Copyright & Photography

Early History of Photography

- 1820s - experimentation with the idea of photography begins
- 1839 - Jacques Louis Mande Daguerre and François Arago announce the daguerreotype, the "first commercially practical photographic process"
- 1841 - William Henry Fox Talbot patents the calotype
- 1850s - development of the ambrotype
- 1861 - first use of celluloid (which is not patented until 1870, and is trademarked in 1873)
- 1865 - photographs are first covered by copyright
- 1877 - shutter speeds begin to increase
- 1878 - dry negative processing becomes more viable

Daguerreotype

Calotype

Street at Frankfort gloomy day 15 minutes in Camera

Ambrotype

Early Attitudes About Photography

- First promoted as a purely scientific and mechanical endeavor
- "Photography" literally means "drawing with light"
- Largely seen as a wholly objective technology
- Often used as evidence in court cases because it was seen as "incorruptible"
- Becomes a more democratized practice as the 1800s advance, and technology is increasingly easier to use
- Professional photographers and portraitists were concerned because having more people practice photography meant they were less needed
  - Also the use of negatives meant that there was a huge black market for prints
- Wanted to prove that they were more specialized and artistic than hobbyists
- Debate between artistic photography and scientific photography by the late 1800s

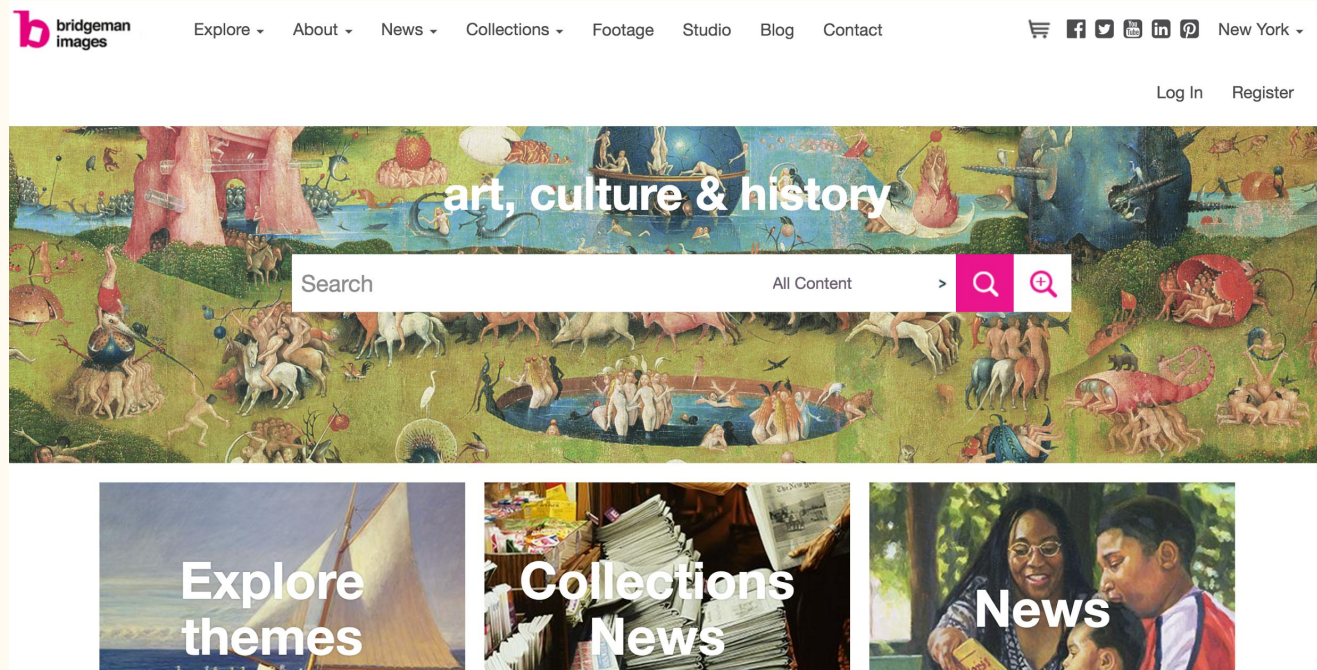# Burrow-Giles Lithographic Co. v. Sarony (1884)

- Burrow-Giles Lithographic Co. had made and sold 85,000 copies of Sarony's "Oscar Wilde no. 18"
- The defense argued that: "there is no originality in the manual operation of a machine that produces an unaltered transcription of the scene before it."
  - Therefore, photographs shouldn't be protected by copyright
- Sarony proved how much work and authorial vision he had put into setting the scene (props, posing, lighting, etc.)
  - No mention of any later editing
- Supreme Court decided in Sarony's favor and upheld that photographs could be protected by copyright
- Due to the focus on only the "arranging" of the scene, the idea of certain photographs depicting the unadulterated truth could still live on

Specialties for Photographic Copyright

- **Manner of photographing**, such as the angle of shot, light, shade and exposure;
- Creation of the **scene** or **subject** to be photographed;
- **Ability to capture** a unique scene in the right place at the right time.

