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## **Focus Issue: The Impact Of Intellectual Property Regimes On The Enjoyment Of Right To Science And Culture**

The Office of the United Nations High Commissioner for Human Rights

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Comments contributed by the Graphic Artists Guild, USA

September 12, 2014

The Graphic Artists Guild is pleased to have the opportunity to submit our comments, opinions and suggestions as contribution to the Office of the United Nations High Commissioner for Human Rights regarding the impact of intellectual property regimes on the enjoyment of right to science and culture, as enshrined in particular in article 15 of the International Covenant on Economic, Social and Cultural Rights.

These comments are submitted on behalf of visual artists, with a focus on illustrators and graphic designers (together, “graphic artists”).

Copyright protects the economic and moral rights of visual creators (artists, designers, and photographers) around the world. As citizens of Berne Convention signatory countries, we are assured that our work and our rights to control the use and duplication of our work is protected in other countries as well.

The legal concept of intellectual property rights was meant to protect the economic rights and interests of authors/creators/inventors. It was never intended to protect the rights of users by taking the intellectual property rights to works away from authors/creators/inventors so that others could profit from their works.



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Graphic arts are integral to a broad range of industries, such as publishing (illustration, book design, graphic novels), advertising, educational and training materials, motion pictures and broadcasting, retail packaging, websites and online commerce, textiles, video games, apparel, home furnishings, computer graphics, stationery, posters, CD and DVD art, ceramics, and editorial illustration. Because graphic art is so integral to the world economy, the graphic art industry is uniquely vulnerable to copyright infringement. Protecting the creative works of illustrators and graphic designers must continue to be a necessary and integral part of both U.S. and international copyright law.

The Graphic Artists Guild supports archiving, preserving and restoring deteriorating and genuinely orphaned works to preserve cultural heritage and broaden access to educational and research materials. We're not worried about the motion picture archive that wants to preserve a deteriorating celluloid film, or the library that wants to scan an out-of-print book to make it available for academic research. Our concern as visual creators who earn our living by creating visual works is that our rights to our works — our legal and moral rights to our copyrights as well as our economic and licensing rights — are not diminished.

Copyright in the United States is a bundle of rights, including the right to reproduce the work and the right to display the work. Rights holders license different types of uses, use in different media, use by different users, and use in different markets and geographic locations. We earn our incomes by licensing the use, display, reproduction, and broadcast of our visual works.

### **COST-SAVING IS NOT FAIR USE**

The cost and effort of locating and contacting rights holders who did not include license for digital or Internet use —likely because their work was published before digital or online use was either possible or considered — does not trump copyright law. Paying rights holders to license their work is a the cost of doing business. Some users, including non-profit institutional and for-profit commercial users, are seeking expanded allowances under fair use [fair dealing] when their real motive is simply financial; they don't want to pay rights holders to license use.



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## **PUBLIC BENEFIT AND ELECTRONIC RIGHTS**

The end use of digitization of copyrighted works does not justify unauthorized copying of whole works without properly licensing them simply because someone believes that use will benefit “the public.” Disregarding the legal and economic rights of authors/creators/rights holders does not benefit “the public” unless you believe that millions of creative individuals and businesses shouldn’t be paid for their work. Electronic rights are separate licensing rights from print publication rights. Digital use/reproduction, display on the internet, and digital distribution are completely separate licensed uses, and must be negotiated and paid for separately.

## **EDUCATIONAL USE**

Millions of Americans – individuals, small and large businesses – create copyrighted works intended for educational purposes. Writers, illustrators, graphic artists, photographers, filmmakers, composers and songwriters, musicians, software developers, and publishers all contribute to the creation of works for educational purposes. We earn our living from the licensing and sale of our works for educational use; to educational facilities, to teachers, and directly to students of all ages. Our works are licensed and sold to educational institutions, teachers and students in a variety of media including in print, on digital media, and online. Depending upon the course curricula and what a teacher or professor chooses to teach, just about anything could be used for educational purposes. Allowing broad an unlimited unlicensed reproduction and distribution of any copyrighted works for “scholarship” purposes will lead to the sweeping elimination of an entire American industry — educational materials. Without payment, the work will not be produced.

