

# Photo Credit

## Respecting copyrights on social media.

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Fashion and portrait photographer Rachel Scroggins was surprised to discover that a picture she had taken of supermodel Karlie Kloss appeared on Kloss's Instagram account without crediting her as the photographer. Scroggins was even more alarmed when the same picture was apparently downloaded from Instagram and used on the websites of more than a dozen fashion magazines from *Vogue* to *Harp-er's Bazaar*—again without mentioning Scroggins or compensating her.<sup>1</sup>

Today, by taking a quick screen shot on a mobile device, an Instagram or Facebook user can capture another user's photograph and send a copy of it around the world. Consequently, professional photographers like Scroggins continue to find their works published on the Internet without proper attribution and, more significantly, without compensation. Courts have just begun to address this thorny issue.

**Agence France Presse v. Morel.** When a 7.0-magnitude earthquake shook the island country of Haiti in 2010, Haitian photographer Daniel Morel was one of the first people on the ground capturing images of the devastation. Morel posted his photographs to Twitter via his account with Twitpic, a now-defunct photo-sharing website. Twitter user Lisandro Suero copied the photos and posted them on his Twitter feed, without credit to Morel. Shortly thereafter, Agence France-Press downloaded eight pictures from Suero's page and later licensed the photos to American photography agency Getty. Within 24 hours of Morel's initial post, his pictures appeared on the CBS Evening News, CNN, the *New York Times* website, and in dozens of newspapers around the world. Initially they were all credited to Suero and then later to Morel.<sup>2</sup>

The district court denied AFP's motion to dismiss Morel's claims for direct copyright infringement, contributory infringement, and Digital Mil-

lennium Copyright Act violations.<sup>3</sup> The court rejected AFP's argument that Twitter encourages and permits broad reuse of content, such that any other Twitter user has a right to reuse copyrighted material.<sup>4</sup> In other words, the court said that media companies do not obtain rights to use photos simply because they appear on social media.

On November 22, 2012, a jury awarded Morel \$1.2 million in statutory damages.<sup>5</sup> Morel's legal battle, which lasted nearly four years, is seen as an important victory among professional photographers.<sup>6</sup>

**The Selfie.** More complicated questions arise when a self-portrait, otherwise known as a selfie, is taken of a group of people or someone other than a human being. A monkey in Indonesia made headlines when she borrowed photographer David J. Slater's camera and began taking pictures of herself.<sup>7</sup> The photographs soon went viral and were featured on Wikipedia, prompting the U.S. Copyright Office to offer its two cents on the question: Who owns the copyright to a picture taken by a monkey? It issued an updated guidance compendium clarifying that for a work to be copyrightable in the United States, it must have a human author.<sup>8</sup> Even though the camera belonged to Slater, he did not create the work and could not claim copyright holder status.

Similar ownership issues arise when a group of people takes a selfie. During the 2014 Academy Awards, Ellen DeGeneres persuaded celebrities including Julia Roberts, Bradley Cooper, and Brad Pitt to pose with her in what became the most retweeted post in Twitter's history.<sup>9</sup> The Associated Press attempted to get Ellen's permission to publish the photo, but attorneys for Bradley Cooper asserted that Cooper holds the copyrights to the photo because he actually snapped it.<sup>10</sup>

**Conclusion.** To avoid copyright

infringement, users should take extra steps to ensure that the person or source from whom they have received a photograph has the authority to grant permission for its use. Just because a photograph appears on the Internet or social media does not mean that the copyright holder has given permission to third parties to publish it. As Morel demonstrates, failure to conduct due diligence may have significant consequences. That is, unless a monkey took the picture. **TBJ**

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### Notes

1. Rachel Scroggins, *What Happens When a Supermodel Violates Your Copyright*, PetaPixel (Aug. 5, 2014), <http://petapixel.com/2014/08/05/happens-supermodel-violates-copyright/> (last visited Oct. 16, 2014).
2. *Agence France Presse v. Morel*, 769 F.Supp. 2d 295, 300 (S.D.N.Y. 2011).
3. *Id.* at 308.
4. *Id.* at 303.
5. James Estrin, *Haitian Photographer Wins Major U.S. Copyright Victory*, N.Y. Times (Nov. 23, 2013), <http://lens.blogs.nytimes.com/2013/11/23/haitian-photographer-wins-major-u-s-copyright-victory/>.
6. *Id.*
7. Danny Cevallos, *When a monkey takes a selfie ...*, CNN (Aug. 18, 2014), <http://www.cnn.com/2014/08/08/opinion/cevallos-monkey-selfie-copyright/>.
8. Rule 608, *Compendium of U.S. Copyright Office Practices: Third Edition*, U.S. Copyright Office, available at <http://copyright.gov/comp3/docs/compendium.pdf> (stating the U.S. Copyright office will refuse to register a copyright claim where "the work lacks human authorship").
9. Philip Bump, *Paging Bradley Cooper's Lawyers: He Might Own Ellen's Famous Oscar Selfie*, The Wire (March 3, 2014), <http://www.thewire.com/politics/2014/03/paging-bradley-coopers-lawyers-you-might-own-ellens-famous-oscar-selfie/358758/>.
10. *Id.*



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