

Infringements of Stock Images and Lost Revenues

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Stock Artists Alliance

INTRODUCTION

Nearly all aspects of the stock photography business have been transformed in the past decade. Film-based capture and overnight delivery of analog images have been replaced by digital images and electronic delivery. High-speed databases and broadband internet connections have made it easy to market, sell and deliver images anywhere in the world— all with the press of a button.

In addition, the internet has brought a major shift in how and where images are used. Print uses are declining and new media uses—such as online and portable devices—are proliferating. In the future, the stock photo industry will rely more heavily on revenues from these new media formats and non-traditional licensing models.

Along with the opportunities of the new digital age, significant challenges for the stock industry have also emerged. One challenge in particular is not yet fully appreciated, although we think this challenge also creates an opportunity for photographers, image distributors and industry groups to create new customers, new markets and new revenue streams.

Easy online access to millions of stock images has also made them extremely susceptible to theft and misuse. With just a click and a drag, users can move a digital file from any web site onto their desktop—without payment or license. Although images sourced this way are typically low-resolution, they are often good enough. High resolution is traded for an unbeatably low price—free.

In addition to outright piracy, digital media have also increased the potential for legitimately licensed images to be used outside the scope of the original license. Once downloaded, image files can be easily repurposed and redistributed to other users. File names are commonly changed and identifying metadata is stripped or altered, making these images vulnerable to misuse.

This paper addresses how and why the stock photo industry is subject to this theft; we also try to gauge the size of the problem. We describe what is being done now, obstacles to overcome, and suggest additional steps to minimize piracy of stock images, protect our copyrights, and maximize revenue opportunities for photographers and the distributors of their images.

THE SIZE OF THE PROBLEM

To learn more about the extent of the infringement problem, the Stock Artists Alliance teamed up with PicScout, a company that uses advanced visual recognition technology to track images on the web. Starting with a repository of copyrighted images, PicScout crawls the web to find matches and the technology is able to reliably identify unauthorized usages.

In 2003, SAA became aware that PicScout had begun searching commercial web sites for the Rights Managed images of several major stock collections and uncovered a shocking rate of abuse—*nine out of every ten images they found were unauthorized uses.*

This suggested a staggering loss of potential licensing revenue to those companies—and to copyright holders. PicScout further observed that these infringements could be classified into two general categories—inadvertent misuse and intentional theft. While some customers exceeded legitimate licenses, a large fraction of cases they reported were blatant infringements.

It is difficult to know how to interpret the real-world significance of this startling finding since many infringing uses cannot practically be converted into new licenses—yet. But these practical difficulties have not stopped many stock distributors, archives, and some individual photographers from aggressively pursuing some of the worst offenders, often with real revenue gains as the result.

Public records indicate the largest stock distributors today convert many infringers into paying customers and generate millions in revenue that used to go uncollected. Mid-sized and smaller archives too have reported significant revenues recovered by pursuing leads.

THE SAA/PICSCOUT STUDY

In 2005, SAA and PicScout joined forces on a study that used SAA's methodology and PicScout's technology. Our goal was to add some more depth to our understanding of the internet infringements of stock images. Our findings provide some insights into the extent of the problem—and lead us to hope that the industry can convert the infringement problem into a set of revenue opportunities for agencies and photographers.

The study tracked a sample of 20,000 images represented in the Rights Managed collections of the leading stock distributors, Getty Images and Corbis, who were not using PicScout's technology at the time. The largest sample —16,000 images from Getty Images—represented 3 percent of their RM collection at the time. An additional 4,000 images were from Corbis. The images came from the collections of 70 SAA members and included diverse subjects, styles and vintages.

We excluded from the sample images that had previously been licensed for website use. This assured a high level of accuracy in identifying actual infringements. In addition, all images had registered copyrights with the U.S. Library of Congress, thereby maximizing the potential to recover revenues and damages.

For four months, PicScout crawled commercial web sites in the U.S., U.K. and Germany looking for matches. We concluded the study when Getty Images began working directly with PicScout in April 2005. Later that year, Corbis also began working with PicScout. The following observations are based on detailed reports that included the URL, a screen grab, and contact information for each usage found.

