

New Zealand Government Open Access and Licensing framework (NZGOAL)

Guidance Note 6: Licensing and use of images containing identifiable individuals or protected property

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Summary

NZGOAL Guidance Notes

- 1 NZGOAL is the New Zealand Government Open Access and Licensing framework. NZGOAL Guidance Notes either explore issues raised in NZGOAL or address operational or technical issues that arise in practice. All references in this Guidance Note to NZGOAL are to version 2 of NZGOAL.

What this Guidance Note covers

- 2 This NZGOAL Guidance Note covers two topics:
 - (a) First, it alerts agencies to two situations in which they need to be careful when *licensing* their copyright works for re-use, to ensure they don't breach third party rights. Those situations are:
 - (i) licensing of images that show identifiable people (e.g., agencies need to be careful not to breach protectable privacy interests); and
 - (ii) licensing of images that copy another person's copyright work (agencies need to be careful not to infringe that person's copyright).We can call this first topic the **Licensing Scenario**.
 - (b) Second, it alerts agencies to the risks of *using* images they find on the Internet which have been licensed under a Creative Commons licence or CC0¹ but which contain an identifiable person or show another person's copyright work. We can call this second topic the **Use Scenario**.
- 3 For both topics, the Guidance Note sets out practical steps agencies can take to mitigate risk and, where possible, license or use images containing people or protected property with confidence. The key points relating to both topics are summarised below. The remainder of the Guidance Note then discusses the legal issues in more detail.

Licensing Scenario

- 4 In the Licensing Scenario, an agency seeking to license an image that contains an identifiable person or another person's copyright work:
 - (a) works through the NZGOAL Review and Release Process;
 - (b) decides it owns the copyright in the image; and
 - (c) concludes it is free to license the image without restriction, but without giving due consideration to breaching other people's protectable rights or interests.
- 5 The restrictions in paragraph 24(b) of NZGOAL ought in some cases to prevent this² but there is a risk that agencies may not focus sufficiently on the "breach of privacy" or "other actionable wrong" references in that paragraph. This risk exists because agencies may not be sufficiently aware of:

¹ As discussed in NZGOAL, CC0 is a tool that seeks to enable an owner of copyright in a work to waive the copyright in that work, thereby relinquishing the work into the public domain. It also states that, if the waiver is legally ineffective, an extremely broad and obligation-free licence is granted instead.

² Paragraph 24(b) states that neither the Open Licensing Principle nor the Open Access Principle applies where open licensing or open release would "constitute a breach of contract, breach of confidence, *breach of privacy*, disclosure of a trade secret or *other actionable wrong*".

- (a) protectable privacy rights and interests that may be affected by the release and licensing of an image that contains an identifiable person; or
- (b) another person's copyright in, for example, an artistic work that is reproduced in the image the agency wishes to license for re-use.

If they are not sufficiently aware, they may not think to check whether release could entail a breach of privacy or third party copyright. If they don't check, they could expose both themselves, and members of the public who use the released images, to liability to the third party rights holders.

6 The practical implications and steps for agencies are as follows:

- (a) agencies need to take care when releasing and licensing photos they own for re-use where those photos contain identifiable people or protected property in the nature of copyright photos, artwork or business logos;
- (b) in particular, they need to consider whether the release of the photos could infringe a person's privacy rights or interests or another person's copyright;
- (c) if there is any risk that the release and licensing of a photo with an identifiable person would infringe the person's rights or protected interests, the agency should either:
 - (i) not release and license the image; or
 - (ii) obtain a sufficiently broad "model release" from the person before doing so that specifies the circumstances in which the photo – when identifying the person – can be used (note that the breadth of the release would need to match the breadth of the re-use rights in the chosen Creative Commons licence); and
- (d) similarly, if there is any risk that the release and licensing of a photo with protected property would infringe a third party's rights, the agency should either:
 - (i) not release and license the image; or
 - (ii) obtain a sufficiently broad property release from the third party before doing so that specifies the circumstances in which the image can be used (again, note that the breadth of the release would need to match the breadth of the re-use rights in the chosen Creative Commons licence).

