

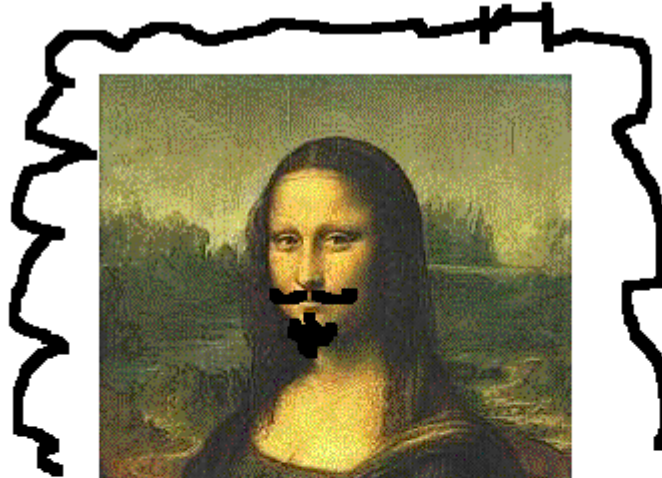
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***"Copyright infringement through unauthorized digital reproduction of original works of art"***



In general terms, copyright provides an author with a tool to protect a work from being taken, used, and exploited by others without permission (Roseoner 1). This is further defined in federal statute 17 U.S.C. Section 106. The owner of the copyrighted work has the exclusive right to authorize any of the following:

- ✚ to reproduce the copyrighted work in copies
- ✚ to prepare derivative works based upon the copyrighted work
- ✚ to distribute copies of the copyrighted work to the public
- ✚ to display the copyrighted work in a public setting

There have been many underlying forces that have shaped the copyright law in our legal system today. Tensions have always existed between the rights of the public versus the rights of the artist. The term of copyright imposes limitations on the public and weighs in favor of the artist. Of course, the irony of this, is the fact that the public's appreciation of a particular work of art extends well beyond the life of the original artist. The system of copyright law have, and will, continue to change. New means to create, store, and deliver art, place access to and use of all imagery, perhaps on the model of a compulsory license which means that the copyright owner has no right to prevent the use of copyrighted work. Copyright owners may not have the right to control usage, but they do receive a fee fixed either by voluntary arrangements or government assistance.

We know that the history of copyright began with, and manifested by, the printed word. But, images are just as susceptible to plagiaristic acts. In the early 1700's, artist, William Hogarth and others, petitioned the English parliament to extend copyright protection to pictures and prints. Hogarth was an English satirical artist. Hogarth is best known for his work of prints, which he engraved after his own paintings. He is essentially a preacher and moralist, but a preacher from the stage of life, with the spirit of the dramatist in the series of scenes with which he often addressed his audience (Hind 233). Hogarth was constantly preyed upon by plagiarists. Hogarth's most popular work was called "The Rake's Progress", which were a collection of prints. Plagiarists would actually pose as potential buyers to get into Hogarth's home to see his most popular works, then they would make attempts at reproducing the images of what they had seen.

By 1735, England granted Hogarth's protection claims. The copyright laws of the United States stand on this structure built in England. In 1790, the United States Congress enacted our first federal copyright statute providing copyright for an initial term of 14 years. In 1831, the initial term of copyright was lengthened to 28 years. By 1870, the laws were amended to cover paintings, drawings, statues and models or designs of works of the fine arts. Recent legislation has extended the term to the artist's life plus 70 years for works created after 1977. For works created before 1978 that must be renewed, the total term has been extended to 95 years from the time it was published. There has been a dispute as to what constitutes publication, and interpretations have ranged from an appearance in an exhibition to reproduction in printed form. The law varies from country to country.

Today, we have the Internet. In 1995, there was recommended legislation to accommodate the new technologies of the rapidly expanding digital environment. These recommendations also produced further clarification on the application of copyright protection in cyberspace. In response to these

recommendations, a bill known as the National Information Infrastructure Copyright Protection Act of 1995 was introduced in both the United States Senate and the House of Representatives. It's main purpose was to increase and clarify the scope of copyright protection as an incentive for copyright owners to make their works available on the Internet, for the benefit of the public at large. This bill introduced in 1995 actually failed to pass, because opposition came from a coalition of groups representing libraries, educational institutions, and higher technologies. However, in 1998, the Digital Millennium Copyright Act was enacted after compromises that alleviated these groups concerns. However, the bill's key provision is it's anticircumvention section. The moment someone breaks the encryption or password that protects the digital content, that person would be breaking the law. See web site [www.computerworld.com/home/news.nsf/CWFlash/9810143copy](http://www.computerworld.com/home/news.nsf/CWFlash/9810143copy).

