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To: FN-OMB-IntellectualProperty
Cc: info@copyrightalliance.org
Subject: Intellectual Property Suggestions
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Dear Mr. Espinel,

ASMP and the Copyright Alliance have informed me of this welcome invitation from the Obama Administration to share my thoughts on the rights of the creators that I represent.

As someone who has represented photographers for over 25 years I am concerned about the Governments direction of copyright reform in both Canada and the United States. The copyright laws need to recognize the livelihoods of all creators including photographers who haven't had fair representation. The notion of making the works of artists easily available is fine in theory provided the creators of that material have been financially remunerated for all the potential uses that exist for that creation to appear in. I'm certain you realize that whatever decisions are made will undoubtedly alter the domino chain of interdependence. You simply cannot change the rules of the business without any repercussions to the entire chain.

I believe there is a grave misconception that the public has that Photographers are some how raking in the money and therefore their images should become public domain. The reality is that the market is saturated with imagery and professional creators are struggling to stay in business. The creators of editorial photography have not had their fees change since after the Second World War. No increase in fees, no cost of living increases, no increases in the billing of expenses. There is no governed body to champion the livelihoods of these individuals and there are many. ASMP, "The American Society of Media Photographers" has fought for years for fair laws to govern these creations however it's a David and Goliath situation whereby the organization just doesn't have the legal means that Time Warner, Disney and other huge corporations that covet content do.

As some background history, protocol for magazines in the early forties was such that an image would be commissioned and the first rights for a full page image would sell for \$400.00. That was in the early forties. Immediately following that it was the responsibility of the creator to generate any further revenue to cover their overhead and expenses. Fast forward 70 years and with the onset of technology the fees have remained the same and in most cases even lower which is anywhere from \$250.00 - \$500.00 per commission. Further less expenses are covered. Need to rent a lens, in some cases it's on the photographers dime not the clients that commissioned it. It's impossible to acquire, house and insure all the technical tools that exist. To make things even more difficult there is a minimum embargo of 90-120 days that denies any further revenue from being generated. This is especially difficult when it's time sensitive material that you need to resell. Therefore, that income is naturally lost and with fees that haven't risen in close to 70 years it's impossible to generate any type of livelihood in the editorial marketplace. Furthermore, the images are commissioned with the understanding that they are getting not only first rights for the magazines, however all the varied internet, marketing, reprint and web usages, as well anything else they can extract from that artist. An unseasoned artist is fodder for corporate abuse and such abuse is abundant due to the current lack of protection these individuals have. Magazines couldn't survive without the advertisers who won't commit to advertise without the promise of being aligned to a magazine that provides exquisite images which provides a landscape for them to feature their brand. Sadly, in this creative equation the photographer is the weakest link. Usages that in the late 70's and 80's 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. It's 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 thousands of dollars. Depending on the consumer magazine anywhere from five to thirty thousand dollars however the artwork that makes that magazine so desirable to advertise in is commissioned at only a few hundred dollars. Sure you can make the work of great living artists available to everyone to

enjoy and learn from, this 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 in a pragmatic sense. How do we ensure that they continue creating for the world and are allowed to enjoy the fruits of their creations. Right now currencies are those fruits. We have yet to establish a more enlightened economic model. I'd be curious to know how Michelangelo would do during this time if he had the same restrictions placed upon him and how denied history and culture would be had he not been remunerated for his contribution.

The contracts submitted to editorial photographers these days routinely have the word "Rights to the Universe" and "technology that is not yet known or yet to be created" to cover satellite transmission of the works. All this for \$400.00. Our living photographic artists have a huge role to play in all of our lives. They are storytellers, historians and the archivists of our existence. Are we supposed to take even more from them? What other profession 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 to their insurance costs to cover a cornucopia of variables. Their expenses for such 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 even entertain to take what they make into the public domain to satisfy the corporations you are taking more then you know and essentially killing any history of culture and eliminating all the collateral employment possibilities that are also hanging on a string at the same time and there are many. The collateral employment is one of the areas that has room to grow and expand during these technologically and creative transformational times. The point is to keep people employed not unemployed. By granting the creative first rights to the creator is doing exactly that keeping people and many of them employed and allowing these areas to grow.

