

Micheál O'Dowd Dear Sirs,

14/07/2011 11:32:47



Micheál O'Dowd
<micheal@ohod.ie>
14/07/2011 11:28

To: copyrightreview@djei.ie
cc: s.hedley@ucc.ie
Subject: Fair Use & Innocent Infringement

Dear Sirs,

Attached herewith is a form of letter used extensively by Getty Images, and has been sent to dozens of businesses that we are aware of.

It appears the letter originates when a business uses an image for which Getty Images hold copyright. Generally this is an innocent infringement, and often pictures are taken from what people consider to be the "public domain", i.e. Google images or the like. We are not aware of any proceedings ever being initiated by Getty Images. We understand some businesses have settled with Getty Images.

You might note the form of letter, and the invoice raised and consider same in light of your deliberations on fair use and innocent infringement. In particular we would urge that in Irish Law there should be a requirement that parties should be put on notice of the infringement and fail to act expeditiously before a cause of action could accrue, particularly in the case where such infringement was innocent and did not cause a loss to the rightsholder.

Regards,

Micheál O'Dowd

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Micheál O'Dowd
O'Hanlon & O'Dowd Solicitors

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Crestfield Centre,
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Co. Cork.

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Getty Images demand.pdf



micheal.vcf

24 June 2010

Legal Department


**Re: Unauthorised Use of Getty Images' Photograph
Reference Number 6445864 - 988617**

It has come to our attention that you are using an image (or images) represented by Getty Images for online promotional purposes. We have searched our records and have not found a valid license for the use of the image(s).

As you may know, use of an image without a valid license is considered copyright infringement in violation of the Copyright and Related Rights Act of 2000 in Ireland, the Copyright, Design and Patents Act of 1988 in the UK and equivalent laws in other jurisdictions entitling Getty Images International to seek legal remedies in any appropriate court.

The following action must be taken within 21 days of the date of this letter:

If a valid license has been issued for the image(s) and use, please provide license information by emailing LicenseComplianceUK@gettyimages.com. This includes the sales order or invoice number of the license purchase. If the image(s) was licensed under an alternate company name (dba) or in the name of a third party, such as an advertising agency, please provide the company name and phone number. The subject line of the email must include your company name and reference number as they appear on the attached settlement demand.

If you cannot provide proof that the image(s) has been properly licensed, you must cease and desist use of the image(s). In addition, payment for the attached demand amount must be received within 21 days of the date of this letter. Ceasing use of the image(s) does not eliminate liability for payment of fees due. Payment details are included on the demand, and additional payment information is provided below.

If you desire continued use of the image(s), please contact our License Compliance team at the number listed below. A new license must be issued for the image(s), or use of the image(s) must cease by 15 July 2010.

Please read the attached Frequently Asked Questions for more information related to this matter. If you do not respond within the timeframe provided, we will presume that you do not intend to do so and will take action accordingly. For questions, or to settle this matter, please contact LicenseComplianceUK@gettyimages.com or dial 1800 931 876 in Ireland and 44 207 544 3448. If you believe you have received this letter in error, please contact us immediately.

Getty Images is committed to investigating licensing infractions not only to protect our interests, but also to protect the interests of the photographers whom we represent. We are committed to protecting the intellectual property rights and livelihood of the artists whose work we license. We must enforce our licensing conditions rigorously and feel that your cooperation regarding this matter should be promptly forthcoming. This letter is without prejudice to Getty Images' rights and remedies, all of which are expressly reserved.

In an effort to resolve this quickly, Getty Images is offering a one time discount of 10% on this settlement demand if payment is received by 15 July 2010

The total amount due, less the discount is 1 089,00 € EUR.

Sincerely,
License Compliance Team, Getty Images



gettyimages®

116 Bayham Street London NW1 0AB UK
Tel 0800 279 9258 www.gettyimages.co.uk

27 August 2010

130559 0825 0 000789 000001 005024/006264

Legal Department
[REDACTED]
[REDACTED]

Ireland

**Re: Unauthorized Use of Getty Images' Photograph
Reference Number 6445864 - 988617**

You were previously notified of your unauthorized use of imagery represented exclusively by Getty Images. Copies of our previous letters are attached for your reference. To date, the case has not been resolved and we have not received payment or any proof of a valid license.

As already notified, unauthorized use of our images constitutes copyright infringement in violation of the Copyright and Related Rights Act of 2000 in Ireland, the Copyright, Design and Patents Act of 1988 in the UK and equivalent laws in other jurisdictions entitling Getty Images International to seek legal remedies in any appropriate court. Please be aware that copyright legislation provides for strict liability, meaning that you can be found liable for infringement regardless of your level of knowledge of the infringement or your intent.

Getty Images is willing to offer you one last chance to resolve this claim through payment of the attached settlement demand. Ceasing use of the image does not eliminate liability for payment. Payment details are included on the demand and in the previous letters attached.

Your failure to make payment immediately will result in escalation to our Legal department and the possibility of legal action being commenced for damages exceeding the amount presently being offered by way of settlement.

For questions, or to settle this matter, please contact LicenseComplianceUK@gettyimages.com or call 1800 931 876 in Ireland or 44 207 544 3448. Please also contact us immediately if you believe you have received this letter in error.

