

D J A N K A  
GAJDEL

31 May 2018

Attention: Michel Marcotte

Dear Members of the Standing Committee on Industry, Science and Technology

Re: Copyright Reform

As someone who has represented photographers for the past 33 years, I am concerned about the Governments direction of copyright reform in Canada. The laws need to recognize the livelihoods of all creators including photographers who haven't received fair representation resulting in dismal to no financial compensation.

The notion of making the works/content of artists readily available is excellent in theory provided the creators are financially remunerated for that material and all the potential usages that exist. You cannot change the rules of the business without any repercussions to the entire chain.

There is a grave misconception in the public that Photographers images should become public domain. With a market saturated with imagery, professional creators are struggling to stay relevant in a business that has transformed exponentially. The creators of editorial photography have not had their fees change since the Second World War while the cost of living and business expenses increase yearly. There is no governed body to champion the livelihoods of these individuals. Today only a minuscule percentage can create without part-time or full-time employment elsewhere. It is not feasible to have a livelihood in photography as there once was and the same is true for illustration.

Royalties which supplemented income and provided revenue to cover capital costs have gone from thousands of dollars to below \$100. Meanwhile, the capital costs have increased dramatically and beyond what royalties can even begin to cover. What was once a constant stream of income to preserve one's livelihood has vanished.

Further, the Universities refuse to pay for content and are openly violating the letter of the law, by copying and using that content in class. These institutions declare in

their mission statements words like 'equity, justice, innovation.' They claim themselves to be vestiges of critical thinking and quite often teach courses that pertain to digital and intellectual property, yet they refuse to pay for the intellectual property they are utilizing for their course curriculum while openly violating copyright. Copyright that they would challenge if it was their materials, yet feel free to abuse the rights of others. The teachers on staff at these institutions will make small amendments in a textbook they have assisted in drafting and have their course books reprinted and billed at astronomical prices of which they become the beneficiaries of not only a wage as a teacher but another additional stream of income on the sale of the textbooks. How is that fair?

Historically, the protocol for magazines in the early forties was to commission an image, and the first rights would sell for \$400.00. Immediately following it was the responsibility of the creator to generate any further revenue to cover their overhead expenses. Fast forward 70 years and with the onset of technology the fees have lowered to anywhere from \$250.00 - \$500.00 per commission. With fewer costs covered it's financially impossible to acquire, house and ensure all the technical tools required for production on the financial remuneration that currently exists.

Complicating matters is the minimum embargo of 90-120 days that denies any further revenue from being generated. An especially tricky fact when it's time sensitive material that you need to resell. Consequently, that income is gone. With fees that haven't risen in close to 70 years, it's impossible to generate any livelihood in the editorial marketplace. Furthermore, the images commissioned have the understanding that the magazine is getting not only first rights for the magazines but all the different internet, marketing, reprint and web usages, as well anything else they can extract from that artist. All usages that at one time belonged to the artist.

An unseasoned artist in this environment becomes fodder for corporate abuse, and it is abundant due to the current lack of protection these individuals have and the expectation that exists in the market place. Magazines couldn't survive without the advertisers and advertisers won't commit without the promise of being aligned to excellent images which provide a landscape for them to feature their brand. Sadly, in this original equation, the photographer is the weakest link.

Usages that in the late 1970's through to 2000 commanded a few thousand dollars are now considered part and parcel of the \$400.00 fee. The magazine profits off the backs of its creators. A curious business model. Imagine building a car and selling it for profit, however, getting all the pieces for free. One page of ad space sells for tens of thousands of dollars depending on the consumer magazine. However, the artwork that makes that magazine so desirable for advertisers continues to be commissioned at only a few hundred dollars. To make the work of great living artists available to everyone to enjoy and learn from is the essence of a good thing. However, you need to create a model whereby such contributions to cultural, spiritual and scientific evolution are enabled economically and pragmatically so that they can generate a fair living. We need to ensure that they continue creating and are allowed to enjoy the fruits of their creations. Right now copyright is the currency to the fruits of their labour. We have yet to establish a more enlightened economic model.

I'd be curious to know what Michelangelo would do during this time if he had the same restrictions placed upon him. How denied history and culture would be had he not been remunerated for his contribution. With contracts submitted to editorial photographers these days routinely worded with "Rights to the Universe" and "technology that is not yet known or yet to be created" to cover satellite transmission of the works. All are usages that further erode any chance of generating a livelihood. Our living artists have a huge role to play in all of our lives. They are storytellers, historians and the archivists of our existence. What other professions can you name that hasn't had a pay increase in close to 70 years? Any remuneration they would receive through their fees sadly doesn't even begin to cover their operating costs of which there are many from their capital expenditures like camera gear and studio rental to their insurance costs as well as a cornucopia of variable operating expenses. These hard costs are not recognized as they once were. Furthermore, more often than not they cannot produce an image without the assistance of the make-up artists, stylists, assistants, set builders, caterers and a host of others that they employ. No one can do that for \$400.00. If you're going even to entertain taking what they make into the public domain, you are taking more than you know and essentially killing any history of culture and undermining all the collateral employment possibilities that are also already hanging on a string.

