The Selfie Hits Prime Time

Three events led me to the idea behind this issue’s editorial on the selfie.

I only recently took my first selfie; it was a liberating experience and I immediately shared it with my children who laughed and asked, “Really, Mom, your first selfie?” And I thought I was being so cool.

After all it was not long ago that I had become familiar with the expression selfie. And yet the new and fifth edition of the Official Scrabble Dictionary — this dictionary that rules at international Scrabble tournaments — may, in the very near future, be including the word selfie. So obviously this was a word that had been around longer than the lasting effect of a single tweet. (Again, I apologize if I am trying to be cool in this analogy.)

But I do think the intersection between the selfie and copyright hit the big time when Ellen Degeneres tweeted a selfie that got retweeted three million times. Associated Press (AP) asked Ellen for a license to use this selfie and Ellen granted the license. Why did AP ask for permission? And why did Ellen grant it? And so the online debate began. And I noted that several bloggers and newspapers were writing about ownership of this most famous selfie.

Selfie Copyright Issues
First, is there copyright in a selfie? A selfie is a spontaneous photograph taken with a smartphone and an outstretched arm. It is a photo taken of oneself and sometimes oneself with one's friends. The selfie in question was a photograph of Ellen, Bradley Cooper, Meryl Streep, Kevin Spacey, Julia Roberts, and others, taken at this year's Academy Awards ceremony. For the selfie to be protected by copyright, it must be an original work with a minimal degree of creativity. That creativity could be composing a shot, selecting the lighting and angle, and framing the image. The threshold of creativity is quite low in copyright law and even a selfie would likely qualify as a copyright-protected work.

Second, who owns the work? Copyright usually resides in the person who takes the photograph or, in this case, selfie. Although the image is often being referred to as Ellen's selfie, Ellen did not in fact take the image. To get the best image possible, Ellen handed her phone to Bradley Cooper, who was then holding the phone and pressed the button to take the image. Arguably, Ellen was behind the genius of the image and directed it to be made, so even though Bradley technically took the image, Ellen was its creator. This of course leads to the further discussion as to whether the image belonged to the Academy and whether Ellen, under the U.S. work-for-hire-provision, took the image as part of her duties for the Academy—in which case the Academy would own the selfie. Without knowing the exact nature of Ellen’s relationship with the Academy, I would guess that Ellen was an “independent contractor” and owns the copyright in the works she created that evening.

Third, if a work is all over Twitter, is it necessary for AP or others to obtain permission to use the selfie? Three million people retweeted the selfie. Did they ask for permission? No.
But that is because the whole purpose of tweeting is to be retweeted. You do not need permission to retweet an image. However, if you use a copyright-protected image like Ellen’s selfie other than by retweeting it, you likely do need permission (unless of course you argue fair use, but then that is a topic for a different editorial).

I am always happy when copyright becomes a broad and popular discussion and is not limited to creators protecting their works or students or librarians using copyright-protected materials. And I am also happy to share this general analysis of a copyright issue—and to share with others how the application of copyright depends on the specific circumstances in each situation. Thanks for the teachable moment, Ellen, and for orchestrating that selfie.

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