



Changes in the law

Paul Ellis of Stop 43 explains how impending changes to current copyright legislation could be disastrous for photographers. He talks to **Oliver Atwell**

TERMS like orphan works and extended collective licensing (ECL) have been in the news a lot recently. But why are they so important? Since 2010, Paul Ellis, founder of the website Stop 43, and several concerned parties, have been fighting in vain to prevent them from entering government legislation. Now, as a result of these impending changes, individual photographers will suffer as they could have their work used without their knowledge and, potentially, without payment.

ORPHAN WORKS

First, let's take a look at what we mean by the term 'orphan works'. 'An orphan work is a copyrighted work, such as a photograph, the owner of which is unknown,' says Paul. 'Basically, a corporation may wish to use an image it has found online or in an archive, but cannot establish who owns the copyright as no information is available even after extensive research.'

This is particularly relevant with photographs uploaded to sites such as Facebook, as the site removes the Exif data from images, thus making it near impossible to find the original creators and uploaders. And, of course, countless images are uploaded to blogs and photo-sharing sites every day. Once these images are out in the world, there is the potential risk they will become orphan works.

COPYRIGHT

International copyright law across most of the world is based on the Berne Convention.

'The convention states that the author has the exclusive right of authorising the copying of their work,' says Paul. 'It also says that copyright is automatically held by the creator of that work.'

The purpose of the changes in legislation is to create an exception to copyright. Under proposed legislation, people or companies will be able to use a copyrighted work (orphan works) without permission from its creator by using an ECL. Therefore, it is crucial that readers keep a stringent record of their published images, particularly ones that are put online.

COLLECTIVE LICENSING

Extended collective licensing takes place when primary licensing simply isn't feasible. Take, for example, a large music retail chain that plays music in-store. It would be unfeasible for the chain to negotiate licensing with each individual artist, so those rights are placed with a collective rights organisation as there is nothing in the Berne Convention that prevents assigning rights to a third party. The collective rights organisation then works out how many licences have been sold in a year and all the members of that organisation are paid.

'Extended collective licensing expands the power of a collective rights organisation to cover works that belong to non-members,' says Paul. 'They can issue a licence to a user to use any orphan work photograph. For example, the British Library will be able to use any kind of photograph commercially and all it will have to do is pay a licence fee

The images of professionals and amateurs alike could be used without permission and without payment

to a collective management organisation, which then has to try to figure out who the photograph (the orphan work) belongs to and then pay them a nominal fee.'

Sadly, a large portion of the licence fee that could be paid to the artists will be swallowed up by administration costs.

WHO GAINS FROM THIS?

The big winners in the world of orphan works are the academic sector (schools, colleges and universities) and the cultural heritage sector such as the British Library, the BBC and, at the top of this tree, Google.

'Entities like the BBC and the British Library have a vast number of orphan works,' says Paul. 'The British Library, for example, wants to digitise and commercialise its entire holding of stock without having to pay the creators, or at least not pay them much.'

According to Paul, the real value lies in the future. He believes ECLs will result in a massive transfer of value from individuals to corporate entities.

'The government has gone on record as saying all of this will stimulate economic growth,' says Paul. 'This is a conclusion that they have reached through the Hargreaves Review of Intellectual Property and Growth back in 2010. However, the direct economic impact on rights holders has been completely ignored. In the end, the report was roundly debunked.'

The Hargreaves report claimed that these proposed changes would generate around £2 billion for the UK economy. However, when the report was questioned that figure reduced to £2 million. In fact, Paul claims that the benefit to the UK economy is just 80p per UK citizen per year.

Unfortunately, these changes have been passed in the EU, so the UK must implement the same legislation by October 2014.

'There are countless people who are still fighting against this,' says Paul. 'If you want to do something, read everything you can on this subject. You can also write to your MP and arrange to see them. Demand answers and protect your rights.' **AP**

To learn more about forthcoming changes to copyright legislation, visit www.stop43.org.uk