

**COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES**

**SUBCOMMITTEE ON COURTS, THE INTERNET,
AND INTELLECTUAL PROPERTY**

**HEARING ON INNOVATION IN AMERICA:
THE ROLE OF COPYRIGHTS**

JULY 25, 2013

**EXECUTIVE SUMMARY AND PREPARED STATEMENT
OF
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PREPARED STATEMENT OF EUGENE H. MOPSIK EXECUTIVE SUMMARY

ASMP wishes to thank Committee Chairman Goodlatte and Subcommittee Chairman Coble for the opportunity of testifying on this important issue.

Founded in 1944, the American Society of Media Photographers' mission is to protect and promote the interests of professional photographers who make photographs primarily for publication. ASMP is the oldest and largest trade association of its kind in the world. ASMP's members are primarily freelance imaging professionals, creating images --- both still and moving --- for publication in advertising, editorial, fine art and other commercial markets.

Simply put, ASMP's members and professional photographers like them create many and probably most of the images that the American public sees every day: they create this country's visual heritage. These images communicate the horrors of war and genocide, "the thrill of victory and the agony of defeat", the events of every day life and the joy of discovery and travel. They create emotion, document history, and expand our knowledge. Much of the incentive to create, innovate and the ability to control the sale and license of these works would be lost without copyright.

Imagine National Geographic, The Sunday New York Times and its Magazine, Rolling Stone, Travel and Leisure, Food and Wine, Saveur, Sports Illustrated all without photographs! And not just any photographs, but photographs created by professionals to fulfill the needs of their clients, created under various conditions, on schedule, processed and prepared for reproduction. Stunning images that consistently stretch the bounds of creativity and innovation. Each assignment is a challenge to create something new, never seen before. Communicate light, emotion, the facets of a commercial product, the history and location of an event. Professional photography enriches and opens our eyes to new worlds making us better informed and more sensitive to the issues and conflicts occurring around us.

Again, in order for professionals to be able to sustain a livelihood, they need to be able to control the sale and license of their works so that they may receive fair compensation for their use. Copyright is the cornerstone of this equation.

For thirty two years, prior to my becoming the Executive Director of ASMP, I worked as a professional photographer creating images and solving problems for companies such as Mack Truck, Hyster Company, Ingersoll-Rand and Citicorp. It was the ability to license my works that allowed me to buy a home, put my children through school and create a better life for my family.

Creativity and innovation are essential to the success of an imaging professional. There is a saying in the trade that, "You are only as good as your last job." Competition is fierce even amongst friends. Client loyalty only goes so far. The ability to profit in an ongoing manner from my images was a key stimulus for my work. In addition to my corporate industrial photography, I created and licensed a number of sunset skyline views of Philadelphia and its significant architectural environments including the Ben Franklin Parkway, Logal Circle, and the waterfront. These images were repeatedly licensed by companies for business development literature and by other companies needing to highlight Philadelphia attractions. These images were created early morning and in the evenings before and after having worked on assignments for the day. In the cold and in the heat, on roof tops and docks, with no promise of financial gain other than the knowledge that the images would be unique, of great quality, and that I would own the copyright and be able make licenses. I was driven to create and innovate. I needed to provide for my family and my future and copyright gave me the path.

The digital revolution was supposed to be better, faster, and cheaper. Well, not all of that promise has come true. It may be better in many ways than film, it may be faster to capture the image – you can have immediate confirmation of success or failure. In regard to cheaper, it never happened! Professionals now need \$5000.00 to \$7000.00 cameras that will become obsolete in approximately 18 months. Lenses extra! In addition, there is a need for extensive computer and storage devices to process and manage the thousands of files. Photographers tend to be equipment junkies, appreciating good design and function. The marketplace has responded over the years with numerous innovations, the photographers have bought in and have become thought leaders for the pro-amateur and amateur markets encouraging further innovation and consumption.

Copyright is key to a free and open expression of opinion and point of view. If independent professionals were no longer able to sustain a living from their works, the dissemination of images would be more concentrated in the hands of a few corporate giants who may have their own business interests and agendas. Embarrassing or controversial images might never see the light day.

