



AI Upscaling & Image Licensing: Key Considerations for Creators & Users

With AI imaging technology evolving at a rapid pace, AI-based upscaling tools are making it easier to enhance the quality and resolution of images. These tools add details and sharpness that weren't in the original file, offering significant benefits for those who want clearer visuals or higher resolutions. However, using AI upscaling in conjunction with licenced images can be a potential legal and ethical minefield.

In this post, we'll explore some common scenarios where AI-based upscaling could infringe upon licensing terms, covering the nuances of specific licences and key factors to consider when working with licenced images.

1. NoDerivatives (ND) Licences: Treading Carefully with Transformation

NoDerivatives (ND) licences are designed to prevent modifications that create a "new" version of the original work. For many creators and users, this is where AI-based upscaling brings ambiguity. Since upscaling can add new details and transform the visual clarity of an image, it may qualify as a derivative work—especially if the changes significantly enhance or alter the original image's structure.

Most ND licences typically only permit basic adjustments like resizing or cropping. Because AI upscaling does more than simply enlarge an image, it could be viewed as creating a new, derivative version. To stay compliant, it's best to obtain explicit permission from the original creator if you plan to use an AI-upscaled version of an image under an ND licence.

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2. Attribution Licences: Ensuring Proper Credit for Enhanced Images

Some licences, like Creative Commons Attribution (CC BY), require users to credit the original creator of the image. When AI upscaling is applied, it's essential to consider how this enhancement might alter the perception of the creator's work. For instance, if the upscaling process introduces substantial new details, you may need to clarify that the result differs from the original and attribute both the creator and possibly the AI tool if it significantly altered the image.

Failing to provide accurate attribution or misrepresenting the creator's original work could lead to a breach of the licence agreement. Clear, accurate attribution that acknowledges any enhancements is a must when upscaling licenced images.

3. Non-Commercial Use Only: AI Upscaling and Commercial Licensing Terms

Some licences, such as Creative Commons Non-Commercial (CC BY-NC), restrict the image's use to non-commercial contexts only. Here, the intention behind the image's use matters significantly. If you upscale an image licenced for non-commercial use and later incorporate it into a commercial project—such as for marketing materials or resale—this would violate the original licence terms.

It's also worth noting that many AI upscaling tools themselves require a paid licence if you're using them for commercial purposes. Be sure to check both the image licence and the terms of the AI tool to avoid any potential conflicts.

4. Moral Rights: Respecting the Creator's Vision

In some regions, creators hold "moral rights" to their work, including the right to control how it's presented or altered. AI upscaling can sometimes create a version of the image that appears significantly different from what the creator originally intended, potentially conflicting with these moral rights. For instance, changes in texture, colour fidelity, or detail could be viewed as distorting the original work, especially if the upscaled version emphasises aspects not meant to be highlighted.

If you're working with images where the creator's moral rights apply, it's prudent to get their permission before applying substantial AI-driven enhancements that alter the visual style or intent of their work.

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5. Model Releases and Privacy Concerns: Enhanced Detail Can Change Context

If the image includes recognisable individuals, privacy rights and model releases become relevant, even if the image itself is under a permissible licence. AI upscaling that enhances facial features or other identifiable traits could bring privacy issues, especially if it makes a previously ambiguous or low-resolution figure more recognisable. This can infringe on the model's rights if there wasn't a model release that covers these changes.

For sensitive use cases, especially commercial ones, consider whether upscaling might alter the degree of privacy in the image and, if necessary, obtain a model release or the individual's permission.

6. Copyrighted Elements: Beware of Background Details and Logo Prominence

Images may include copyrighted elements like artwork, brand logos, or architecture that are not part of the primary image focus. When these elements become clearer or more prominent after AI upscaling, it may inadvertently infringe on the copyright of those elements, especially if they were incidental and thus allowed under fair use or a similar doctrine in the original resolution.

If an AI-enhanced version brings any of these details into focus, you may need additional permissions to use the image in this form. It's crucial to evaluate all visible copyrighted content after upscaling to ensure it doesn't cross into an unauthorised use.

Final Thoughts: Understanding the Complexities of AI and Image Licensing

AI-based upscaling tools bring new opportunities for image clarity and resolution, but they also add layers of complexity to traditional licensing terms. Whether you're using images for commercial, personal, or artistic purposes, it's vital to review the licensing terms carefully. Each licence has its own stipulations, and AI enhancements can quickly bring an image beyond the intended scope of use.

When in doubt, consider reaching out to the original creator or rights holder to clarify any terms and obtain permission if necessary. Taking these steps can help ensure that your AI-enhanced projects respect the rights and intentions of the original creators while keeping you within legal boundaries.

There are a lot of resources available for further reading. This [CreativeCommons.org](https://creativecommons.org) link is an excellent start in understanding these complexities.



About Pixometry

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Pixometry has been focused on automated image enhancement software for publishers since 1997. Formerly known as Elpical Claro, Pixometry has offices in Europe and works with over 20 partners around the world.

With a powerful blend of proprietary toning algorithms and the latest AI technologies Pixometry powers image workflows around the world. Contact us via info@pixometry.com to discuss what's possible. View what's achievable with intelligent image toning, cut-outs and auto key-wording in our [galleries here](#).

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