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Italian Copyright & the Academy

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Abstract

In Italy, a detailed law on copyright was introduced in 1941, during the fascist era, when artwork and images began to assume a strategic role in mass communication. Consequently, the protection of artistic works became of primary importance. Building upon the agreements set by the 1886 Berne Convention for the Protection of Literary and Artistic Works, a long list of artistic media were subsequently categorized as protected. "Photograph" was included under the subheading "figurative arts." Then in 1979, "photograph" was specifically incorporated into this copyright law as a specific media in its own right. In 1999, a national law concerning Italian Cultural Heritage declared photography as a protected subject.

Introduction

In Italy, a detailed law on copyright was introduced in 1941, during the fascist era, when artwork and images began to assume a strategic role in mass communication. Consequently, the protection of artistic works became of primary importance.¹ Building upon the agreements set by the 1886 Berne Convention for the Protection of Literary and Artistic Works, a long list of artistic media were subsequently categorized as protected. “Photograph” was included under the subheading “figurative arts.” Then in 1979, “photograph” was specifically incorporated into this copyright law as a specific media in its own right. In 1999, a national law concerning Italian Cultural Heritage declared photography as a protected subject.

Distinctions Made Among Types of Photographs in the Law

To explain how the Italian Law arrives at the various distinctions between images in a short article—or in general for that matter—is difficult, and to an extent, subjective. When the law included photography among the artistic media to be protected, it became important to clarify which kind of photographic images could be defined as “artistic” and which are not. The line between the two was never well defined. The debate is all-too-familiar to those creating or working with images. While it is problematic to establish a definitive unique limit for creativity, a compromise solution was arrived at with the introduction of the NON-creative image.

Creative Images

In summary, creative photography is defined as those photographs that express the author’s distinct personality, where the photographer gives a meaning to his subject. There must be something that makes the photo unique. And even if rights are transferred to someone else, the name of the photographer must always be credited. So creator credits are mandatory and copyright depends on the agreement between parties. Creative photography is protected for seventy years following the author’s death. To be considered “protected” the image must have:

- The author’s name,
- The date in which the photo has been produced,
- *AND the author of the subject/object depicted (if applicable).*

Non-Creative Images

Non-Creative images, also known as "simple" pictures, in direct translation from Italian to English, are protected for only twenty years following the author’s death. A non-creative

¹Originating in Bern, Switzerland back in 1886, this law became Italian Copyright Statute, Law No. 633 of April 22, 1941. <http://www.wipo.int/wipolex/en/details.jsp?id=13133>

(Art. 1) "The object of the author's right is the work of intellect of creative character that belongs to the sciences, literature, music, figurative art, architecture, theatre, and cinematography, no matter the style or form of expression."

image is a work in which the author's photographic interpretation cannot be directly recognized. It must meet the following criteria:

- It can be technically perfect, but without originality;
- Credits always depend on agreements between the photographer and the user;
- The image can be legally used without credits.

Documentary Images

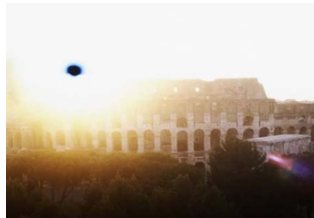
Documentary images are without protection. For example, the image on the right below is an image that has been created only to document something, reproduce reality as it is, without any aesthetic or personal alterations.

One must keep in mind that these broad distinctions and categorizations cannot serve as a definitive checklist and the boundary between the three categories is not always crystal clear.

The distinction between Creative and Non-Creative pictures becomes even more important where digital images are concerned, not only in terms of the law, but also mostly due to economic implications.

If a reproduction does not have the necessary data to identify it and its source, any unlicensed use of it will not be considered illegal unless the author/photographer can prove that the user of the image acted *in bad faith*.

Creative/Artistic Image



Marco Delogu, Amphiteatrum Falvium, Rome 2009

Not Creative/Simple Image



Ernest Nash Amphiteatrum Falvium, Rome, 1950

Documentary Image



Fototeca Unione Collection

The Digital Era

The Italian Copyright Law, dated 1941, has, substantially, one goal:

“To protect the photographer's creativity which is expressed through his pictures and this is evident in the juridical distinctions made among types of pictures.”

