

From: [REDACTED]
To: [FN-OMB-IntellectualProperty;](#)
Subject: IPEA Enforcement Strategy
Date: Tuesday, March 16, 2010 6:16:55 PM

Date: March 16, 2010

To: Victoria A. Espinel

United States Intellectual Property Enforcement Coordinator

As a member of Advertising Photographers of America, a non-profit 501(c) (6)

corporation, I appreciate the opportunity to submit comments on improving

intellectual property right enforcement. My personal area of intellectual property is

in the visual art field of photography. Professional photographers have been

allowed to make a living in the United States because of strong copyright laws that

allow for protection of our work and the ability to go after infringers of our

copyrighted images.

With the advent of the web and internet commerce, photographers have been able

to promote to far more potential clients, deliver completed work through private

sites, and to even register with the US Copyright Office our published and

unpublished work. Along with these advantages has come the rapidly and

immensely worrisome issue of web theft. Frankly, web theft is killing us by

contributing to the demise of our industry. Physical theft is quite easy to do by simply grabbing and copying images from the web. In addition, it is often improperly rationalized under the guise of Fair Use and Public Domain claims.

The Fair Use Doctrine incorporated into the Copyright Act of 1976, 17 U.S.C. § 106

and 107 has been so egregiously misinterpreted to mean “free use.” The Fair Use

Doctrine allowing for use in such things as news reporting, teaching and research is

indeed fair however, it has been stretched to include derivatives of copyrighted

images. Fair Use has also come into play with infringers claiming that the use is not

for commercial purposes. The fact is that in most circumstances the alleged “fair

use” does harm the potential market of the original. This fact alone is a major factor

in the determination of Fair Use and how misinterpretation has had a negative financial impact on photographers being able to make a living.

The issue of Orphan Works is also a great concern to photographers. Because of my

belief in copyright registration, knowing that my images are on record as mine, the

ability to find the creator or owner of a copyrighted image is important. Every

effort

should be made by someone seeking the use of an image to be able to find the copyright holder. There are times when the copyright holder may not be found. Just

as in Fair Use Doctrine libraries, museums, educational institutions, scholars and

researchers should have the ability to provide educational use of images. A system

that allows for the commercial use of published works without the permission of

copyright holders, whom cannot be found, is not acceptable. The very foundation of

copyright law, that when an image is created it is copyrighted, is threatened when

images are used without permission of the copyright holder. Orphan works

exclusions should be held to the same standards as Fair Use Doctrine; to libraries,

museums, educational institutions, scholars and researches and only after a thorough search has been executed, and never for commercial applications.

As an APA member, I believe in the business of licensing images. Licensing is a contract between the copyright holder and a user of the image that may cover many

details such as a geographic region, an industry market, a set time period and of

course, an agreeable usage fee. This business model allows for my clients to have

the ability to use an image for a purpose that is agreed to by me, the copyright

holder. It allows me to decide who uses my images, how they are used, and for how

much money, all of which effect how I make my living. It is a practice that also

allows for Fair Use within the framework of the law and would help in the search of

copyright holders in the case of Orphan Works.

The IPEC is a welcome office in our government to help the intellectual property

creator. Any effort to enhance and enforce the copyright laws of the United States in

cooperation with countries throughout the world is greatly needed. As a

photographer that depends on the copyright integrity of my images and a strong

system to stop infringement I appreciate the opportunity to express my views.

Respectfully,

Mark Estes
Estes Photo
54 Glen Ave.
Oakland, CA. 94611

Mark



ESTESPHOTO.COM
MARK@ESTESPHOTO.COM
510-653-8950