Use Scenario

- 7 In the **Use Scenario**, an agency wishes to *use* an image containing an identifiable person or protected property that has been released by someone else under a Creative Commons licence or CC0, but the agency may not give sufficient consideration to:
- (a) the circumstances in which the image was released under the Creative Commons licence or CC0; and
 - (b) whether the identifiable person or the owner of the protected property in the image has any rights that ought to be cleared before further use and release of the image. The 'clearance' process can entail obtaining permissions from the individual or owner and obtaining releases from liability in relation to the permitted uses. Sometimes the source of the image (e.g., a stock photo site) may have done this, but sometimes it may not.

- 8 The practical implications and steps for agencies are as follows:
- (a) agencies need to appreciate that people may release images they own, that show identifiable people or protected property, under a Creative Commons licence or CC0 without obtaining the required model or property releases (either at all or in sufficiently broad terms);
 - (b) agencies need, therefore, to be cautious about using such images if they cannot obtain or view the releases that may be required;
 - (c) the need for caution applies equally to images found on the likes of Flickr or Unsplash which, despite being Creative Commons-licensed or released under CC0, show identifiable individuals or protected property; and
 - (d) it may be too risky for an agency to use such images if the agency cannot be confident that any required releases were obtained.

Detailed discussion of the Licensing Scenario

Rights at stake

General comment

- 9 When considering whether to license images that contain identifiable people or protected third party property, agencies need to consider the rights of those people or third party rights holders. In the case of photos containing identifiable people, the totality of rights involved may be greater than just copyright. In the case of photos containing another person's artistic work, third party copyright issues might arise. The first part of this discussion looks at photos containing identifiable people. It then looks at photos containing protected third party property.
- 10 Depending on the circumstances and the country's laws that apply, the person in the photo may have privacy rights or protectable privacy interests, the right to be shown in the photo in a particular manner, contractual rights in his or contract with the photographer (if there is one), character merchandising rights, publicity rights and/or other rights to control one's own image or personality (this last one being more common in civil law jurisdictions).
- 11 For example, photos taken in a person's home or on some other private property may be private in nature and, in some countries, even photos taken of a person in a public place have the potential to be private in nature if, for example, the photos were obviously private or their publication could be offensive in some other way. Particular care needs to be taken with photographs of children and other vulnerable groups.

Privacy Act 1993

- 12 In certain circumstances, publication of photos that show identifiable individuals may breach information privacy principle 11 (**IPP 11**) in the Privacy Act 1993 (IPP 11 states that an agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds, that one of the exceptions applies). For example, in one case,³ the Privacy Commissioner considered a mother's privacy complaint arising from a sports trust's publication in a local newspaper of her daughter's photograph and name. The mother had not consented to such publication and no exception to IPP 11 applied. The Privacy Commissioner

³ Case Note 89271 [2007] NZ PrivCmr 12.

found that IPP 11 had been breached and, on the facts, that there had been an interference with privacy.

Copyright Act 1994

- 13 Note also that section 105 of the Copyright Act contains a statutory right to privacy of certain photographs (and films). It states that a "person who, for private and domestic purposes, commissions the taking of a photograph or the making of a film has, where copyright exists in the resulting work but is owned by some other person, the right:
- (a) not to have copies of the work issued to the public; and
 - (b) not to have the work exhibited or shown in public; and
 - (c) not to have the work communicated to the public."

This means that if you have a photographer take photos of you for private and domestic purposes but the photographer owns the copyright in the photos (as they often do under standard contract terms) the photographer cannot publish the photos unless you consent.

- 14 Subject to a range of narrow defences, this right is infringed by a person who does any of the acts listed in (a)-(c) above or authorises another person to do any of those acts.

Tort of interference with privacy

- 15 New Zealand's Court of Appeal has accepted the existence of a tort of interference with privacy.⁴ The two fundamental requirements are:
- (a) the existence of facts in respect of which there is a reasonable expectation of privacy; and
 - (b) publicity given to those private facts that would be considered highly offensive to an objective reasonable person.

It is unlikely that a government agency would consider publishing a photo where the publication would meet this threshold but the existence of the tort is something to bear in mind.

Care required

- 16 The kinds of rights and interests referred to above may, when they exist, limit the circumstances in which a photo of a person can be used, even where the person or agency that wishes to use the photo is the copyright owner.
- 17 To give a tangible example, take an agency that takes photos of staff at their desks for the purpose of publication on an internal intranet. Assume the staff consent to that particular use. It would be unwise for the agency subsequently to publicly license the photos for re-use or to publish them on its public-facing website. Doing so could breach, for example, the Privacy Act's IPP 11.

