



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
Office of the General Counsel

Public Health Division
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February 8, 2011
VIA EMAIL

TO: Michelle Paulson, Associate Counsel, Wikimedia Foundation,
mpaulson@wikimedia.org

Christine Moellenberndt, Community Associate, Wikimedia Foundation,
christine@wikimedia.org

RE: DMCA Takedown Notice Regarding National Cancer Institute Photographs

Please remove the 7 photographs and the inaccurate related copy on Wikimedia that appear in the following search results for photographs by Max Hirshfeld:

<http://commons.wikimedia.org/w/index.php?title=Special:Search&ns0=1&ns6=1&ns12=1&ns14=1&ns100=1&ns106=1&redirs=0&search=Max+Hirshfeld&limit=20&offset=0>

Although the images had been posted to the public NCI/NIH Websites in the past, that posting was done in error. NCI had contracted MFM Design in 2005 to produce the photographs as illustrations for a myNCI exhibit project. The photographs are protected by a license agreement and copyright, and none of the parties involved, including the photographer, has ever intended for the images to be in the public domain.

In view of the above and the explanation below, we therefore have a good faith belief that your display of the material is not authorized by the copyright owner, its agent or the law.

On Jan. 25, 2011, the photographer of the images, Max Hirshfeld (max@maxpic.com), notified NCI that the photographs were on the NCI and Wikimedia Websites. NCI immediately removed all of the images from its Website and asked Wikimedia that same day to do the same. As indicated in a prompt response from Christine Moellenberndt to Donna Bonner, Associate Director of Communications Services at NCI, the Wikimedia Foundation is willing to work toward the goal of removing the images. The following information is in support of the NCI request.

All of the photographs currently on Wikimedia are covered in a Copyright/License of Rights agreement dated August 8, 2005, between MFM Design (David Fridburg, <http://mfmdesign.com>) and the National Cancer Institute (Donna Bonner, bonnerd@mail.nih.gov). The agreement provides the following license, which does not include the right to post the photographs online for the public:

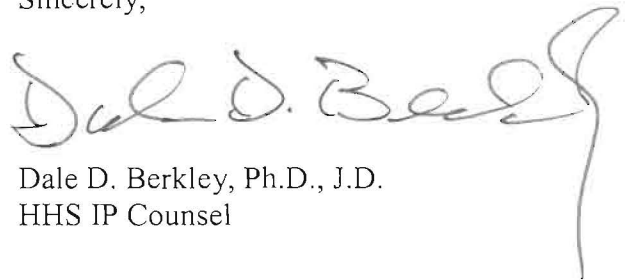
“Copyright / Reproduction Rights Granted:

Subject conditionally to receipt of full payment, which is due upon delivery of the commissioned artwork, a license is hereby granted for CORPORATE use and publication by MILES FRIDBURG MOLINARI of up to eleven (11) photographs of a photo assignment, herein referred to as National Cancer Institute, for distribution within the United States of America only; ENGLISH language rights only; for an unlimited, exclusive duration; as COLOR illustrations; an UNSPECIFIED PRINT RUN. Failure to make payment voids any license granted and constitutes copyright infringement. All rights not specifically granted in writing, including copyright, remain the exclusive property of the photographer.”

The information in this notification is accurate, and under penalty of perjury, I am authorized to act on behalf of the United States agency that holds these exclusive rights.

Thank you for your prompt attention and assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Dale D. Berkley". The signature is fluid and cursive, with a long vertical line extending downwards from the end of the name.

Dale D. Berkley, Ph.D., J.D.
HHS IP Counsel