Sincerely,

License Compliance Team
Getty Images



Case ID: 988617 Reference No: 6445864

Settlement Demand

Reference No: 6445864
Case No: 988617
Settlement Demand Date: 24 June 2010
Source Code: UUPW

Legal Department

Ireland

Payment terms: Due On Receipt

Details



200500987-001 (RM) Last will and testament document with pen

Collection: Riser
Photographer: Mark Weiss
Usage: Web - Corporate or promotional site
Placement: Secondary page
Territory: Ireland
Release information: No release, but release may not be required.

Image price:
1 000,00 € EUR

Notes: This settlement demand does not represent an approval on the part of Getty Images for the unauthorised use or uses of this image identified to date and referenced herein. The payment of this settlement demand together with your immediate cessation of use of the image (unless you have separately licensed this image for future use), including uses by your owners, directors, employees, agents, clients and/or licensees, in any and all media, will release you from any legal claims by Getty Images relating solely to this identified past infringement.

Total

Subtotal:	1 000,00 € EUR
IRL VAT STD	210,00 € EUR
Total Due Upon Receipt	1 210,00 € EUR

Please include remittance with payment



Report Data:

Name: [REDACTED]

Home Page: [REDACTED]

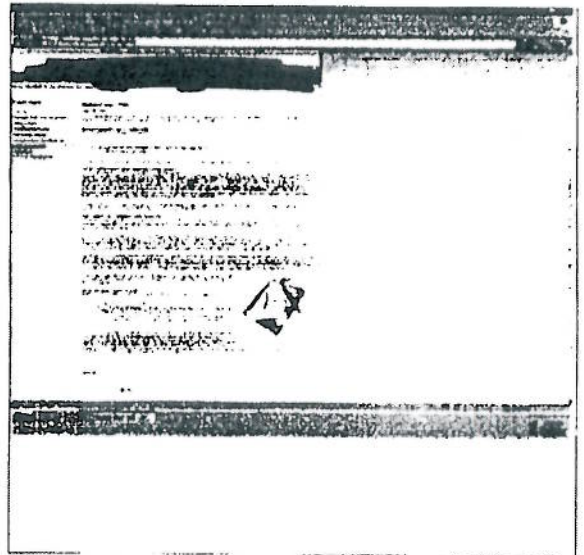
Contact Details: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
E-mail: [REDACTED]

Remarks: E-mail: [REDACTED]

Catalog Image No.
200500987-001



Screen Capture



Remit To

Getty Images International Ltd
Attn: Accounts Receivable - Unauthorised Use
116 Bayham Street
London, NW1 0BA

Please Remit Bank Transfers To
Bank Of America N.A. - Dublin
Account Code: 54209030
Sort Code: 990061
Swift Code: BOFAIE3X
IBAN: IE81 BOFA 9900 6154 2090 30

Reference No: 6445864
Case No: 988617
Settlement Demand Date: 22 June 2010

Payment terms:	Due On Receipt
Subtotal:	1 000,00 € EUR
Tax	210,00 € EUR
Total	1 210,00 € EUR



Frequently Asked Questions

If you believe that you have received this notification in error, please email us at LicenseComplianceUK@gettyimages.com or dial 1800 931 876 in Ireland and 44 207 544 3448. Please be sure to provide the reference number found on your settlement demand, as well as your name and company contact information.

Who is Getty Images?

Getty Images represents some of the world's best photographers and filmmakers. Getty Images has contractual agreements with its photographers to represent certain Rights-Ready and Rights-Managed imagery exclusively and to license the use of these images to companies all over the world. The images Getty Images provides can be found in magazines, websites, and billboards, marketing collateral, product packaging and mobile devices, to name only a few. Getty Images, on behalf of itself and its represented photographers and artists, is committed to protecting its imagery from unauthorised use.

Somebody else created my company's website.

Getty Images understands that a third-party designer, former employee, or intern may have been contracted to design and develop your company's website. However, if no licenses from Getty Images exist, the liability of any infringement ultimately falls on the company (the end user) who hired that third-party, employee, or intern. Getty Images recommends that your company contact the third-party, employee, or intern to see if any licenses from Getty Images surrounding the specific use of the images in question exist. Please provide an invoice number or sales order number and Getty Images will research as appropriate.

We have removed the images and now consider this matter closed.

Getty Images appreciates the removal of its represented images from your company's website. However, removal of the images in question solves only part of the issue, as Getty Images will continue to require full payment of the demand presented to settle the matter and avoid further escalation.

We found these images on the Internet or the Getty Images website and thought they were Royalty-Free.

Although Royalty-Free images from Getty Images are different from Rights-Ready and Rights-Managed images, a license must still be purchased for Royalty-Free image use.

We didn't know these images were represented by Getty Images and had to be licensed.

Unfortunately, despite the fact that your company may not have known, this does not excuse your company's unauthorised use, nor does it relieve you of the obligation to pay the demand to settle Getty Images' claim of copyright infringement. If no licenses exist, you received the benefit of using the images in question on your company's website without permission from Getty Images or its represented photographers. Since the unauthorised use already occurred, payment for that benefit is necessary.

We purchased these images from a company we found online as part of a web template.

As the end user of Getty Images' imagery, you are ultimately responsible for ensuring that you have obtained the appropriate rights to use the imagery. That means that if you acquire imagery from a web template provider or other such company, you are still liable for copyright infringement if that provider or other such company did not properly license the imagery for your use.