⁴ *Hosking v Runting* [2004] NZCA 34; [2005] 1 NZLR 1; (2004) 7 HRNZ 301.

Protectable rights in relation to property

- 18 The rights referred to above relate to identifiable individuals. There are also circumstances in which the use and licensing of a photograph of certain property can raise issues, even where the licensor owns the copyright in the new photo. The relevant right in this context is usually third party copyright and the most common situation is where someone takes or uses a photo of another person's copyright artistic work. If the photograph's copying of the artistic work is not "incidental", the taking of the photograph and any subsequent publication of the photograph could amount to an infringement of copyright in the photographed artistic work.
- 19 The reference to non-incidental copying is important. This is because section 41(1) of the Copyright Act contains a defence to incidental copying. It states that "[c]opyright in a work is not infringed by—
- (a) the *incidental copying* of the work in an artistic work, a sound recording, a film, or a communication work; or
 - (b) the issue to the public of copies of an artistic work, the playing of a sound recording, the showing of a film, or the communication of a work to the public, *in which a copyright work has been incidentally copied*; or
 - (c) the issue to the public of copies of a sound recording, film, or communication work to which paragraph (a) or (b) applies."
- 20 A useful example of incidental copying issues can be seen in the United Kingdom case of *Football Association Premier League Ltd v Panini UK Ltd* [2004] 1 WLR 1147. In that case, the defendant produced stickers with photos of Premier League players that included the Premier League's logo which was a copyright artistic work. One of the issues the Court of Appeal had to consider was whether the inclusion of the copyright work was incidental. This is because the UK copyright legislation contains a defence of incidental inclusion of copyright material (on which section 41 of the New Zealand Copyright Act was based).
- 21 On the facts of the case, the defence was rejected. Chadwick LJ said that the question of whether there was incidental inclusion:
- "is to be answered by considering the circumstances in which the relevant artistic work – the image of the player as it appears on the sticker or in the album – was created"
- And whether or not the inclusion is incidental:
- "turns on the question: why – having regard to the circumstances in which the [allegedly infringing work] was created - has [the original copyright work] been included in [the former]."
- 22 He went on to hold that commercial, as well as aesthetic, considerations came into play in that consideration and concluded:
- "If, as I would hold, the relevant question, for the purposes of testing "incidental" ... is why has work 'A' been included in work 'B', the answer, in the present case, is ... self-evident. The objective, when creating the image of the player as it appears on the sticker or in the album, was to produce something which would be attractive to a collector. That conclusion does not depend on any inquiry into the subjective intent of the individual employee who created the image – or (as I have said) of the photographer who took the photograph from which that image was

derived. It depends on an objective assessment of the circumstances in which the image was created. It is not, I think, a matter about which there can be any doubt. Nor can there be any doubt that it was of importance, in order to achieve that objective, that the player should appear in the appropriate club strip; and that the club strip be authentic. An image of a player in strip which an informed collector would recognise as not authentic would not achieve that objective. But if the strip were to be authentic it must include the club badge and (where appropriate) the FAPL emblem. That, as it seems to me, is what the judge had in mind when he described the inclusion of the badge as "an integral part of the artistic work comprised of the photograph of the professional footballer in his present-day kit". The authenticity of the image of the player as it appears on the sticker or in the album (work 'B') depends on the inclusion in work 'B' of the individual badge and the FAPL emblem (work 'A') in which copyright subsists. It is impossible to say that the inclusion of the individual badge and the FAPL emblem is "incidental". The inclusion of the individual badge and the FAPL emblem is essential to the object for which the image of the player as it appears on the sticker or in the album was created."

23 Mummery LJ observed that:

"incidental is an ordinary descriptive English word ... The range of circumstances in which the word 'incidental' is commonly used to describe a state of affairs is sufficiently clear to enable the courts to apply it to the ascertainable objective context of the particular infringing act in question."

24 Where the copying in a photo or other artistic work (the **new work**) of another person's copyright work is *not* incidental, the owner of the new work should not license it for re-use. Doing so could expose that owner and the people who re-use the new work to allegations of copyright infringement.