In 1999, European Law (D.lgs. 6 maggio 1999 n. 169) extended protection to image databases.² However, the gap between analog and digital capture and reproduction wasn't bridged until 2000. Digital era amendments have been introduced with the aim of incorporating “new” and continually evolving techniques. In fact, one (amendment) specifies that: “The image is protected no matter what the instrument and/or procedure used to realize it.” This far-reaching language is important as it includes digital capture formats and digital display.

Authorship in the Digital Era

Whereas the photographer's negatives were key to establishing ownership in the past, Italian authors are using a variety of solutions to establish their rights as well as to try to safeguard the authorship and /or original source. Among the most relevant techniques are:

- Making use of embedded metadata panels within the image file,
- Not distributing the camera RAW file (as it proves originality).

Everyone understands the vulnerability of the digital image, and that there is no specific technology that would completely protect the original. True protection, in a sense, lies in the authenticity and “completeness” of the digital file. The law gives the photographer the authority to decide on the use of his/her images, that is, on the kind of agreement and on the economic fee regarding the image's end use, according to the guidelines prescribed by the law. They are as follows:

- Reproduction Rights—the author has an exclusive right to give permission to reproduce the work in multiple copies;
- Distribution/ Diffusion Rights—the author can give permission to use the pictures for sale, or in any case, make them available to the public, by any means and function, including remote or long distance diffusion of pictures, via television, satellite, or Web;
- Elaboration Rights—is the right to modify, transform, or re-edit a picture.

The success of managing creative rights depends on the ability of the creator/author to ensure that he or she is credited appropriately and maintains appropriate control over their own work, as well as the ability to monetize his/her own work and/or establish the appropriate fee for the work.

In Italy, it is not necessary to register photographic works with a copyright office or rights-management entity. In fact, no formal registration of the author is required. However, registration is required for musicians, composers, writers, and film directors with the Italian Society of Authors and Publishers (Società Italiana degli Autori ed Editori or SIAE).³

² See: <http://www.camera.it/parlam/leggi/deleghe/99169dl.htm>

³Founded in 1882, SIAE is the Italian copyright collecting agency for literary and musical works: <http://www.siae.it/Index.asp>

Italian copyright law does not have an equivalent to “fair use” as it is known in the United States. Limitations and exceptions are set out individually, case-by-case, and are interpreted in a restrictive fashion by the courts. Visual artists and other visual arts professionals, teaching professors, researchers, and editors share a common problem when creating their work due to the extremely restrictive nature of the Italian copyright law. Every picture passes into the public domain once legal coverage expires, but it remains mandatory to credit the author for creative pictures.

AGCOM – New Measures of Regulation in the Digital Era

Since March 31, 2014, new fast-track measures were put in place to be used against any Web sites hosting materials that appear to infringe on Italian copyright law. These measures were largely written as a cost-effective takedown solution with streaming digital content in mind. Copyright owners can complain to sites hosting their material (or linking to other sites which do) through the Italian Communications Regulation Authority or the *Autorità per le Garanzie nelle Comunicazioni* known as AGCOM.⁴ In order to expedite blocking access to the infringed content, the regulation targets Internet Service Providers rather than the individual or entity that posted the content. AGCOM may also dismiss any claims at its discretion. AGCOM (if the violation is for profit) can request that an ISP provider:

- Remove the single content from site, if provider is in Italy,
- Disconnect access to the site, if Web sites are based outside of Italy.

The ISP provider has three to five days to proceed with blocking access to the restricted content or to rebut the accusation. If no action is undertaken, the provider will be fined up to 250 Euros (about 310 United States dollars). This regulation is causing a great debate as it averts legal proceedings and places the burden on the ISP providers. For artists to seek damages from the infringers, they will need to go to court. Reporting infringing behavior to AGCOM is a temporary stopgap solution to curb the proliferation of the unauthorized use of copyright content online.⁵

Italian Visual Resources

Browsing through well-known Italian visual resources we see that the on-line content is often protected with watermark and permission is always required to use pictures for professional purposes.

Regarding watermarks, a law had to be introduced in 2003 to give the photographers the authority to adopt technological solutions to protect their own images. With the existence of

⁴ Information about AGCOM can be found online at: <http://www.agcom.it/>

⁵ The AGCOM online piracy law was covered extensively by Italian news media. AGCOM oversees a host of telecommunications issues and is frequently in the press for various issues relating to the regulation of mass-communicated content. For example: <http://www.repubblica.it/argomenti/agcom>

negatives, the original was easily protected, whereas with digital content, it becomes much more difficult. A watermark doesn't exactly protect from duplication, but it at least permits the copyright owner to gather some evidence on his/her own behalf.