There was an unacceptably high level of infringements. Over the four-month period, we received 388 reports. 80% of these were for Getty Images and 20% from Corbis. If we annualize the study results, we arrive at an estimate of nearly 1,200 infringements for our sample. This translates to an annual infringement rate of almost 6%, or nearly 1 out of every 17 tracked images. This rate was slightly higher for the Getty sample where the infringement rate was about 1 in every 15 tracked images.

The infringement rate for the market leaders may be higher than for other distributors. Comparing the study results to their other, smaller customers, PicScout observed that the rate of infringement for the Getty sample was significantly higher than the norm. It is perhaps not surprising that the most popular stock image sites are also frequent targets for theft.

The highest levels of infringements were in the U.S. which accounted for 64% of the reported misuse, followed by Germany (23%) and the U.K. (13%).

Infringements involved companies of all sizes and industries. Websites with infringing uses ranged from local businesses to well-known global companies, and from diverse industries including business, technology, insurance, legal, medical, financial, real estate, travel and entertainment, marine, and manufacturing. Significantly, these industries represent mainstream users of properly licensed stock images.

Misuse of images in “templates” was significant. Multiple reports indicated that images are being incorporated into website design templates and then used frequently within an industry. We noted that these tended to be local businesses such as builders, funeral homes and health care services. Template sites are of particular concern because they spur viral distribution and infringement on a broad scale.

Infringing images were frequently used as the primary visuals, and on multiple pages. Many of the images were prominently used, often on home pages or as a major image on secondary pages. These same images were used an average of two times per site.

Multiple infringements of images from the same sources were common. Further investigation by PicScout revealed that on 29 of the websites where images were found, another 91 images from Getty not originally included in our sample were also being used. This suggests a common pattern of multiple infringements, in this small sample being a 3 to 1 ratio.

These were not short-term uses.

One year later, many of the same images were still in use on these web sites. Two years later, these uses had declined, perhaps in response to takedown notices issued by the distributors.

SAA's study, now two years old, remains the most specific and actionable research on this issue.

WHAT IS BEING DONE NOW

Since SAA's study, there have been promising signs of active tracking and recovery efforts across the stock photo industry. Today, Getty Images, Corbis and many other companies use web-scouring technologies to aggressively identify and pursue online infringements. It is also encouraging that new technologies are now extending this vigilance offline to include important print uses, such as magazine and newspaper advertising.

Getty Images has affirmed their policy to address unauthorized uses to their contributing artists, stating: "Getty Images considers the subject of copyright protection of the utmost importance and has an active program utilizing a range of measures to deal with the issue. We are committed to continuing to do all that we can to enforce copyright laws and ensure that both our company and our photographers and filmmakers are compensated for their work."

In addition, and following up on SAA's recommendation, Getty Images introduced an online Unauthorized Use Form for contributors to report suspected unlicensed uses.

Corbis, too, actively engages in recovery efforts, having recently brought successful legal action against a major infringer, TemplateMonster.

It is evident that efforts to track and pursue infringements have grown in recent years, and that they have led to recovery of substantial revenues. What's unknown is how many infringements occur, how much of this loss is recoverable, and how much revenue has been recovered.

ESTIMATE OF LOST REVENUES FROM INFRINGEMENTS

Naturally, everyone wants to know the dimensions of the problem in dollars and cents. We cannot draw precise conclusions since our study looked at a limited slice of the worldwide stock market—RM images on commercial web sites in three markets. It was also limited by the number of images searched, the brief period of the trial, and the level of tracking resources applied to an unpaid study overseen by a not-for-profit industry association.

Also, our study is now two years old and infringers' behaviors and the extent of the problem may well have changed in the meantime. We can, however surmise that unauthorized use of RM images on the internet represents the loss of significant potential revenue for stock distributors and the photographers they represent. But are we talking about tens, or hundreds, of millions of dollars in lost revenues?

Based on the study findings, SAA developed a “ballpark” estimate of the potential market value these infringing uses represent. We applied the infringement rate observed from the study to the rest of Getty Images’ current RM collections. According to Selling Stock’s recent count, there are just over 1 million RM images on gettyimages.com.