Model releases and property releases

Model releases

25 The existence of the rights outlined above relating to identifiable individuals is the main reason for so-called "model releases", or "image releases" as they are also known. These are documents that serve two main purposes:

- (a) obtaining permissions from the subject of the photo as to the circumstances in which the photo can be used; and
- (b) protecting the photographer or image owner (and potentially other users depending on the breadth of the release) from liability in relation to any use of the photo that falls within the scope of the release.

26 In essence, a model release allows certain specified uses and releases the authorised person(s) from liability in relation to those uses. Examples of model releases can be found online.⁵

Property releases

27 There is a separate category of release called a "property release". This serves the same kind of purposes as a model release but is used where a photo is taken of an item

⁵ See the Advertising & Illustrative Photographers Association's template model release at <http://www.aipa.org.nz/Resources/Contracts-And-Forms/> and istockphoto's template model release at <http://www.istockphoto.com/docs/languages/english/modelrelease.pdf>

of property that itself is protected by copyright (or a similar or related right) where the taking of the photo either does or could amount to infringing copyright (or a similar or related right) in the subject of the photo. The most obvious examples are where someone takes a photo of a copyright photo, artwork or business logo. Again, examples of property releases can be found online.⁶

Breadth of releases

- 28 It is important that a release be sufficiently broad to permit all the uses contemplated by the party wishing to license or use the image. This is a particularly important point in an open licensing or open release context.
- 29 If we look at the Creative Commons Attribution (CC-BY) licences, for example, we see that they permit virtually all kinds of uses of the copyright work, including copying, adaptation, distribution and publication, in both non-commercial and commercial contexts. Releases under CC0 are even broader, because CC0 imposes no obligations on the user and, if the copyright waiver is effective, removes all copyright-related controls.
- 30 Any required releases need to contemplate the breadth of permissions that the relevant Creative Commons licence or CC0 grants or makes available. The person who's the subject of the photo or who owns protected property that appears in the photo would need to understand that the photo will be licensed on open terms under the relevant Creative Commons licences or be released into the public domain under CC0 (or licensed on the widest of terms if the licence fallback kicks in) and that, once that occurs, anyone who obtains it may think they can do whatever they want with it. In such cases the photo subject or owner of the protected property would, as a minimum, need to understand and consent to that.

Practical implications

- 31 As noted in the summary of this Guidance Note, the discussion above of the Licensing Scenario tells us that:
 - (a) agencies need to take care when releasing and licensing photos they own for re-use where those photos contain identifiable individuals or protected property in the nature of copyright photos, artwork or business logos;
 - (b) in particular, they need to consider whether the release of the photos could infringe a third party's rights or protected interests;
 - (c) if there is any risk that the release and licensing of a photo with an identifiable individual would infringe the individual's rights or protected interests, the agency should either:
 - (i) not release and license the image; or
 - (ii) obtain a sufficiently broad model release from the individual before doing so (note that the breadth of the release would need to match the breadth of the re-use rights in the chosen Creative Commons licence); and
 - (d) similarly, if there is any risk that the release and licensing of a photo with protected property would infringe a third party's rights, the agency should either:

⁶ See the Advertising & Illustrative Photographers Association's template property release at <http://www.aipa.org.nz/Resources/Contracts-And-Forms/> and istockphoto's template property release at <http://www.istockphoto.com/docs/languages/english/propertyrelease.pdf>

- (i) not release and license the image; or
- (ii) obtain a sufficiently broad property release from the third party before doing so (again, note that the breadth of the release would need to match the breadth of the re-use rights in the chosen Creative Commons licence).

Detailed discussion of the Use Scenario

Two issues arise

- 32 To recap, in this scenario, an agency wishes to use an image with an identifiable individual or protected property that has been released by someone else under a Creative Commons licence or CC0. Two issues arise:
- (a) is it even possible for someone to license an image with a Creative Commons licence or release an image under CC0 without obtaining a model release or a property release when one may be required; and
 - (b) where such an image has been released under a Creative Commons licence or CC0, to what extent can the agency find sufficient comfort that the requisite release(s) have been obtained.

