



PERFORMANCE IMPRESSIONS

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Copyright Office Public Feedback on Making Available Study

Thank you for your time with accepting feedback on the subject of making works available.

I strongly believe legislation should be clarified so that in most instances, making works available equates to utilizing the display right granted to copyright holders. I can attest that me and my company have lost a great deal of licensing revenue by third party websites that have making my works available.

The reason this is so important is because allowing third parties to make available anyone else's content has been detrimental to creative industries and creative individuals. For example, imagine a website called topnewsphotos.com, and every day they put code on their webpages to, in effect, grab the best headline cover photos from each major publication in the nation. Along with the photographs, they hypothetically display paid advertising and generate revenue without the knowledge, permission, or licensing from the copyright holders of the works being made available. Now imagine this website becoming popular and actually diverting viewers from the source publications that have worked hard and at a great expense created new and relevant photographs. By siphoning off viewers and revenue from hardworking content creating publications, our society's ability to support the creation of quality content is being increasingly limited. Many websites such as content aggregators often make use of third party content hosted on the servers of the original publications without obtaining licensing. When this is done, the end result is that original creative works are being displayed on third party websites without authorization. Additionally, these third party websites are relying on the bandwidth of the original sites that are legitimately hosting the works. This can slow down those publications' websites for its legitimate viewers and can also cause site owners to incur additional monetary costs for the use of more bandwidth. Inline linking (hotlinking) of copyrighted works should be proscribed so that third party websites cannot make available copyrighted content without a license from the creators/holders of such works. In my opinion, making available copyrighted works without licensing via inline linking amounts to a theft of services, theft of intellectual property, theft of bandwidth, and has the potential for fraudulent diversion of viewers and/or subscribers from the legitimate outlets of creators of copyrighted works.

The net result of this trend is a situation where reputable publications are removing their photography staff. For example, the Chicago Sun fired their photography staff while encouraging them to contribute cellphone photos for publication as barely compensated freelancers. This is occurring across the country while content aggregating websites and others that make available copyrighted works without licensing are siphoning customers and millions of dollars each year from hard working creators of copyrighted creative works.



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In addition, many websites are making available copyrighted works at near the same dimensions as the originals and are trying to use the use of thumbnails exception to copyright infringement in attempts to avoid liability by merely linking to the source of the work. I strongly feel that a clear definition needs to be enacted in order to define what constitutes a thumbnail that qualifies for fair use. For example, a search engine making available images that are no bigger than 225 pixels on the biggest side and that link to the actual source webpage are rightly considered fair use. However, I would like to see the law amended to clearly state that websites making available images at larger dimensions to meet specific illustration needs, cannot escape liability for copyright infringement merely by having a link back to the source. If this practice becomes widespread, it will have a severe impact on the ability of creators of creative works to be able to sustain their endeavors. Also, legitimate use of thumbnails should require linking to the source webpage and not to the image URL, which does little for the viewer or creator in such instances.

Thank you for your time.

Sincerely,

A handwritten signature in black ink that reads "David Oppenheimer". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

David Oppenheimer