[LEGAL REVIEW]

BY VICTOR S. PERLMAN

THE ASSAULT ON COPYRIGHT

In my last column, I described a momentary calm in the eye of the Orphan Works storm. We are now back in the turbulence and trying to negotiate a piece of legislation acceptable to photographers and other freelance creators of copyrighted works. The new Congress has convened, and by the time you read this, new legislation will have been drafted and possibly introduced. Since matters involving any legislation can change with lightning speed, we will do our best to update you on significant developments via e-mail and the ASMP Web site.

No matter what the final Orphan Works legislation looks like when it gets enacted (and there is no doubt that some version of this bill will become law), this is just one early battle in what I believe is a major and long-lasting assault on copyright. Discussions within our industry are generally limited to a small group of copyright owners. This gives us a skewed vision of the world. For a more accurate view, we need to look beyond our ranks. Check out the Web sites of groups representing the interests of people who use copyrighted works, like the Electronic Freedom Foundation <www.eff.org> or Public Knowledge <www.publicknowledge.org>, and see what they have to say about copyrights.

Try reading *Wired* magazine. Talk to anyone in the educational community. Try talking to your kids. Ask them whether file-sharing has gone away and whether it's good or bad. Check out YouTube <www.youtube.com> or MySpace <www.myspace.com> and see what's going on there. It's really very simple. Digital technology and the internet have made it fast, easy and convenient to distribute copyrighted material—often without permission or payment of licensing fees. For decades now, the trend in society has favored things that are fast, easy, convenient and cheap—and there's nothing cheaper than stolen copyrighted content.

Copyright is under assault, from just about every direction and on every front, including the courts and the legislature. Copyright law finds its very basis in the U.S. Constitution. Despite that, recent years have given rise to lawsuits challenging various aspects of the Copyright Act as—unconstitutional!

The bottom line: Society does not want copyright and does not want to pay for copyrighted works. That's probably not new, but there weren't many practical alternatives before the proliferation of computers and the internet. Today, society has all it needs to use copyrighted materials without permission, except legal authority. And there lies our biggest problem for the future. Laws are created to meet the needs of society. Given the overwhelming desire of millions of registered voters to carve copyright protections down, I see a period in which copyright protections will be eroded on an ongoing basis. Further exceptions will be written into the law, and Copyright Act provisions will be interpreted by courts to benefit users at the expense of copyright owners. We have all watched, and are painfully aware of, marketplace pressures on traditional rights-managed licensing, so I need not belabor that aspect of the attack on copyright.



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Image: *Curtain, Texas* from Arthur Meyerson's series, "The Color of Light," which will be exhibited from February 9 – August 9, 2007 at Roche Bobois, 7611 Girard Avenue, La Jolla, California, (858) 459-0297.

What does this mean for you? In my view, our members' traditional business model is under pressure from so many quarters that it will not last in the long term. It is now time—even past time—to start thinking of new business approaches for your work. Consider yourselves as visual communicators, not as professional photographers doing business in the same way as in the past. Start thinking out of the box. Candidly evaluate your unique skills and talents, then envision ways to convert them to money. The ASMP's board has charged itself with examining these same questions on behalf of our members. Yet, no matter what the board comes up with, you need to plan for your own professional future.

Before cars became commonplace, thousands of companies manufactured horse-drawn carriages. When automobile sales started to outstrip this market, the carriage companies started to disappear. All except one: the Fisher Carriage Company. This company realized it wasn't in the horse-drawn carriage business—it was in the business of making bodywork for personal transportation, whether powered by horse or motor. The company innovated and remained successful—so successful that it was eventually bought out by GM. The threat to copyright today is every bit as real as last century's threat to the horse-drawn carriage, so start now to think of yourself and what you do in different ways.