## **ARTISTS AND DERIVATIVE WORKS**

Digital technology enables people to appropriate, combine and make mash-ups in ways that were not possible before. Making copies and incorporating other’s visual works used to take a lot of time, effort and skill; few people could do it. Now anyone can do it. Does that make everyone a creator, or is it just easier to steal or plagiarize from other creative people? Appropriation art, mash-ups and collages are derivative works.



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Looking at images created by other people for visual research purposes is a necessary part of the working process to inspire our creative thinking to come up with original ideas and is not copyright infringement. However, once we decide we want to use a significant amount of someone else's image in a final design that will be produced, we have a legal obligation to get permission from the rights holder for that particular use and pay them a licensing fee if they ask for one. That is also a regular part of the design business and should be planned for in production schedules and budgets.

Graphic designers typically create collective works and derivative works by putting together a composition of other's creative works. Graphic designers license usage of these works as a regular course of the working process and doing business. Sometimes the works are transformed or adapted, and graphic designers get permission to do this.

Fine artists making appropriation art are doing the same thing, and have a legal and moral obligation to license the images they use. Just because technology exists that enables people to do things with creative works that was unimaginable when copyright law was first codified (mobile phones, digital cameras, the Internet) doesn't mean that the concepts of authors/creators rights is outdated. Just because it is technologically possible to do things with digital versions of creative works doesn't mean that all digital uses should be free. It is just another medium. 21<sup>st</sup> Century artists are not creatively inhibited by copyright. But rather, copyright protects the moral and economic rights of original artists when others desire to incorporate their works into other, new derivative works. Unfortunately, most appropriation artists make no attempt to contact the original visual creator for permission, and are often quick to claim that copyright impedes their incorporation of other creator's work into their own out of fear of legal reprisal for plagiarizing/infringement.

## CONCLUSION

Graphic artists earn our living by creating visual works and licensing our work. Copyright protects our economic rights to earn money from our work. Allowing the use and copying of visual works for free erodes copyright protection and erodes value of work. It amounts to taking something of value without paying for it.



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Copyright also protects artists' moral rights. We have the legal right to determine who uses our work, where it is used and how; who makes copies, how many and for what distribution. We have the legal right to permit others to display our work and to control where it is displayed. We have the legal right to prevent others from altering our work, or give them permission to do so with or without our oversight. Our reputations and livelihoods could be easily harmed by the offensive, obscene, or unskillful changes made by others to our original visual works.

Licensing use, including exclusive use, is the economic basis of how visual creators earn a living. We are quite literally small businesses. We urge The Office of the United Nations High Commissioner for Human Rights to protect the intellectual property rights of visual creators of original works.

#### **ABOUT THE GRAPHIC ARTISTS GUILD**

In the course of its 47-year history, the Graphic Artists Guild has established itself as the leading advocate for the rights of graphic artists on a wide range of economic and legislative issues, from copyright to tax law. Through its publication of the *Handbook: Pricing & Ethical Guidelines* (now in its 14th edition), the Guild has raised ethical standards in the industry, and provides an invaluable resource on pricing information that is relied on by both artists and clients. The Guild's newsletter, the *Guild News*, provides lively, provocative, and useful coverage of developments in the visual communications industry for its readers.

The Guild also provides a wealth of services and benefits for its members, including educational programs, discounts on a multitude of products and services, a legal referral network, and grievance handling. The Guild's website offers up-to-date information on Guild activities, updates on advocacy issues, members' portfolios, individual chapters, and tools and resources for all graphic artists.

Respectfully submitted,

Lisa Shaftel, National Advocacy Liaison

Haydn Adams, President

Tricia McKiernan, Executive Director