In conclusion, the equation is simple: without copyright protection, the public record, our visual heritage and the stimulus to innovate would be drastically reduced in both quantity and quality.

PREPARED STATEMENT OF EUGENE H. MOPSIK

Chairman Goodlatte and Coble, and distinguished members of the Committee, I thank you for this opportunity to testify regarding the important contributions to our society and future generations made by professional photographers and the crucial role played by copyright in the continuing ability of imaging professionals to support themselves and continue to create the visual images that enrich the lives of everyone. Freelance professional photographers are both users and drivers of technological innovations in both the public and private sectors.

Founded in 1944 by a handful of the leading photojournalists of that time, the American Society of Media Photographers' mission is to protect and promote the interests of professional photographers who make photographs primarily for publication. ASMP is the oldest and largest trade association of its kind in the world. ASMP's members are primarily freelance imaging professionals, creating both still and moving visual images for publication in advertising, editorial, fine art and other commercial markets.

1. The Value of This Country's Visual History and Heritage

The ultimate beneficiary of copyright was intended by the framers of the Constitution to be the American public. In possibly no other area has this intent been fulfilled than that of photographic imagery. Ever since its invention in the mid-1800's, the public's lives have been enriched and expanded by an ever-increasing exposure to photographs. The world has been opened up for virtual exploration by people who would never have seen, for example, the Egyptian Pyramids, but for photographs of them.

The public has been able to "experience" every war, beginning with the Civil War, through photographs created by independent, professional photographers like Matthew Brady. The course of human events has been greatly influenced by these haunting and disturbing images. Freelance photographers like Walker Evans, Dorothea Lange and Gordon Parks created an astonishing body of images that showed the realities of the Great Depression and that constituted an archive that continues to educate and inform new generations many decades later.

Imagine what the world would be like without visual images that have been captured and stored. How much would the quality of your life, enjoyment and education be diminished if you turned on your television or computer and were exposed to nothing but text and sound? What if magazines and books, including

their covers, had nothing but text? Think of Sports Illustrated, National Geographic, and CNN without their visual content.

What would the financial impact be on the economy if consumers saw advertisements that had text or text and sound, only; how many people would be incentivized to buy products that they could not see without going to a store? What would Times Square look like if all of the signs and billboards showed only words; how many tourists would want to go there?

Photographic images, both still and moving, are crucial to creating and maintaining a complete and accurate historical record for scholars and future generations of the public. During and even after World War II, many people who had not experienced or seen the horrors of the Holocaust denied its very existence --- until the world got to see the photographic images documenting the death camps and their millions of victims. Without such powerful proof of the truth, the public's view and understanding of the Nazi era might be very different from what it is today.

The power of visual images cannot be underestimated. It is so strong that, in many cases, the images are so burned into our collective consciousness that they do not even need to be seen to be experienced, over and over again. For example, consider these few short descriptions and whether a specific photograph jumps into your mind:

- A zeppelin on fire and breaking apart while landing,
- A young Vietnamese girl running while napalm burns off her clothing,
- A young boy in a coat and shorts saluting as his father's coffin is carried past,
- A cowboy lighting a Marlboro cigarette,
- A British Prime Minister standing with one hand on his hip, glaring into the camera lens.

The list could go on indefinitely. The point is that, as the old adage goes, a picture is worth a thousand words, and photographs are a crucial and integral part of our lives --- past, present and future.

2. The Value of the Professional Photographer

A. The Visual Heritage

While the value of this nation's photographic archive might not be disputable, there are those who have questioned the value and need for --- and even the current existence of --- professional photographers. The CEO of Yahoo!, Marissa Mayer, recently said, "... today, with cameras as pervasive as they are, there is no such thing really as professional photographers..." She quickly posted on Twitter and elsewhere to apologize, but the question clearly reflects

the mindset of many people: Do we really need professional photographers and what value do they add? With vast numbers of amateur photographers and even non-photographers carrying cell phones with amazing picture-taking capabilities, and with the advent of the "citizen journalist," does the world truly need and benefit from professional photographers?