(Parry 2000)

Bridgeman Art Library v. Corel Corp (1998 & 1999): Copyright of photographic reproductions of artwork in the public domain

art, culture & history

Explore themes

Collections News

News

Bridgeman Art Library Website

Bridgeman Art Library v. Corel Corp

- 1998, Bridgeman against Corel Corporation, a Canadian software company, for infringement of the copyright in over 100 photographs of its works of art.
- Bridgeman claimed that Corel copied the photographs from their Art Library and reproduced them in a CD-ROM series.
- The photographs included **paintings** by famous European artists, most of which **fall in the public domain in the U.S.**
- Judge Lewis Kaplan of the Southern District of New York Court in 1998 and 1999 (confirmed) found **for Corel Corporation: no valid copyright in the photographic reproductions of the paintings in the public domain**

(Parry, 2000)

Bridgeman Art Library v. Corel Corp

For the Judgment -

- "**Slavish copying**"; **no originality** in the photographic reproductions, not permissible **subjects** of valid copyright ("Judgement," 1998 & 1999)
- Pose a barrier to the public using the paintings depicted in the photos (Reese, 2009)
- Extend the **copyright term** of the underlying paintings to "forever" (Reese, 2009).

Bridgeman Art Library v. Corel Corp

Against the Judgement -

- **"Originality" v. "Creativity"**
  - "Creativity": imaginative interpretation of the subject matter and authorial agency;
  - "Originality": the **origins** of the work with the **author;**
  - Exercise of **intellectual labor** - significant knowledge, experience, and judgment in photographic reproductions

(Allan, 2007)

Bridgeman Art Library v. Corel Corp

Against the Judgement -

- **Policy concerns: Benefit the public in the digital era**
    - Prevent art libraries and museums from resorting to more restrictive contracts that lack a "fair use" doctrine as the copyright law to protect their collections;
    - Encourage museums and art libraries to produce high-quality photographic reproductions of their artwork **for the public use**.

(Allan, 2007)

Learning from the case...

- Photography as both a form of art and media;
- Special concerns with photographic copyright, the law and the public good;
- Relevance to cultural organizations (i.e., museums, archives, libraries) and information professions;
- Internet and digital environment.

Copyright & Photography in the Digital Age

- Way more information and photography is available to us with the advent of the internet.
- Much easier to pirate a digital photograph than an analog one. It can be copied to a hard drive with a single keystroke.
- Image manipulation software, like Photoshop, also allows for simple alteration to preexisting material.
- Usually, it is due to ignorance than maliciousness. However, some transgressions are intentional. Due to the size of the internet, anonymity is easy to achieve.
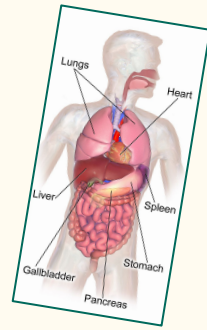
Who Owns a Digital Photo?

- With a digital camera, copyright law begins at the **moment of creation.** Therefore, when the shutter is pressed and the photo is stored in memory, the photographer assumes ownership.
- Only they have the right to **sell, use, copy, distribute, publish, alter, or destroy** the work.
- One exception is when a photographer is hired. In the contract, the **employer can assume ownership rights** of all photos taken by the employee. Therefore, contracts must be read carefully.

Anatomy of a Copyright Notice

Photographer's Name

Reservation Declaration

© Joseph Bender 2016. All Rights Reserved

Copyright Symbol

Year of Photo

Fair Use

- Copyright law has specific provision to allow for use without permission
- Categories
  - Teaching
  - Criticism
  - Review
  - News
  - Parody
  - Satire
- "As long as you don't sell it, you can copy it"

NOT TRUE

Derivative Use

Painting of the Gardener - Maxfield Parish (1906)
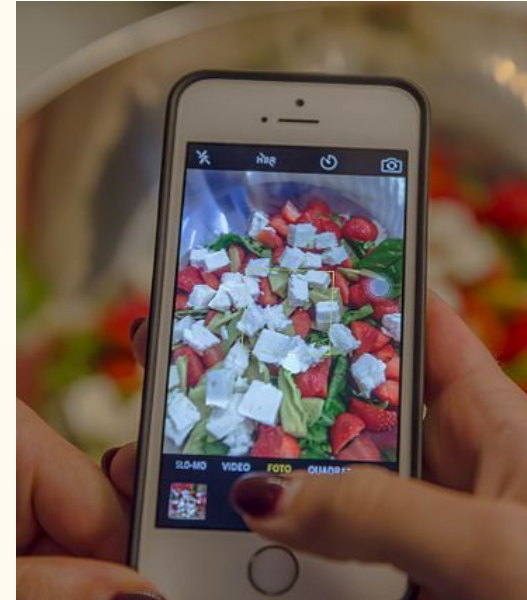**Cover of *Collier's Weekly***

- Derivative work
- Based on a pre-existing work
- Can file for copyright protection
- Photograph from Painting
  - Let's say you recreate a photo drawing from Maxfield Parish's painting
  - This is a derivative work!
  - You don't file copyright = No reproduction, could be infringement!
  - You file copyright = Reproduction allowed
    - Need original copyright holder's consent to file for your own copyright

