of R. J. Stewart and John Schulian with **Lawless** appearing opposite actor Kevin Sorbo in his own series, **Hercules: The Legendary Journeys**. Eventually, **Xena: Warrior Princess** found its audience 1995 and became an Emmy award-winning hit on the small screen throughout its run until the Fall season of 2001.





## Justices debate whether Warhol image is “fair use” of photograph of Prince



By **Ronald Mann**

on Oct 14, 2022 at 9:50 pm





## Denver judge dismisses Jan. 6 participant's lawsuit against news anchor

By MICHAEL KARLIK [michael.karlik@coloradopolitics.com](mailto:michael.karlik@coloradopolitics.com) Mar 29, 2022 Updated Apr 9, 2022 0



## MORE LIKELY A FAIR USE:

1. **The story is about the copyrighted work itself - *i.e.*, you are reporting on the furor caused by the posting of a video or photo of an incident, rather than using the video or photo to illustrate a story about the incident**
2. **Only a small excerpt is used**, and/or work is shown in context.  
If a photo - it is smaller, lower resolution than original
3. Photo was not taken by a professional photographer

## LESS LIKELY A FAIR USE:

1. Content used to enliven report
2. It is dominant element of your report
3. It was created by someone in the business of selling to news organizations
4. It is used in promotion or advertising
5. It is reused from your archive with another report

## Fair Use Takeaways

- Content you find online is **not free**, nor without risk
- Don't use other people's original content without a license (written permission)
- **Providing attribution** to the creator of the content **won't cut it**
- **Sharing a link** to the site from which the content came **won't cut it**

Questions ?

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