Though I have focused on editorial photography the inequities have certainly 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 on. It's essentially been a grab of content.

A pen or a camera is nothing more than an enabler. In the same way that one might write a grocery list with a pencil another individual might craft a Rembrandt. With photography there are those that can document a sunset and those that can document that magical miniscule moment where they know their shutter must fall to make it truly an image that is worth a thousand words. No profession that I know of has had as many restrictions or as many hurdles in place in order to generate a living, as does the profession of photography. I have witnessed several skilled artists declare bankruptcy and lose families because they could no longer generate the revenue to support themselves. These are talented people who are continually sold on the concept that in order to work they have to give more and more of their rights away until they have nothing left to give. Meanwhile, others profited on what should have been theirs.

Struggle is intrinsic for those that have pledged an allegiance to this medium. I believe that photographers are dully entitled to generate a living. In fact I believe that to be true for all creators whether they be photographers, musicians, writers, illustrators or painters. Furthermore, this medium employs a large national demographic who all contribute to the tax base let alone the history and culture of the nation.

The next technology that will invade our society is creativity. It's creativity that will solve and heal what ails the planet. It is "creativity that will become as important as literacy" to quote Sir Ken Robinson for our future generations. Currently, the convergence of science and technology which connects the communities of science, business and capital while fostering collaboration among them is using art to communicate its complex concepts to the public whether it be through photographs, illustrations or some other artistic expression. This is the new landscape that awaits artists and businesses are invested in the solutions they will bring to the table.

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. It embraces many organizations not just photographers and is the future of how rights need to be recognized. There is great virtue in the approach they have taken which is out of the box thinking. PLUS is a wealth of information as to the

direction you may wish to consider so we can create a positive new direction for all these creators.

As a 25 year member of CAPIC (Canadian Association of Photographers and Illustrators in Communication) and a 15 year member of ASMP (The American Society of Media Photographers), I would like to see fair and proper remuneration for all the incredible creators that exists, regardless of what medium they have chosen. You cannot compare sites like "Flicker" where banal images are posted for free to sites like "Stock That Doesn't Suck" where there are provocative, informative and breath taking images created by some of the worlds foremost visionaries. These images are sold for commercial use to convey powerful messages and to stir conversation amongst the masses. I'm certain the later is who you would feel best to take your own image and convey your best side to the public. At this time in our civilization this is the most powerful way of communicating - through compelling visuals. Why then shouldn't these creators generate an income off of what is their livelihood?

It is fundamentally clear that there does exist a difference between a professional and an amateur photographer. In this time of economic turmoil it's fair 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 Flicker that are 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.

As an advocate for copyright for over 25 years, I have penned many letters to both Congress and to Parliament. It has been my experience that legislation of any type can be amended, edited or eliminated and is vulnerable to constant change by the political party that is in power at that time. Therefore I propose the protection of the artists original work in the Constitution of the United States to recognize the innate right of original creations. Freedom of speech is protected by the Constitution and enforced by the courts in the United States. Why then shouldn't the freedom of original creation also be protected at the same level for every American citizen?

This out of the box approach would be fair and equitable to those that have dedicated their lives to this medium. It would also be vehemently opposed by those that have freely helped themselves to content and have abused the livelihood of others. Therein lays the problem that needs to be resolved. I believe real change can happen however it needs to be anchored in something that when political parties come and go it is a constant that exists for every citizen.

For those that believe the photographer was paid once and need not generate revenue I ask them to wear the shoes of a photographer and all encompassing aspects of it and after exercising that, then pose to them the question of ultimately surrendering their work to the public domain. I think 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 chosen, their work demands to be properly remunerated otherwise why bother inventing.

I look forward to your reply.

Kind Regards,
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