
Walter Dufresne, Photographer

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Wednesday 16 January 2012

RE: "the problem of orphan works under U.S. copyright law" and "what has changed in the legal and business environments during the past few years that might be relevant to a resolution of the problem and what additional legislative, regulatory, or voluntary solutions deserve deliberation at this time"

Dear Register of Copyrights,

In one old photograph, the shrouded figures dangle, hands and arms and wrists bound by ropes. Planks collapsed under their feet, knotted ropes around their necks pull taut from overhead, from a gallows.

The photograph is Alexander Gardner's, and the shrouded figures are Lincoln's assassination conspirators at their public execution in 1865. Gardner used old, analog technology to capture and distribute his photograph. including copyright registration and captioning on his prints' cardboard mounts, captioning that included his contact information and descriptions of his photographs' subjects. Thank heavens he did: despite digital technology, the numbers and percentages of **new** orphan works are growing. In addition to older orphaned works, our society is aggressively creating more and newer orphaned works, all the time and at an **accelerating** rate.

My experiences are anecdote, but I suspect they are typical for photographers who license their work business-to-business. Here's what's changed since 2008: solid, steady growth in the numbers of my photographs appearing on the world wide web accompanied by **increasing percentages** of my licensed photographs stripped of their copyright management information (hereafter CMI) and their metadata.

Excluding infringements, in 2008 thirty-eight percent of my photographs appeared on the web without the accompanying CMI mandated in my licensing agreements. By 2013 these percentages **increased** to eight-two percent. All my circulated picture files have file names starting with copyright_20xx_walter_dufresne. The publishers and designers and employees and agents who act on behalf of my licensing clients typically use software which—in

the process of building web pages—renames my .jpg picture files, thus removing their first layer of CMI.

The second thing accelerating since 2008 is the number of my web-published photographs stripped of their metadata. Accelerating numbers of computer programs routinely **remove** all metadata inside a picture file. We install this metadata containing (among several things) my contact information, captioning, licensing details, and my CMI. This stripping **accelerates** the creation of new orphan works.

More than ever, the current, common, default settings in application software cause users to unwittingly remove CMI, unwittingly remove metadata, unwittingly create new orphans. Decades ago, photographic prints and transparencies sent out for reproduction displayed ink stamps on their backs or their mounts. We've lost that simple, durable CMI. Technology removes CMI, yet technology can maintain and extend CMI and metadata, can create a richer legacy for future generations.

My livelihood comes from creating work a business finds worthwhile to license. I wish Congress would mandate the creators of software applications **must**—as a default when running those applications—**not remove** CMI and metadata from picture files.

Sincerely,

A handwritten signature in black ink that reads "Walter Dufresne". The signature is written in a cursive, flowing style with a large initial 'W' and a long, sweeping tail on the 'e'.

Walter Dufresne

WD:fm

file: letter #2013 01 16 Register of Copyrights
via electronic transmittal