

Getty Images Sued for Allegedly Seeking Licensing Fees for Photographs Available for Free Public Use

Getty Images, a well-known stock photo agency used by many news and publishing outlets, has been sued in the Southern District of New York for allegedly seeking licensing fees from individuals and corporations for the use of photographs previously made available for free public use. A number of other stock photo agencies have also been named in the suit.

Carol Highsmith, a decorated photographer whose work has been featured on United States Postal Service stamps, donated her works—consisting of various pictures of landmarks taken across the entire country—to the Library of Congress, allowing the public to reproduce the photos for free, so long as the work was properly credited.

In 2015, a nonprofit organization run by Highsmith received an email from Alamy, a stock photography website similar to Getty, accusing her of copyright infringement and requesting that a payment be negotiated for the use of one of Highsmith's own photos on her website. After receiving this letter, Highsmith then learned that a number of other stock photo agencies—including Getty—were not only charging licensing fees for Highsmith's photographs, but also accusing individuals and entities of copyright infringement and attempting to negotiate settlements for such infringement even though these agencies had no lawful right to either pursue a licensing fee or infringement claim for the use of the photographs.

Highsmith's suit alleges that Getty has illegally held itself out as the copyright owner of nearly 19,000 photographs, has threatened users of her images (which, again, are available to the public for free) with litigation, and has collected licensing fees for the use of photographs that it does not own. While the suit claims there is no agreement or contract between Highsmith and Getty, Highsmith claims that Getty fails to identify her as the author of the photographs and instead seeks copyright licensing fees for the use of the photos.

Similar claims are made against Alamy, which purportedly placed around 500 of Highsmith's photographs on its site, unlawfully seeking licensing fees and failing to identify Highsmith as the author of the work. In its letter to Highsmith's organization, Alamy demanded a settlement payment of \$120.00, even though it allegedly lacks any rights to the photo used by Highsmith on her website.

By failing to identify the proper author and copyright owner of the photographs, Highsmith argues that the stock photo agencies have committed intentional violations of the Digital Millennium Copyright Act ("DMCA"), by providing false copyright management information. Copyright management information under the DMCA

includes the title and information identifying the work, the name of the author and copyright owner and identifying information about the author and copyright owner, along with the terms and conditions for the use of the work. Highsmith is seeking monetary damages totaling millions due to the number of photographs appearing on the site, each one constituting a separate violation of the DMCA.

While the lawsuit has just been commenced and there has been no ruling as to liability, this lawsuit calls attention to stock photo agencies and their potential ability to obtain money for works they do not own.

If your institution has questions or concerns about this topic and you would like further information, please email Karen I. Levin at klevin@cullenanddykman.com or Ariel E. Ronneburger at aronneburger@cullenanddykman.com.

Practices

- Intellectual Property

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