It is a question that begs to be answered, and the answer is a resounding Yes. We get to that answer by considering the following. First, for many, perhaps even most members of the public, copyrights are associated with large media producers, media outlets and other corporations. The reality, however, is that no corporation ever created anything, let alone a copyrighted work. Think about that: no corporation ever created a copyrighted work. While movie studios, record labels, publishing houses, etc. may own the copyrights to works that are published or distributed bearing the corporate name as copyright owner, the fact is that the works and copyrightable creations comprising those works were all created by individuals.

Who are those individual creators? In the world of photography, they are working pros: freelance independent contractors who support themselves through the sale and license of their works. They are small businesspeople, generally sole proprietors or small mom & pop shops, who earn, for the most part, modest livings. They generally receive no employee benefits. Even though they typically pay unemployment taxes, they are not eligible to collect unemployment payments if their work dries up or if they go out of business. There is no such thing as a paid vacation for a freelance photographer. There is no paid overtime or hazardous duty pay. If there turns out to be a problem with a photographic assignment, even one outside the photographer's control, there is likely to be no pay --- and often no future business from that client.

At one time, some large corporations and other businesses maintained significant staffs of photographers on their payroll. These photographers were able to enjoy all of the normal benefits of being an employee. Sadly, recent years have seen drastic reductions in numbers of these positions and frequently the wholesale elimination of staff photographer departments. This past May, the Chicago Sun-Times eliminated its entire photography department and started training reporters to capture still and moving images on their iPhones. See <http://www.adweek.com/news/press/chicago-sun-times-eliminates-entire-photography-department-150009> for more details.

This takes us back to the question of what is wrong with that --- what is the value that the professional photographer adds to the public record that the amateur and even accidental photographer does not? The answer, simply, is quality; it is the photographic eye and vision. Anyone with sufficient money can buy professional quality cameras and other equipment. Even with inexpensive cameras and even cell phones, current technology has made it difficult to make a technically "bad"

picture. However, there is a world of difference between the images created by professional photographers and the vast majority of pictures taken by amateurs and cell-phone-toting people in the streets.

To illustrate this, think about all of the photographs that you and/or your friends have ever taken of the Grand Canyon and our western national parks. Then look at, or even just picture in your mind, the images of the same subject matter created by professionals like Ansel Adams. Think about snapshots of everyday people that you and/or your friends may have taken over the years, then look at the images created by people like Walker Evans or that appear in books like Robert Frank's The Americans. There is a universe of difference, the difference between being forgettable and memorable; between just being a photograph and being evocative; between being filed away and being published again and again over a long period of time.

Consider the photographs that most of us have taken of beautiful buildings and other architectural structures. Somehow, even at their best, they never quite capture the true look and feel of the actual structure. Then take a look at some of the photographs of master architectural photographers like Ezra Stoller or Charles Sheeler. Words cannot describe the differences, a fact that provides additional illustration of my point that a world without images, and especially professionally made images, would be a poor place, indeed.

Aside from quality, a huge difference between professional photographs and non-professional photographs is the subject matter. There are simply subjects that are difficult to look at or capture but that are vital for the public to see and to know about. Professional photographers make images of those subjects because that is their vocation and their avocation; most non-professionals do not. Many such subjects are inherently dangerous and require the photographer to knowingly put him- or herself in harm's way. Professional photographers are paid to do that, one way or another, and they do it. Very few non-professionals do.

B. Innovation

In terms of technological innovations, professional photographers have consistently been among the earliest adopters of change and among those driving improvements and suggesting and demanding upgrades, to the benefit of the economy and the marketplace. Men like Niépce, Daguerre and Talbot were driven by the need for truly accurate visual representations of what they saw, as opposed to the interpretive reproductions provided by illustrations. They invented various photographic processes and simultaneously became the world's first professional photographers. Their invention has enthralled the world's population to the point where, today, an overwhelming majority of the populace walks around with at least one camera in his or her pocket, whether it is a single-purpose device or built into a mobile telephone.