Licensing or release without obtaining a model or property release

- 33 In factual terms it is, of course, possible for someone to license an image with a Creative Commons licence or release an image under CC0 without obtaining a model release or a property release when one may be required. They may do so either because they are not aware of the need for a release or because they don't care to obtain one.
- 34 The main issue here, though, is whether the Creative Commons licences and CC0 require the licensor or releasing party to obtain a model or property release when one is required or whether an image can legitimately be released under a Creative Commons licence or CC0 without a release. In assessing this issue, we'll use the Creative Commons 4.0 International licences as the reference point for the licensing side.
- 35 The answer is that an image with an identifiable individual can, in a sense, be released under a Creative Commons licence or CC0 without a release. However, it is important to understand why. The reason is that:
- (a) the Creative Commons licences only grant a licence of "Copyright and Similar Rights". That term is defined to mean "copyright and/or similar rights closely related to copyright including, without limitation, performance, broadcast, sound recording, and Sui Generis Database Rights, without regard to how the rights are labeled or categorized". The definition and section 2(b)(1) of the licence make it clear that this term does *not* cover the likes of "publicity, privacy, and/or other similar personality rights". The 'human readable deed' form of the licence also makes the point that:

"The license may not give you all of the permissions necessary for your intended use. For example, other rights such as publicity, privacy, or moral rights may limit how you use the material."
 - (b) similarly, CC0 is only dealing with the "Affirmer's" "Copyright and Related Rights". The "Affirmer" is the person who is who associating CC0 with the work. "Copyright and Related Rights" is defined to include "publicity and privacy rights pertaining to

a person's image or likeness depicted in a Work" but the Affirmer is only waiving (or licensing under the fallback) his or her or its *own* "Copyright and Related Rights". Third party rights that may exist are beyond the scope of CC0. CC0 states in clause 4(c):

"Affirmer disclaims responsibility for clearing rights of other persons that may apply to the Work or any use thereof, including without limitation any person's Copyright and Related Rights in the Work. Further, Affirmer disclaims responsibility for obtaining any necessary consents, permissions or other rights required for any use of the Work."

- 36 So, while an image with an identifiable individual *can* in a sense be released under a Creative Commons licence or CC0 without a release, it's not the fully story. The full story is: yes, it may be so released, but care may still be required in relation to third party rights that are not (and cannot be) licensed under a Creative Commons licence or waived or licensed under CC0, particularly where an identifiable individual appears in the image. In the case of CC0, this position also applies to the release of images containing another person's protected property.
- 37 Turning to Creative Commons *licences* and protected *property*, where the image contains a third party's protectable property, such as a copyright photo or artwork, a party licensing the image under a Creative Commons licence should be assessing all copyright components of the work, because that party is licensing "Copyright and Similar Rights" as defined above.

Finding sufficient comfort that requisite releases have been obtained

- 38 Where an agency wishes to use an image with an identifiable individual or protected property that *has* been released under a Creative Commons licence or CC0, the question becomes to what extent can the agency find sufficient comfort that the requisite release(s) have been obtained.
- 39 This will often depend on the source of the image. A range of scenarios can be considered:
- (a) the image comes from a member of the agency's staff;
 - (b) the image comes from an external photographer with whom the agency has a direct relationship; or
 - (c) the image comes from an image repository such as Flickr or Unsplash.

Image comes from an agency staff member

- 40 If an image containing an identifiable individual or protected property comes from a member of the agency's staff (as sometimes happens), the agency can ask the staff member whether any releases were obtained and, if so, ask to see and make copies of them. If there are releases, it will be important for the agency to check that the breadth of the release matches the breadth of the licence or CC0 under which the image has been licensed or released.
- 41 This process may give the agency sufficient information to decide whether it is safe to use the image for its own purposes. If releases were not obtained when they should have been, the agency may need to ask the staff member to obtain them before the agency can feel comfortable about using the image. Again, the release would need to match the breadth of the licence or CC0 under which the image is licensed or released.

Image comes from external photographer with whom agency has a direct relationship

- 42 If an image containing an identifiable individual or protected property comes from an external photographer with whom the agency has a direct relationship, the agency may need to:
- (a) check the contract with the photographer, if there was one, to see what it says about releases; and/or
 - (b) ask the photographer whether any releases were obtained and, if so, ask to see and make copies of them (and check they are sufficiently broad, as discussed above).
- 43 As with the previous scenario, this process may give the agency sufficient information to decide whether it is safe to use the image for its intended purposes. If releases were not obtained when they should have been, the agency may need to ask the photographer to obtain them before the agency can feel comfortable about using the image.