If we apply the 1:15 annual infringement rate observed in our study, we arrive at an estimate of approximately 67,000 infringements in a one-year period. Using an average license fee of \$600 (a conservative figure, based on Getty’s published rates for commercial web site uses), we calculate that these usages represent a market value of about \$42 million per year.

So far, our estimate addresses only the three well-developed markets searched in our study—the U.S., U.K. and Germany. If together they account for about 60 percent of the worldwide market, our preliminary estimate of the annual market value of these usages then rises to about \$67 million.

It’s of course important to recognize that not all infringing uses can be converted into paid licenses. While the true numbers may well be significantly higher or lower, and while not all of these revenues are ‘recoverable,’ this exercise hints at the extent of the problem—and the potential opportunity it implies.

We must also take into account the potential losses from other major distributors, smaller archives and self-marketing photographers. And, in order to gauge the broader extent of the problem, we must look beyond the scope of this small study—and beyond our estimate—to recognize several other forms of infringements that are not included here.

Consider the potential misuse of Rights Managed images in traditional print media, other digital uses, and in emerging markets. And what about Royalty Free images? In considering each of these additional factors we ask, “How can these infringing uses be converted into revenue for photographers and their distributors?”

TRADITIONAL PRINT MEDIA

The majority of RM images are used in more traditional offline formats, such as print advertising, brochures, direct mail, marketing collateral, presentations and other traditional corporate marketing formats. While visual search technologies continue to improve their offline tracking capabilities and are now scanning and searching magazines and newspapers, we still have a limited ability to identify infringing uses of images embedded in print formats. These losses are not included in the estimate above and could well be even larger than online infringements.

OTHER DIGITAL USES

Our study was limited to commercial web sites in major markets. Consider the variety of other web and digital uses such as banner ads, pop-ups, HTML emails, images deeply embedded in flash files, digital displays, CDs, kiosks and wireless applications. Online tracking tools are just beginning to extend this deeply into online marketing and the estimate above includes nothing from these new and rapidly proliferating forms of communication.

EMERGING MARKETS

The well-developed markets we studied have higher levels of copyright awareness, stronger copyright laws and more active policing than many other markets. We can speculate that the infringement rates in emerging markets are much higher than what we observed, suggesting another potential multi-million dollar missed revenue opportunity.

As these economies grow and their image needs escalate, the infringement problem could also grow. From the Getty 2005 Annual Report: “Innovations in broadband and mobile technology are opening up whole new categories of imagery demand; nowhere are these technologies growing faster than in the developing world.” Indeed, the proliferation of websites in these markets will increase the demand for images—legal and otherwise.

ROYALTY FREE

SAA's study looked at Rights Managed images only, but what about infringing uses of Royalty Free images? RF currently represents about half of worldwide revenues and much more than half of images licensed.

Although rights granted by RF licenses are broad, they are not without limit. RF images are also illegally copied and re-used by third parties, and there are good reasons to believe they are being infringed at a far higher rate than RM images.

RF images are more frequently used online, and widespread sub-distribution of RF images across hundreds of websites makes them readily available to potential infringers. These multiple distribution channels make it difficult to determine whether a given use is, in fact, unauthorized.

RF misuse is further fueled by a widespread misperception that a royalty "free" license implies unlimited use by an unlimited number of users. Without more vigilant compliance efforts, this widespread misperception is reinforced and further fuels image thefts. Furthermore, as enforcement and recovery efforts become more effective for RM images, we can expect that willful infringers will steal more of these difficult-to-track RF images.

It is not possible to sum up these various sources of infringements and define with precision the costs to the industry in terms of uncollected revenues. But we can conclude that scores of millions of dollars of revenue each year are not being realized from commercial websites alone, and that these losses are compounded by infringing uses of images in other formats and media.

OBSTACLES TO OVERCOME

It is clear that the stock photo industry is currently subject to theft on an unacceptably large scale, and the problem will likely continue to grow as new digital media and emerging markets mature. Other obstacles need to be addressed. These involve some outdated industry practices, such as the lack of industry-wide standards, as well as external pressures, such as anticipated changes to copyright law.