Having covered a very abridged perspective on the history of copyright laws, we are now at a point where I can begin to discuss what this paper is about, which is reproduced images and it's legality concerns. We live in an interesting time. As things shift because of these new technological leaps, we must pay close attention to what is fundamental. Works of art still need to be protected. Copyright laws in place today, offer the best way in which to achieve the delicate balance between the rights of the creator, the user, and ultimately, the community at large.

In the emerging landscape of online images, people of all ages are getting better acquainted with works of art, and the appetite for the original will only deepen. The palpable hypnotic effect of such imaging have contributed to the demand for original work. The exposure of these images to a vast audience of the world wide web will also be a contributing factor in such demands. However, there are fears of the opposite happening, where people will grow accustomed to looking at the reproductions, and forget about the original and what the benefits to seeing an original work of art entails.

In addition, in the cases of reproduced images online, the fear is not the loss of the original, but fear of the original worth being greatly 'cheapened'. For example, what if a reproduction depicts greater detail than the original? What if a painting is reproduced, then that reproduction is further manipulated to eliminate dirt, darkened varnish, craqueleure or cracks in paintings, and other unintended disfigurements of the surface? You can virtually have a painting that is in physical respects, more faithful to the artist's original intention than the current state of the work. All this can be done today without harming the original painting. But, on the flipside to this, what would be the value of the reproduced digital image if the pool of available images increases with every reproduction? Let's say a criminal act to willfully reproduce thousands of images and disseminate to a vast public. Doesn't that diminish the value of the reproduced

copy as well? Maybe not for the criminal, but certainly for the general public. Museum's housing paintings provide argument that art is to make the encounter with the original, an enriching one. The criminal's intention is to make money, and lot's of it.

Perhaps, to better understand the process of image and how easy it is today to reproduce a piece of artwork, I should describe the concept or process of digital imaging. How does the concept of imaging work? A digital image is composed of pixels or picture elements. This is similar to dots or grains, arranged in columns and rows, eventually forming the entire image. The number of possible colors or shades of gray, for example, that each pixel can represent, is determined by the image's dynamic range. This dynamic range or bit-depth, is taken from a pre-set palette of colors. The two most commonly used in today's computers are 8 bit and 24 bit color palettes. The specific colors in a palette are predetermined by the system displaying the image, and the same 256 colors, which is the system palette, are used for all images.

An image may be viewed on a monitor or printed on a sheet of paper. Monitors vary in today's market, and are capable of displaying anywhere from 256 to more than 16 million colors. I personally have a NEC 17 inch monitory which, in my opinion, is the best on the market so far. The resolution that a monitor can display also may vary. If a monitor is set for a lower resolution than an image's true color scheme, some of the detail will be re-interpreted. Such variations on the viewers monitor can greatly change the appearance and quality of the image.

How do you get an image in the first place? An image is derived at by using either a scanner, or a digital camera. With a scanner, the direct image is read or 'scanned' in a process similar to as if you were at a photocopying machine. With a digital camera, an item, like a bowl of fruit, for example, is placed on a table, and a digital picture is taken of that image. With either process, the image being reproduced is formatted for storage in an image file. Image files include not just the image data, but descriptive technical information related to the image. For example, it's color palette, and the compression algorithm, etc. There are many standards for image storage files, such as TIF, GIF, and BMP, to name a few. Not all image formats can be interpreted by all viewer programs, but image files can be easily generated in various formats.

Image files tend to be larger than other files located on your computers hard drive. Therefore, you need lots of disk space! There are programs that allow you to compress image files for storage optimization, and can be decompressed at a later time or at another location.

With the easy creation of images to image files, there is now an introduction to many legal issues associated with the use of such images. Before access to an image is allowed, many questions must be answered relating to the rights to reproduce, re-distribute, or to download, or even print an image.

The distribution or dissemination of image files can occur in several ways. When an image is converted to digital form and becomes accessible, the right to reproduce it electronically must be verified or acquired, or the public domain status of the work must be verified. The conditions under which users may print or download each image must be determined, and the rules must be policed and enforced. Usually, copyright notices and other restrictions are prominently displayed so that user can not claim ignorance of the law.