Throughout the history of photography, professional photographers have invented new devices and techniques that have benefited themselves, their colleagues, their peers and the general population. For example, Edward Muybridge invented the first device to create moving images, to the eventual delight of untold millions of moviegoers --- and to the delight of movie studios and producers, as well as the economy in general and, I daresay, even the Internal Revenue Service.

Professional photographers have, from the beginning, been the earliest adopters, beta testers and users of every hardware and software innovation, as well as a driving force in demanding constant upgrades, improvements and new inventions. They are compelled to do so by the pressures of the marketplace. They are in constant competition with each other and need to take advantage of every new creation in order to remain competitive. Each assignment is a challenge to be innovative, creative, and to render their subject in a new and compelling manner. Their clients expect and demand that they be in the forefront, on the penalty that, if they are not, these same clients will move on to another working pro. When digital cameras were invented, it was professional photographers who have consistently been the first adopters. The same has been true for each improvement and invention in the evolution of digital photographic imaging. Typically, it has been only after a significant number of working pros start using a particular camera or product that the mass market tends to follow suit, then generating significant revenues for every person and entity in the supply chain and the economy, as a whole.

Freelance professional photographers kept asking for some way to track infringing uses of their images on the internet. This demand drove the invention of image recognition based search technology, which is used by huge numbers of professional photographers and other individuals and entities through vendors such as PicScout and TinEye. Freelance photographers continually pressed the Copyright Office to develop an online registration system, leading to the creation of eCO, a system in which professional photographers continue to work with the Copyright Office to upgrade and improve, for the benefit of the public.

3. Copyright --- the Sine Qua Non for Professional Photographers

Without copyright, there would be no professional photographers. It is that simple. Copyright is the engine that drives the professional photography machine and makes it sustainable as a living. Photographs are information --- visual information. As with news reporting, it is the uniqueness and freshness of information that give it much of its value. Being the first source for information, and being able to control other sources for the same information, is the difference between getting paid for that information and not. Without copyright, once a photograph is published or distributed for the first time, the photographer or other copyright owner goes unpaid. And going unpaid spells the end of a class of

businesspeople who rely on the revenue stream from copyright licenses for their livelihoods. The demise of freelance professional photographer would inevitably lead to a deplorable degrading of the quality of our visual heritage and public record.

The need of copyright protection by the freelance photographic committee is, today, at an all-time high for another reason. The advent of the digital era has made it fast, easy and simple for images to be stolen or otherwise infringed. Without copyright protection, all possible recourse by the photographer would be eliminated, and we would be creating a culture in which digital theft is considered acceptable.

Further, copyright protection is needed in order to preserve the integrity of our visual history. In a digital environment, images can be altered with little or no evidence of the alteration. Without copyright protection, the visual record --- history, itself --- could be altered, and there would be nothing that the creator of the true record could do about it.

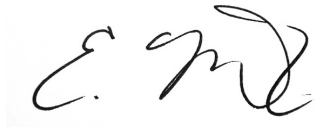
Further, copyright protection is necessary to allow the photographer to say No when he or she feels it to be appropriate. There are situations in which possible uses of images are contrary to what the photographer would and should allow. For example, in recent elections, there have been many instances in which photographs were illegally appropriated by candidates and used out of context to support candidates and issues that were diametrically opposed to the beliefs and intentions of the photographers involved. Without copyright, there would simply be no redress available.

Finally, if the loss of copyright did, as I believe it would, cause the end of the professional photographer, a handful of large business entities would become the primary source of visual information for the public. It appears likely that those business interests would not be concerned with a complete exercise of our First Amendment rights to freedom of speech. Rather, they would be interested in exercising those rights only when it was to their financial best interests to do so. Photographs that might cause embarrassment or problems for themselves or their allies would never see the light of day.

In conclusion, the equation is simple: without copyright protection, the public record and our visual heritage would be drastically reduced in both quantity and quality.

Thank you for your time and consideration.

Respectfully submitted,



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