
Your Bottom Line

By Dr. Henry J. Oles, Cr.Photog.

Copyright boomerang

In the past year, no photo industry issue has attracted more attention in numerous magazine articles, convention platform programs, and casual conversations than the effects of the Copyright Act.

After two major Federal Court copyright victories by the PP of A against flagrant copyright violators, many professional photographers across the country began serving customers with copyright infringement warnings. Some state they will "file criminal and civil actions against anyone who violates the copyright law".

At first glance, these major court victories appear to help insure professional photographers' continuing income. However, closer scrutiny of the situation may yield a different, even frightening, perspective.

First, professional photographers should recognize that technical advances in imaging, such as sophisticated color copiers, cannot be restrained. The Fuji Color Copier AP5000, for example, can control both a reproduction's color balance and density. This unit produces quality copies quickly and inexpensively, and is so simple to operate that it can be set up as a coin-operated machine. This makes it impossible to inhibit anyone from copying professional color portraits.

Although PP of A won judgements against companies that blatantly violated copyright law by making substantial incomes from reproducing professionally made images, it would be difficult to persuade a prosecutor to indict Grandma for copying a professional portrait of her grandchild.

Portrait photographers are correct that Grandma is illegally infringing on their rights and potential income. However, Grandma feels that since she paid for a professional service, she "owns" the image and is entitled to make copies for her personal use. This is a point of view prevalent among portrait photography clients and affects professional portrait businesses.

One fast way for studio owners to lose customers is to tell them they do not have the right to do what they want with their family portraits. Photographers should be aware that this attitude can be ex-

tremely damaging to their businesses—even if they have legal rights. Competitors can exploit this situation by assigning portrait copyrights to customers who are interested in legally reproducing images.

This is already happening in some marketplaces. A number of professional wedding photographers and several portrait studios charge creative fees and produce the customer's initial album or print package, then turn the color negatives over to the subjects. How far away is a time when a studio portrait photographer makes the exposures and turns the unprocessed film over to the subject?

An increasing number of photo reproduction choices are becoming available to photography consumers. For example, Eastman Kodak Company markets Create-A-Print II, a do-it-yourself 35mm color negative printer/enlarger already at many camera stores and photo labs. It allows customers to custom crop, adjust color balance, and print up to 17X enlargements at a free-standing consul, in less than 5 minutes without help.

Offering consumers a wide range of choices is not uncommon in other industries. For many years, individuals who visited optometrists for eye examinations assumed that their eye doctors would fill corrective lens prescriptions. This service was a financial staple for optometrists.

Although the option to purchase glasses from an eye doctor is still available, optometrists are now required by law to give corrective lens prescriptions to customers after an examination. Individuals then have the option to purchase corrective eyewear from a wide variety of suppliers, including one-hour eyeglass labs.

I predict that this approach to business will be embraced by the professional photography industry. Today, most color labs service anyone who places print orders from negatives, regardless of whether or not they are professional photographers.

Professional photographers should try to understand how the average portrait subject feels about being denied rights to make copies of professional images they

purchased. Imagine visiting an optometrist who not only refused to provide a corrective lens prescription after an exam, but charged a "top-market" price for eyeglasses. Then, after an optical specialist from a discount eyelab determined the prescription by analyzing the original eyeglasses, you purchased an identical pair for half the price. How would you feel if the optometrist then filed criminal and civil penalties against you for violating his or her rights? Would you recommend or visit that eye doctor again?

So, what is a professional photographer to do? Instead of threatening potential clients with lawsuits against copyright infringement, photographers should improve their sales strategies to obtain maximum orders from customers during the initial session—before customers have an opportunity to consider other options.

Although professional photographers have legal recourse against copyright violators, is it a sound business decision for studio owners to make an issue about potential copyright infringement with customers? Many retail stores refrain from warning patrons about shoplifting laws, since threatening customers with criminal penalties does little to enhance the store's image or profit potential.

To prosper, photographers must consider the ramifications of imaging advancements. Today, it is possible to digitize a photograph and make substantial improvements—such as opening closed eyes or removing facial blemishes—before producing a print. After such image enhancements, it may be difficult to determine the true copyright owner.

It is essential for photographers with marketing savvy to keep their business practices in harmony with future technological advances. Optometrists were forced to survive in a transforming industry. Some adapted by starting their own one-hour eyelabs. Successful studio owners also must be able to restructure their business operations during change to maintain a healthy bottom line. ■