

One of the frequent questions our readers send us relates to protecting images from inappropriate usage and enforcing your copyrights. It seems that underwater photographers take very little time to actually learn the process of properly registering your copyrights (actually most photographers are all in the same boat). The answers for copyrights are actually pretty straightforward, but the approach you chose to protect your images from being stolen and used online can be a bit subjective.

So, here is the Cliff Notes version of everything you need to know about copyrights and protecting your images.

Just a disclaimer - the following is not intended to be legal advice, and I am not a lawyer (and don't even play one on TV).

The process and concepts are rather simple:

1. **Ownership of Copyrights:** You obtain the copyright to your images the moment you depress the shutter on your camera (unless you have contracted otherwise as a "work for hire"). You own your copyrights, even when you do not actually register the copyrights. Additionally (and subjectively) a work is only copyrightable if it holds artistic merit described as "original work of authorship".

2. **Registering Copyrights:** Only when you register your images with the US Copyright Office at the Library of Congress are you able to benefit from the complete protection and enforcement against copyright infringement.

You can copyright any image, but the idea or concept behind it is not copyrightable. As described in the copyright law: "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work."

Registering Unpublished Images: Protections are enforceable from the date of registration.

Registering Published Images: Must be registered within 90 days of being published in order to be protected from the date of publishing, otherwise protections kick in from the date of registration.

Registration Process: The Copyright Office is phasing out the old registration form process and slowly migrating the process online. You will complete the registration form online, and send in copies of your images along with a filing fee. The old form VA has been replaced by the new online form CO. [You can find the form and instructions here.](#)

Registration Tip: The fee for registering is \$45 per registration - not per image! You can register as many images as fit on one CD for the same \$45. What I normally do is batch copy all the images from an entire time period (it used to be yearly, and then quarterly, and now is sometimes almost monthly) or one specific shoot if the images are being published soon thereafter (I like to register images before they are published), and send in a CD and form with a clear labeling of what the images are. For example: "Images from 2008", "Underwater Images From Q3 2008", "Images from Dec 2008", "Underwater & Land Images from Indonesia Dec 2008".

3. **Copyright Infringement & "Fair Use":** Once registered, an infringement is punishable for punitive damages up to \$150,000 per image plus legal fees. Of course the actual amount of damages depends on the scenario and usually is directly proportionate to the profit generated from the infringement. In other words, don't expect to sue a small website or publication with little to no revenue and expect much. On the other hand if a major news outlet or advertiser infringes on your copyright, you have significant leverage.

The exception here is "fair use". This is a very subjective matter when it comes to general content, and a little less so with images. Copyrighted materials that is considered for fair use is described in the law:



"...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include: 1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; 2) the nature of the copyrighted work; 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and 4) the effect of the use upon the potential market for or value of the copyrighted work."

4. **Copyright Notice:** Once registered, your images' are fully protected against copyright infringement with or without the copyright notice (©). However, if the image does have the notice and the infringer removes it, there is an additional penalty. A best practice currently is to ensure that your copyright notice is embedded in the EXIF data of the image.

5. **Orphan Works:** Recent legislation regarding "[Orphan Works](#)", or images whose copyright owner cannot be located after a reasonable search, allows publishers to use these images free of copyright protection as if they were in the public domain. There was a lot of controversy over this new legislation during 2008. Your best bet to protect your images from being Orphaned is to include the copyright in your EXIF data, note it on the image itself, and also include your name in the image filename.

Online Tracking & Enforcement: The Orphan Works legislation has spurred the need for photographers to ensure that it is easy to be tracked back to your images and for publishers to track down copyright holders. While there are many photo marking and encryption services on the market, I have been very impressed with a new service from [Copyright Registry](#) (as far as I know this is a unique service). As official as this service sounds, it is indeed a private firm, in fact a division of a stock photo agency. The site offers both free and paid services for photographers and for publishers. If you shoot professionally or simply have a large amount of images online and you want to enforce your copyrights, the short video below explains how their service works.

Final Words Of Wisdom...

Having your work discovered by an editor or potential buyer trumps the potential of some small time website stealing your images. If saved at the right file size (all online images should be saved at 72dpi and limit the largest pixel dimension to a reasonable size that balances visual impact and security), your images couldn't be used for much else than web-use anyway, so you don't have to worry about magazines or advertisers stealing them - it just won't happen. Check out [my website](#) and you'll see that I chose a format that displays my images as large as possible - I want editors and buyers to bask in the glory of my creative vision, versus wasting my time worrying about the small time copyright infringers. I feel it is penny wise and pound foolish to do anything otherwise. So an image gets "stolen" and used as peoples' desktop backgrounds or on their blogs. Would I like photo credit? Sure. Do I care? Not in the least. Do I profit from this approach? As Sarah Palin would say, "you betcha!". Copyright © Jason Heller