

A Public Hearing by
United States Patent and Trademark Office (USPTO)
and
National Telecommunications and Information
Administration (NTIA)
on behalf of the
U.S. Department of Commerce.

**Hearing on Copyright Policy, Creativity, and
Innovation in the Information Economy**

July 1, 2010

Prepared Statement
of
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Good morning. On behalf of the American Society of Media Photographers (ASMP) and its approximately 7000 members, I thank you for the opportunity to participate in this important discussion. For over 65 years, ASMP has been the premier association dedicated to protecting and promoting the interests of imaging professionals.

A Brave New Digital World

At age 61, after 32 years as a professional image producer, I have become a dinosaur. Recent changes in the industry, economy, and society have created a perfect storm; the transition to digital capture, digital distribution, the explosion of digital media outlets, the rise of the talented amateur and citizen journalist, coupled with a dilution of effective copyright protection have made it virtually impossible for a commercial photographer to sustain a career solely as an image creator. While the photography community is working diligently to navigate this new world and take advantage of the enormous opportunities it presents, the print to pixel revolution has been as disruptive to professional photographers as it has been to publishing and electronic media. The Internet and new devices such as the iPad love motion. The opportunity to tell a story, promote a company, sell a product using stills in combination with motion is upon us. Photographers are not simply still image creators, they are evolving into producers, videographers, and editors. ASMP, our sister trade associations, various coalitions such as the Copyright Alliance and PLUS, business affiliates such as PicScout, TinEye and ImageRights, along with a number of talented and creative photographers are all working together to develop new business models and cooperative solutions to capitalize on the challenges we face.

New Reality for Professional Photographers

ASMP, has spent the last 65 years teaching photographers good business practices and emphasizing the importance of copyright all based on a print paradigm – images going from the camera to reproduction on paper. This has been turned upside down in the last few years as more images are reproduced in the digital form than in print. Meanwhile, the pricing formulas for this new digital paradigm have not been firmly established. For a number of years, digital use was simply lumped into many licenses without any request for additional compensation; now the digital use is primary for many images and print is secondary. Under the new paradigm, there are no regions, everyone is a world wide publisher. Information has an unlimited lifespan because there is no shortage of space on the Web. The purposeful or

incidental stripping of metadata means that most images have no licensing history or attribution. Without an efficient licensing option such as iTunes, it is far easier to right click and infringe than to right click and buy. How do you monetize use under these circumstances? Photographers want their images to be seen and used; we are simply seeking fair compensation for the use.

At the same time as the paradigm shift, clients seeking to maximize their return on investment are seeking greater and greater rights positions for the images they commission. For commercial work this means additional rights for Web use, 3rd party use, and/or any use now or possibly envisioned in the future, all without any additional compensation. For editorial work, it means that the secondary licensing rights - the ability of the rights holder to license images for use subsequent to the initial publication and the only thing that really ever made editorial work remotely profitable - are no longer left to the photographer. Through publication embargoes and contractual language imposed by the client, the photographer is frequently left with virtually no way to monetize the rights to his own intellectual property, again more often than not without any additional compensation.

Add to the issues addressed above a rising tide of public sentiment for information to be free and easily available and you begin to see the realm of issues facing the commercial photographer. Many online users simply do not recognize digital media as intellectual property and think nothing of making use of images without compensation. The same infringers would hesitate to steal real property, but something that only exists as "ether" is fair game.

Copyright Law in the Internet Age

The current copyright process was not designed to manage the volume of images being created today. The new online registration process has been fraught with problems; some of which have been remedied and other fixes are still in process. In order to effectively promote copyright registration, which is necessary to take any legal action against infringement and to collect statutory damages and legal costs, registration must become an automated part of the photographers' workflow. Registration must become available from within and become integral to digital asset management workflows and simultaneously deposit images into Orphan Works Registries. The PLUS Coalition, an international non-profit initiative on a mission to simplify and facilitate the communication and management of image rights, is currently working on a registry that will be PicScout searchable, provide ownership and attribution information as well as image licensing history. This will make possible the identification of image rights holders from the Web who have deposited

images to the registry. The success of this effort hinges upon its acceptance by both photographers and the marketplace.

Additionally, distributors and users of content should expect to make payment for use – either by formula as with European and Scandinavian reproduction rights organizations (RRO's) – or by actually tracking the clicks or downloads of an image with direct compensation to the rights holder. With all of the information and technology available, there must be a way to reasonably compensate individual rights holders for the use of their images in various digital media.

Possible changes to the current copyright statute might include:

1. A compulsory means for the resolution of small copyright claims – i.e. a small claims copyright court. If the images have not been registered – sadly fewer than 5% of all photos are registered prior to infringement – then the likelihood of any reasonable recovery for infringement under the current system is next to nill. The cost of entering into and pursuing an individual copyright action is prohibitive without access to statutory damages and recover of legal fees.
2. The current practice of differentiating between published and unpublished works for registration purposes adds confusion and complication to the registration process especially when experts cannot agree on what constitutes publication.
3. Photographers should be able to purchase registrations in bulk or on an annual subscription basis rather than paying per registration.
4. The definition of “fair use” should be precisely defined and clearly limited to non-commercial use.

A Future We All Can Live With

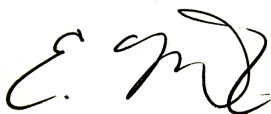
Things are never going back to the way they were in the pre-historic days of the 70's and 80's. After all is said and done, this dinosaur is excited about the opportunities afforded individual creators in the new economy. So what can be done to make the transition and identify and take advantage of the opportunities? ASMP has been working through seminars and Web based resources to provide photographers with information on copyright, licensing, new business models, social media marketing, and the addition of motion work . Our Registration Counts initiative created over 1500 new photographer registration accounts with the Copyright Office. Our day

long symposium in April at the Times Center in NYC brought together a group of thought leaders with widely varying views to discuss copyright in the new economy, issues and trends facing visual artists. This event is available through video and podcast from our Website at www.asmp.org/copyright. Participants included ASMP president Richard Kelly, Professor Lawrence Lessig of Harvard, David Carson, General Counsel US Copyright Office, Victor Perlman, ASMP General Counsel, and Chase Jarvis, photographer, director and social artist.

In addition, ASMP has been working with the Library of Congress through a three-year award from the National Digital Information Infrastructure Preservation Program to create dpBestflow.org – a Website dedicated to best practices for digital imaging and preservation, supported by a book and series of educational seminars. This is part of our effort to help photographers manage their workload more effectively, ensure proper deliverables, and preserve the visual heritage of our country. ASMP is an active member of the Copyright Alliance, a broad coalition of corporate and individual interests that believes copyright law promotes creativity and job creation, and strengthens the U.S. economy. Under the leadership of Patrick Ross, the Alliance has created an ambitious and effective copyright education program coupled with an active congressional outreach and informational campaign.

ASMP seeks partners to develop the means of tracking uses and/or reasonably compensating rights holders so that the profession of photography will survive. Professional photographers, such as members of the American Society of Media Photographers, bring their vision, creativity, understanding, and good business practices to bear with every assignment. They create the visual heritage of our country. In order to sustain this profession, image producers must communicate the value that the professional brings and be able to reasonably profit from the use and license of their intellectual property.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. Mopsik', written in a cursive style.

Eugene Mopsik
Executive director, ASMP
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