Image comes from an image repository such as Flickr or Unsplash

- 44 Where an agency wishes to use:
- (a) a Creative Commons-licensed image it has found in an image repository like Flickr; or
 - (b) an image released under CC0 it has found in an image repository like Unsplash, the agency should first check the terms of use, or terms of service, that govern use of the relevant site. Let's illustrate that process by reference to the services mentioned above: Flickr and Unsplash.
- 45 Flickr's terms of service are the Yahoo Terms of Service together with, it seems, the Yahoo Content Upload Additional Terms of Service. The Yahoo Content Upload Additional Terms of Service contain this clause:
- “3. PROHIBITED CONTENT AND CONDUCT.
- By submitting Your Content, You agree: a. that *You own or have the necessary licenses, rights, consents and permissions to all patent, trademark, trade secret, copyright or other proprietary rights ("Rights") to Your Content and any other works that You incorporate into Your Content, and You authorize Yahoo to use Your Content in the manner contemplated in these Additional Terms; b. that You have the written consent, release, and/or permission of each and every identifiable individual person in Your Content to use such person's name or likeness in Your Content for use in the manner contemplated in these Additional Terms; and c. not to include in Your Content any content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, pornographic, offensive, indecent, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable.*”
- 46 This may give the agency *some* comfort that the original source of a Creative Commons image it finds on Flickr, that contains an identifiable individual or protected property, has obtained any requisite releases. However, the agency *cannot* be sure that this is the case because the person who uploaded the image to Flickr:
- (a) may have accepted the terms of service without reading them or understanding them; or

- (b) may not be the true original source of the image (for example, s/he may have copied it from somewhere else); or
 - (c) may have uploaded the image without obtaining any requisite releases; or
 - (d) may have obtained a release but one whose breadth doesn't match the breadth of uses permitted by the Creative Commons licence.
- 47 There are likely to be large numbers of Creative Commons-licensed images on Flickr, that contain identifiable individuals or protected property, for which requisite releases have not been obtained. For this reason, it is suggested that agencies should exercise caution before using and publishing these kinds of images. It is for each agency to decide whether it will accept the risk of doing so.
- 48 Turning to Unsplash, its terms of use say this:
- “... you represent and warrant that: (i) you either are the sole and exclusive owner of all Pictures that you make available through the Website or you have all rights, licenses, consents and releases that are necessary to grant to Company the rights in such Pictures, as contemplated under this Agreement; and (ii) neither the Pictures nor your posting [etc of them]... will infringe [among many other things]... a third party's ... rights of publicity or privacy... .”
- 49 A photographer uploading photos to Unsplash who doesn't yet know much about copyright law and model releases may not understand the full meaning of this clause. Its reference to “releases” exists among a number of similar terms, its reference to “rights of publicity or privacy” may not be understood and there are no FAQs on the site that explain these issues. At the same time, site users are told:
- “Free (do whatever you want) high-resolution photos.”
- That's a potentially risky mix.
- 50 Even if the photographer did obtain a release when it should have, without seeing the terms of the release one cannot be sure that it matched the breadth of uses permitted by CC0.
- 51 Users, including agencies, who publish in their own publications or on their own sites an image from Unsplash that contains an identifiable individual or protected property might find themselves on the receiving end of, at least, a “please remove immediately...” request. Because governments are often perceived to have deep pockets, an agency could also find itself subject to legal proceedings for an injunction and/or damages for breach of the relevant third party rights.
- 52 For these reasons, as with images from Flickr, agencies may wish to exercise caution before using and publishing these kinds of images that they find on Unsplash. Again, it is for each agency to decide whether it will accept the risk of doing so. (Note that these comments only apply to photos with identifiable individuals or protected property. The vast majority of photos on Unsplash do not contain identifiable individuals or protected property.)

Practical implications

53 As noted in the summary of this Guidance Note, the discussion above of the Use Scenario tells us that:

- (a) agencies need to appreciate that people may release images they own, that show identifiable individuals or protected property, under a Creative Commons licence or CC0 without obtaining the required model or property releases (either at all or in sufficiently broad terms);
- (b) agencies need, therefore, to be cautious about using such images if they cannot obtain or view the releases that may be required;
- (c) the need for caution applies equally to images found on the likes of Flickr or Unsplash which, despite being Creative Commons-licensed or released under CC0, show identifiable individuals or protected property; and
- (d) it may be too risky for an agency to use such images if the agency cannot be confident that any required releases were obtained.