LACK OF ATTENTION TO ROYALTY FREE

To our knowledge, RF image licenses are not being tracked. The implication is stark: the majority of all licensing transactions today are made with limited efforts to ensure compliance. Although many more images are being used every day, fewer and fewer of them are being licensed, with the result that we leave money on the table through weak enforcement of licensing agreements. As a result, revenues for photographers and distributors are not being maximized.

There is no reason why Royalty Free licenses cannot have their limited rights "managed" more proactively. It is possible to challenge anyone using an RF image to produce the license agreement that authorizes the use, and it is possible to prosecute copyright violations.

All licenses for copyrighted images—even those with the broadest use terms—should be made with an expectation of compliance. However, the industry has been notably lax in enforcing even the most basic restrictions on RF licensing.

ISSUES WITH SUB-DISTRIBUTION

The multiple layers of distributors and sub-distributors that market the same image create an additional challenge. SAA's Investigative Shopping Study has been licensing images through sub-distributor sites over the past three years to better understand the royalty reporting and payment process. In our limited sample, we have commonly observed long reporting delays to the primary distributor, especially from international sub-agents.

Moreover, when licenses are reported, information about the end user has, in nearly all cases, been omitted. Without a prompt and transparent reporting of licensing activity, how can infringements be identified? Also, because royalty reports to contributors commonly omit licensing information, we all lose a valuable tool in tracking infringements—artists spotting unauthorized uses of their own images.

There is a deep mutual interest among photographers and distributors: the rights to use photographs become most valuable when those rights are enforced. Without a more concerted, diligent effort, infringements will continue to create unrecoverable theft of income for both. While distributors have stronger commitments (and more dedicated resources) to pursue infringements, their effectiveness is inhibited by the complexity of a distribution system that lacks transparency and coordination among all the involved parties.

LACK OF METADATA USE AND PRESERVATION

Embedded metadata should be the primary means of storing information in images; this is certainly the best way to prevent images from becoming “orphaned.” However, metadata practices within the stock industry are inconsistent. And while photographers are increasingly embedding metadata as part of their workflows, these tags are too often stripped or altered after the image file is passed along to multiple distributors and end-users. The result: too many orphans and a limited ability to enforce copyrights and generate revenues. This challenge is true for both Rights Managed and Royalty Free licenses.

RISKS FROM “ORPHAN WORKS” LEGISLATION

Some proposed changes in US copyright law could weaken protections for copyright holders and impair our ability to effectively pursue infringements. Proposed “orphan works” legislation in the U.S., and changes in U.K. law as recommended by the recent Gowers Review, would allow the free use of an image without penalty if the user failed to locate the copyright owner after conducting a “reasonable search.” At present, there is no clear standard for what would constitute a “reasonable search,” which could encourage infringers and would put additional burdens on copyright holders.

This legislation could severely limit our industry’s ability to protect our images from intentional misuse. Many digital files in circulation lack identifying information. Images are typically published without attribution. For those images that become “orphaned”—even despite diligent efforts of the copyright holders and others—we anticipate that there will be a growing number of what are essentially “allowable infringements,” including commercial use of images without licenses.

WHAT CAN WE DO?

In closing, SAA proposes the following actions for stock photographers and distributors to take to help effectively address the issue of infringements, protect our copyrights, and maximize our licensing revenue opportunities. In short:

1. Always promptly register copyrights.
2. Always embed and preserve metadata in images.
3. Commit to pursue infringements.
4. Make yourself easy to find.
5. Enable all licensing systems to manage rights.
6. Work together.

1. ALWAYS PROMPTLY REGISTER COPYRIGHTS

Images are copyrighted at the moment of creation, but registration is recommended to maximize the protection of intellectual property. Only registered works may be eligible for statutory damages and attorney's fees in successful litigation, and this provides a strong incentive for infringers to settle.

For all photographers who license images in the U.S.—*regardless of their country of residence*—copyright registration is now considered to be an industry 'best practice' that is in everyone's interest. Registration will not only help in the event of U.S. infringements but will also make it easier to prove ownership by making a registration certificate available.