When a law is violated, the copyright owner of the original work can sue, seeking a remedy for the damages incurred. An infringer can be sued for the artist's actual damages, in addition to any profits made that aren't included in the calculation of actual damages. Statutory damages can be sought if the owner can not prove actual damages. Whether the lawsuit will be effective and whether damages will be awarded depends on whether the alleged infringer can raise one or more legal defenses to charge. Common legal defenses to copyright infringement are ( [www.nolo.com/ChunkPCT/PCT23.HTML](http://www.nolo.com/ChunkPCT/PCT23.HTML)):

- ✚ too much time has elapsed between the infringing act and the lawsuit (the statute of limitations defense)
- ✚ the infringement is allowed under the fair use doctrine (discussed further below)
- ✚ the infringement was innocent (the infringer had no reason to know the work was protected by copyright)
- ✚ the infringing work was independently created (that is, it wasn't copied from the original), or
- ✚ the copyright owner authorized the use in a license (see below)

To win an infringement suit, the artist must prove that he or she owned the copyright and the work was copied by the infringer. However, there are exceptions, such as 'fair use', 'compulsory licensing', and 'permission'. There is a test for infringement as used by the courts. It is whether an ordinary person, looking at the original work and the work was altered in some way, but the ordinary observer test still leads to that most of the work has still been copied, then an infringement has taken place. Compulsory licensing was initially explained at the beginning of the paper where the copyright owner has no right to prevent the use of copyrighted work. Permission is simple. The author consents for the works of his or her own material, usually with a simple statement such as "I am happy for you to copy and re-use my art

works as long as full attribution to me is given and I am informed". See this web site for post-surrealist artist, Julian Hill (<http://mail.bris.ac.uk/~lijeh/ftcopy.htm>).

- ✚ what are the guidelines of fair use? There are 4 factors for the fair use exception:
- ✚ the purpose and character of the use, including whether or not it is for profit.
- ✚ the character of the copyrighted work.
- ✚ how much of the total work is used in the course of the use.
- ✚ what effect the use will have on the market for or value of the copyrighted work.

Fair use usually provides protection for reproduced works that are used for criticism, comment, news reporting, teaching, scholarship, or research (Crawford 37).

Another claim that a copyright owner may promulgate is the issue of unfair competition. The essence of an unfair competition claim is that the defendant assembled a product which bears so striking a resemblance to the plaintiff's product that the public will be confused as to the identity of the products (Crawford 69). The description of the unfair competition claim can be even broader. For example, artists can be prevented from being presented as the creator of works that they did not really create. There is a test for unfair competition decided in New York case: *Shaw v. Time-Life Records*, 38 N.Y. 2d 201. The test is whether persons exercising 'reasonable intelligence and discrimination' would be taken in by the similarity (Crawford 69).

The whole concept of reproducing an image is that more than one user will be able to take the digital file and use it. Unfortunately, in the real world, the proper channels of legally obtaining a copy and legally distributing an image are not always adhered to. The reality, in this day and age, when time appears so scarce, people are less likely to make a special trip to a museum to see an original work of art if they can easily get access to a reasonable copy at their computer screens, whether it's a legal copy or not.

Original works of art not only provide a link to the past, but the actual viewing of an original gives us insight on the times and circumstances and point of view of the artist's time. Artwork images are not merely reproduced for dissemination via image files. You can see artistic images depicted in the television shows, commercials, and movies we see, such as current movie "Eye's Wide Shut" in which all artwork in the background was painted by Stanley Kubrick's wife, or even more recently, impressionist paintings by Monet and Renoir depicted in "The Thomas Crown Affair". This movie is a remake of an original where the premise was about a bank robbery. This current version delves into the world of

museums and art and we see great classical works that were reproduced with great clarity. With all these reproduced images embedded in our technologies today, eventually, the image may no longer be regarded as a temporary substitute for the original, but as a permanent replacement.

Over time, people will eventually forego the experience of looking at any image that is truly 'original'. Ultimately, those viewing the image only on-screen will be missing a presence that cannot be reproduced or adequately expressed in words. It is the same kind of unquantifiable experience that is rapidly disappearing from so many facets of modern life.

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