The collateral employment is one of the areas that has room to grow and expand during these technologically transformative times. The point is to keep people

employed not unemployed and proposing anything other than granting the creator first rights is doing precisely that. Though I have focused on editorial photography, the inequities have indeed surfaced in all areas of this medium from commercial and corporate to book publishing. Editorial, however, has been the navigational template on which the others have built their protocols.

No profession that I know of has had as many restrictions or ridiculous requests or even as many hurdles in place to generate a living, as does the business of photography. I have witnessed too many skilled artists declare bankruptcy, lose families because they could no longer create the revenue to support themselves and become gravely ill due to the financial stresses. These are talented people who are continually sold on the concept that to work they have to give more and more of their rights away until they have nothing left to give. Meanwhile, others profit from what should have been theirs.

The struggle is intrinsic for those that have pledged allegiance to this medium, and it shouldn't be. I believe that photographers are dully entitled to generate a living. In fact, I think that to be true for all creators whether they be photographers, musicians, writers, illustrators or painters. Furthermore, this medium employs a large national demographic whom all contribute to the tax base.

The new technology that has invaded our society is 'creativity.' Current technology is about getting smaller, faster and holding more information. It's creativity that will solve and heal what ails the planet. MARS which exists in Toronto is about "Medical and Related Sciences." It is a 'convergence of science and technology and connects the communities of science, business and capital and fosters collaboration among them.' It has used art to communicate its complex concepts to the public. A new landscape that awaits artists and business investment in the solutions they will bring to the table.

Fortunately PLUS (Picture Licensing Universal System) is moving through the world and into Canada. It is the genesis of an American photographer to establish a language that is fair and equitable designed to recognize the varied uses that exist for a visual artist, but it needs support from Canadian Copyright Laws. It embraces many organizations not just photographers and is the future of how rights need to be

recognized. There is a great virtue in the approach they have taken which is out of the box thinking.

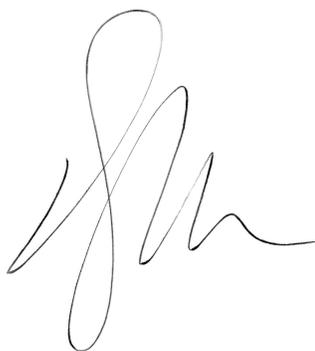
As a 33 year member of CAPIC (Canadian Association of Photographers and Illustrators in Communication) and a member of ASMP (The American Society of Media Photographers), I would like to see fair and proper remuneration for all the incredible creators that exist, regardless of what medium they have chosen. Sadly, a letter similar to this was written over ten years ago and addressed to Prime Minister Harper, and in that decade nothing has changed except that the situation has become dire.

It is fundamentally clear what the difference is between a professional and an amateur photographer. At this time, I'm optimistic to believe that there is nothing left to take and in fact it is time that the pendulum swings in another direction where we as a community and a society begin to recognize those that have given so unselfishly of themselves to document for us historically what is transpiring in today's society. It will not be Flickr that our children's children will be reflecting on to catch a glimpse of who we were in history, it is the master photographers that have struggled financially to tell their tale whose images will supply them with their story. For those that believe this inequity where content is expected to be created for free I ask them to wear the shoes of a photographer and produce their content for free and all-encompassing aspects that go with that profession and after exercising that, then pose to them the question of ultimately surrendering their work to the public domain. No architect, lawyer, or any other business professional would do that so why is the expectation different for creators of artistic content? I think if politicians were to walk in the shoes of a professional photographer they would best understand the great inequity that exists and why copyright is so fundamentally important. Photography is a mistress that calls so many and chooses so few. For those that are selected, their work demands to be remunerated appropriately otherwise why bother inventing.

As an advocate for copyright, I have penned many letters both to Congress and to Parliament. It has been my experience that legislation of any type can be amended, edited or eliminated. Therefore I propose the protection of the artist's original work in the Charter of Rights and Freedoms and for the Minister of Culture to recognize the innate right of original creations. Freedom of speech is protected by The Charter of

Rights and Freedoms and the Courts of Canada enforce it. Perhaps the freedom of original creation needs to be protected at the same level for every Canadian citizen.

Thank you.

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