The good news is that the registration process is getting easier as the U.S. Copyright Office launches an electronic registration system later in 2007.

The **U.S. Copyright Office** web site is <http://www.copyright.gov/>. Helpful resources include **Copyright Tutorials** from ASMP—the American Society of Media Photographers at <http://www.asmp.org/commerce/legal/copyright/> and from PACA—the Picture Archive Council of America at <http://www.pacaoffice.org/copyright.html>.

2. ALWAYS EMBED ESSENTIAL METADATA IN IMAGES, USING WIDELY RECOGNIZED STANDARDS, AND ENSURE THAT IT IS PRESERVED AT EVERY STEP IN THE WORKFLOW.

Photographers should enter critical metadata—copyright and creator contact information—into their images at the earliest possible point in the workflow and always before passing them on to distributors or end users. It is also advisable to add rich metadata such as captions, keywords and unique identifiers.

Adopt universal standards for embedding metadata so this information has the best chance of being widely understood and easily discovered. An excellent start is the IPTC Core metadata panels that are built into Adobe Photoshop CS2, referred to as "File Info." They write metadata in two formats that makes them widely recognized in other software and image databases, ensuring that image metadata can be read and understood.

If you have Photoshop CS, download and install the **IPTC Core panels** at <http://www.iptc.org/iptc4xmp/> along with the **User Guide** at <http://tinyurl.com/qw25p>. As a quick introduction, view **SAA's Video Tutorial** at <http://www.stockartistsalliance.org/tutorials/index.asp>.

Photographers need to examine their existing stock imaging workflow from start to finish to ensure that the applications used to embed metadata preserve ownership and contact metadata by default, especially when creating derivative files and copies. Stock distributors need to ensure that their workflow maintains this essential metadata, taking special care to ensure its preservation in files posted to their web site, passed along to sub-distributors, and downloaded by clients.

SAA's Metadata Manifesto clarifies the key principles for metadata use at <http://www.stockartistsalliance.org/info/news/news.htm#manifesto>. A comprehensive discussion of metadata issues and goals is presented in the **IPTC White Paper** at <http://www.phmdc.org>.

3. COMMIT TO PURSUE INFRINGEMENTS

While the pursuit of infringements is appealing as a source of increased revenue, it is also imperative to counter the commonplace notion that images on the web are "free" or "fair game." Much like the music and motion picture industries, we need to communicate to end users that copyrighted materials cannot be used without a license. Allowing infringing uses to continue sends the message to abusers that this behavior is tolerated.

Vigilant compliance efforts yield the benefit of educating image users that rights must be properly licensed and that misuse is not acceptable. Getty Images' Unauthorized Use Policy states: "When we find infringements, our experience shows that they are most often unintentional. Our policy therefore is to turn infringements into

licenses, and infringers into customers. The process we use focuses on education, informing the client about what copyright is and where they went wrong. Our aim is to avoid legal action but we will not hesitate to use it when the need arises.”

Photographers may be contractually bound to give their stock distributors sole authority (or first right of refusal) to pursue an infringement. Distributors, in accepting this responsibility, need to make good faith efforts to protect these images from all possible unauthorized uses. Distributors should also make their contributors aware of how their copyright compliance programs and systems work, and keep them “in the loop” about suspected infringements of their images and what action has been taken. As a minimum standard to protect the intellectual property of their contributors, they should commit to follow up with leads to confirm if they are infringements, and if so, send warning letters and issue take-down notices. We have seen significant progress and improvements in this area in recent years.

Photographers need to do their part to assist in pursuing leads by promptly providing copyright registration, licensing history and any other documents requested. If their distributor chooses not to follow up on a qualified lead, they should promptly refer the lead and all relevant details to the contributor to give them the best opportunity to pursue the infringer, should they choose to do so.

Leads need to be carefully evaluated as to prospect for recovery. The investment in time and money to pursue these cases can be significant. Should photographers choose to independently track how and where their images are used, they can utilize visual search technologies and specialized collections services.

Advice on the range of options for enforcing your rights at available from ASMP at <http://www.asmp.org/commerce/legal/copyright/protect.php>. PicScout has an Image Tracker™ Service for Photographers which includes a compliance service to follow up on leads at <http://www.picscout.com>.

