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PHOTOJOURNALISM THE FALLEN

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UNDERSTANDING
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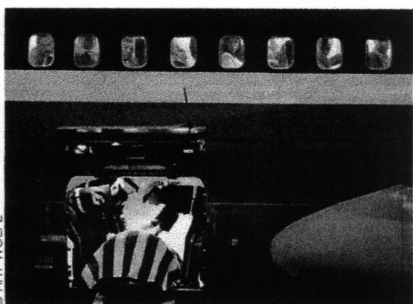
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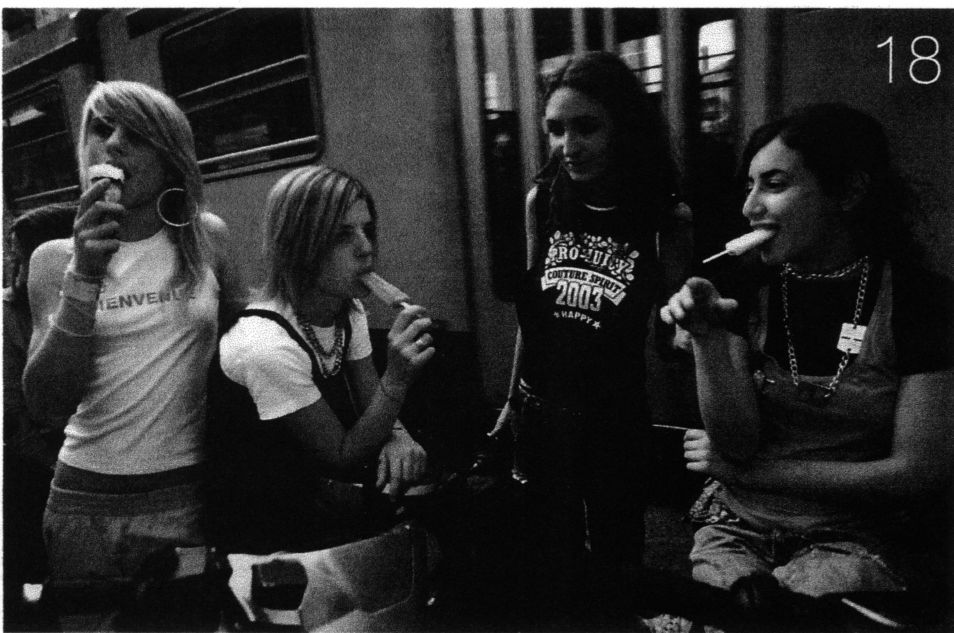
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Can't Buy Me Image: A copyright dispute arose from the image at right by famed photographer **Harry Benson**. Benson shot the portrait, called "John Lennon in Chicago," while the Beatles were on their last concert tour of America in 1966. In 1997, Benson saw a painting (far right) by artist Elizabeth Peyton reproduced in *The New Yorker* magazine, with a story about Peyton's renderings of rock icons. Though it had been transferred to another medium, Benson recognized the image as a copy of his photograph. "I feel mugged," he said at the time. He hired a lawyer, and the case was reportedly settled out of court for an undisclosed sum.



© HARRY BENSON



PHOTO BUSINESS

Safe Pix

Eight things photographers need to know about protecting their copyright. **By Michelle Bogre**

In our brave new world of royalty-free imagery and illegal music downloads, it's easy to think of photography as a commodity with little value. In fact, the ease with which digital technology permits the copying, sharing, and transmission of original images has made it all the more important to protect your photographs from illicit use, whether due to outright theft or contractual misunderstandings. Yet copyright—your legal ownership of the photographs you create—is a less complicated matter than it used to be, and than you probably think.

1. You do not have to register your photograph for it to be copyrighted. Copyright protection occurs at the moment an original work is created. Legally speaking, work is "created" when it is fixed in a tangible medium such as film, paper, or a digital camera's image file.

2. Registering your photographs is a good idea. Although you don't *have* to register a photograph with the U.S. Copyright Office to copyright it, doing so can be legally beneficial. Your photo must be registered, for example, before you can sue someone for copyright infringement. If you've done so in a "timely" fashion—meaning before, or within three months after, the infringement—you may be eligible for statutory damages of \$30,000 to \$150,000 per infringement, plus your attorney's fees, if you prevail in a lawsuit. (If you register the photo later than that, any legal settlement will be based on a hard-to-prove estimate of what you might have earned, and won't include attorney's fees.)

It's easy to register your photographs. You'll find all the registration forms (Form VA for photos) and instructions at copyright.gov. You can also call the Copyright Office's 24/7 Forms and Publications Hotline at (202) 707-9100 to request that forms be mailed to you. The registration fee is \$30 per image or collection of images, so include as many as you can at one time. Just make sure you don't mix published and

unpublished images, and that all the images you submit on a given disk were taken or published in the the same year.

3. You can't copyright an idea or a concept. Copyright protects the *expression* of an idea, not the idea itself.

4. Copyright lasts a long time. For works created after 1978, copyright protection lasts for 70 years after the death of the creator. So if you make an image when you are 20 years old and live to be 90, your copyright lasts 140 years.

5. Selling a print does not mean you have sold your copyright. Copyright is actually a bundle of five exclusive rights: The right to reproduce the work in any form; the right to make derivative works, such as a painting based on a photograph; the right to distribute the work; the right to perform the work, if applicable; and the right to publicly display the work. As copyright holder you control all these rights, and you can either *license* or *transfer* them individually or collectively. A license can be exclusive (meaning other parties can't use the photo) or nonexclusive, but is always of a limited duration. A transfer of rights means giving a right away permanently, and must be in writing. So selling a print or even giving someone your negatives does not affect any of your five exclusive rights.

6. Watch out for the words "Work Made for Hire" in a contract. "Work Made for Hire" is the only exception to the rule that you own what you create. If you accept a "Work Made for Hire" assignment, the person or company that hired you owns the copyright to anything you produce. To qualify as Work Made for Hire, though, such an assignment must be given in writing and signed by you. But watch out for that phrase in a contract or a deal memo—and if your client isn't willing to strike it, think twice before signing.

7. Everything is negotiable. Though clients may tell you that a contract is not negotiable, most of the time you *can* negotiate a better deal. The trick is to find out what a particular client really wants or is concerned about. For example, sometimes clients demand "all rights" only because they don't want you to sell to their competitors.

8. Downloading music for free is almost always copyright infringement. Just because everyone does it doesn't mean it's legal. The Web is not exempt from copyright law. It's copyright infringement to download songs—or photographs—without permission!

Chair of the photo department at Parsons The New School for Design, Michelle Bogre is an attorney who specializes in copyright issues.