Photography in Modern Day

- Analog → Digital → Internet
- Easier than ever
- **Chalfen (1987)**
  - "Kodak Culture"
    - Tells a story
    - Daily and private life are captured
    - Emotional ties to friends and family are enforced
- **Miller & Edwards (2012)**
  - "Snappers"
    - "Producer Diffusers"
    - High technological competence
    - Social Networks
    - Privacy is compromised
    - Instantaneous sharing
  - "Digital Migrants"
    - Traditional → Modern
    - Contrast "Digital Natives"

"Camera eats first"

Study of Methodology

- Study of 92 university students
  - 64 women, 29 men
  - Private higher education institution in Mexico City
  - Upper and middle class

- **Motives**
  - Most Relevant
  - "Sharing my experience" - 34%
  - "Expressing my emotions" - 23.6%
  - "Documenting reality" - 23.6%
  - Least Relevant
    - "Making friends" - 49%

- **Topics and Themes** (Out of 13 points)
  - "Friends" - 9.13/13
  - "Travel" - 8.78/13
  - "Landscapes" - 8.68/13
  - "Objects around me" 8.08/13
  - "Self portrait" - 7.71/13
  - "Festivities" - 7.69/13
  - "Family" - 7.44/13

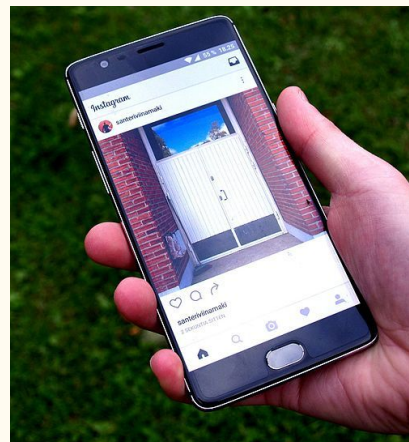# These Photos are Worth Defending!

- **Photographic Quality**
  - Focus, composition, lighting, color, contrast, volumen, scale, brightness, blur and movement
  - Composition - **42%**
  - Focus - **21%**
  - Lighting - **15.6%**
  - Scale - **3.27/10**
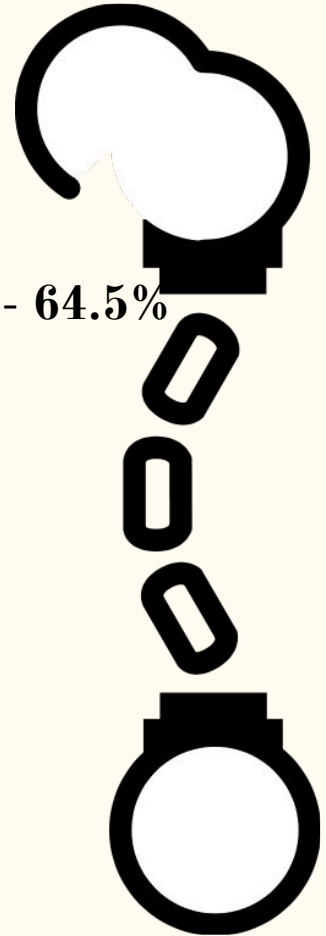 - **"Definite Photographic Aesthetic" - 81%**

- **Social Networks**
  - Instagram - **65.1%**
  - Tumblr - **12.1%**
  - Flickr - **6%**
  - Pinterest - **4.5%**
  - **Profile significance - 87.7%**

Copyright Results

- Read contract - **83.8%** do not
- Unaware of Copyright regulations in social network they use - **64.5%**
- Know their rights when uploading a photo - **55.9%**
- Beliefs
    - Lose intellectual property - **46.2%**
    - Yield their personal data - **34.4%**
    - Surrender Patrimonial Rights - **33.3%**
    - Lose possibility of getting images back - **20.4%**
    - All rights surrendered - **13.9%**
    - **Do not surrender any rights - 19.3%**
- ## SENSE OF APATHY

Professional Photographers of America (PPA)

Docket to the US Copyright Office

- Everyone takes photos
  - True skills take decades to develop
  - Must protect the art of photography
- Wedding Photos
  - 90% of wedding photographers make money when photos are delivered to client
  - DVD - Can be copied and shared
  - Fight orphaned status
  - Metadata can be stripped
- **1%** of photographers regularly register copyright
- **84%** have never registered with USCO
- Average photographer takes **20,000 photos a year**

- **"Reasonably Diligent Search"** can be misconstrued
  - Strict definition
  - Policing of bad faith searches with legal consequences
  - Unique identifiers, metadata, keywords, and digital watermarks included in search
  - Updated search for subsequent use
  - Ease of contacting rights holder

Photography is always evolving. However, the moral obligation to give credit where it is due has always remained.

We cannot know where photography will go next, but we do know copyright isn't going anywhere...

Image References

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- https://upload.wikimedia.org/wikipedia/commons/0/0c/Frankfurt_Am_Main-William_Henry_Fox_Talbot-Zeil_in_Richtung_Hauptwache-1846.jpg
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