4. MAKE YOURSELF EASY TO FIND

With “orphan works” legislation in some form likely to become law, there is a heightened urgency in ensuring that image owners can be readily found in the course of a ‘reasonably diligent’ search. Otherwise, there is a risk that this law could be misused by some as a “free pass” to use images without fees or licenses.

Currently, our industry lacks robust tools to protect images from becoming “orphan works.” Several tools and proposals are being developed to strengthen this vigilance. For example, as envisioned by the PLUS Coalition, an industry-wide image registry would help identify infringements. With broad industry support, such registries could virtually eliminate any claim that copyrighted images are “orphans.” This would provide a powerful tool to reduce infringements and increase licensing revenues.

5. ENABLE ALL LICENSING SYSTEMS TO MANAGE RIGHTS

There needs to be “rights management” of all stock images, not just those licensed through the RM model. We have already mentioned the need for RF licenses to have their rights managed as well, and the potential revenue gains if the professional image community is motivated to do so.

Today, we are seeing the emergence of alternatives to traditional RM that streamline and automate the licensing process, yet also continue to enable protection and tracking of images. For example, Getty Images introduced its “Rights Ready” model as simplified form of RM that offers broad use licenses (such as Print Advertising) with worldwide use for ten years. Because Rights Ready licenses are restricted to one user and one project, the usage can be tracked and the rights can be managed.

Another example is **PLUS™Packs**, a new universal standard developed by the PLUS Coalition that is available for implementation by image licensors worldwide. 18 broad-use Packs addresses the frequent image usage needs of commercial and editorial customers. This PLUS™Packs system effectively simplifies the RM licensing process into a “three click” process, by offering customers a short list of options for duration (from 6 months to 10 years)

and coverage (from Local to Worldwide). The PLUS™Packs system presents a unique opportunity to offer image users a simple online license that is also solidly rights managed.

To help spur adoption of the PLUS standards, SAA has developed a free **PLUS™Packs Calculator** that automates selection and pricing. This tool, and an introduction to PLUS™Packs standard, can be downloaded at <http://www.stockartistsalliance.org/pluspacks>.

6. WORK TOGETHER

In the spirit of collaboration and mutual interests, industry coalitions and initiatives are working to strengthen our ability to protect our images, and our livelihoods.

The **Imagery Alliance** is a coalition of twenty-one diverse associations (including SAA) that represent the interests of photographers, illustrators, stock archives and distributors, picture researchers and designers, who have come together to address issues related to protecting and enforcing copyrights. This coalition is actively engaged in influencing the proposed “orphan works” legislation, and plans to coordinate efforts across its more than 100,000 members so we speak with a powerfully unified voice to legislators about the need to preserve copyright protections.

The **PLUS Coalition** has brought together major stakeholders from across the licensing industry to develop universal standards that will facilitate image licensing and rights management. *Learn more about PLUS -The Picture Licensing Universal System at <http://www.useplus.com>.*

Industry leaders held the first **Photo Metadata Conference** earlier this year to address the urgent need for a seamless workflow that utilizes and preserves metadata. The participation of software developers, camera manufacturers and standards organisations demonstrated a willingness to work together to address shared challenges as the image business moves forward in this rapidly changing world. *Read about the 2007 Conference at <http://www.phmdc.org>.*

IN CLOSING

Looking ahead, diligence, creative solutions, and a spirit of cooperation across the stock photo community will be more important than ever to ensure that our images are protected from misuse. This is a matter of increasing revenues and enhancing the value of our images—goals we can all embrace. We encourage you to join these efforts. Your business will benefit from your vigilance.

SAA invites your comments and encourages an ongoing industry-wide dialogue about this topic.

ABOUT SAA

The Stock Artists Alliance is the only trade association dedicated to the business interests of professional stock photographers. SAA supports its worldwide membership with substantial information resources and ongoing advocacy initiatives.

Learn more about SAA and the benefits of membership at <http://www.stockartistsalliance.org>.

Contact us at info@stockartistsalliance.org

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