Giancolombo, Struggle, Milan, 1948



Archivio Primoli, Roman Forum flooded, 1956

Italian Visual Archives & the Gap

It is important to underline that in Italy, in addition to professional photographers, many visual archives are first and foremost historical repositories. These are nearly always independent organisms, not related to any academic institution, so their re-adaptation as new (digital) sources for research is not so automatic.

Many historical photo archives are not yet ready to face this gap in which the image user isn't under their direct control. Some complain that with online information the "historical" help of an archivist (traditional research instruments) will be skipped. Others complain that the online user finds redundancy, repetition, or a proliferation of images of varying quality selected by others (also a semantic problem). These online image providers often supply the pictures without much descriptive metadata or, even more importantly for Italian users, source or provenance information calling their authenticity into question.

Changing Roles

Visual resources in Italy—that up to now have been able to survive thanks to their distinctive material and only in part thanks to payments of copyright fees—are currently dealing with the challenges presented by online content and, consequently, have to reconsider their role and mission.

Traditional roles are changing and the challenge for Italian archives is to make room for

digitization projects and technologies while striking a balance with existing historical materials, so that digital and analog materials can co-exist.

It could be said that the survival of many Italian historical archives will depend on financial means and on their ability to adapt to these important changes, or they will become places of memory with no real use.

The Photographic Archive of the American Academy in Rome

The photographic archive of the American Academy in Rome preserves and provides access to a number of historic collections for the purposes of both research and publication.⁶ It consists of several collections of photographs on archaeology, architecture, and art. For almost all of the collections the archive owns negatives and vintage prints as well as modern prints. It holds the copyright for almost all the original materials, which are in the process of being digitized and made accessible online. It has been decided to provide online access only to low-resolution images in order to make them available to the general public and to keep the high-resolution images locked down on our servers.

Beside the online catalog KOHA, an open-source, integrated library system (<http://www.koha.org/>), the Academy currently has circa 10,000 pictures in an on-line digital database (<http://staging.idra.info>). We provide reproductions based on the format specifications and resolution requested with variable charges for higher resolution images.

With the support of the Kress Foundation, we are now implementing Fedora (<http://fedoraproject.org/>) as our central digital repository and ArchivesSpace (<http://www.archivesspace.org/>) to catalog our collections. In addition, we are building a unified search interface for all our digital assets across our separate databases in Drupal (<https://www.drupal.org/>).

In Italy, each single institution has control over its own copyright policy. In actuality, common practice considers images copyright-free in any publication running under 2,000 copies. In spite of the restrictive law, online content is available for students, scholars, and small publishers, but not professionals.

It is the same in the Academy's photo archive. When a photograph (analog or digital) is requested, we require the potential user to sign an application form where the conditions on the use of the image are provided. It mentions the following:

- Exclusive use—one time only—no editing;
- Each reproduction must bear the credit line;
- Rights fees depends on the use;
- Images are copyright-free for any publication that runs under 2,000 copies.

⁶ <http://www.aarome.org/research/photo-archive/about>

The fact that the Academy owns original materials and the related copyright does not mean that the institution intends to limit the availability of the images. On the contrary, our aim is to actually increase the circulation of image resources and find better ways to share them with other like-minded institutions.

This is a priority that is becoming more feasible as decisions about complex copyright issues are made and new policies are adopted.

Conclusion

An example of a recent collaboration between the American Academy in Rome and other educational institutions is represented by the project led by Professor Bernard Frischer, University of Virginia, and the University of Washington Computer Scientist, Steven Seitz. Detailed and accurate 3D models at city scale were created from the Academy's online digital photo collections. This "Reconstructing Cities from Photographs." project also feeds into the extended "Rome Reborn" project.⁷ This is the kind of exciting work that can be accomplished when photographs are made more accessible and copyright laws promote rather than restrict educational and creative uses.

⁷See: <http://www.frischerconsulting.com/frischer/projects.html> and <http://romereborn.frischerconsulting.com/gallery-current.php>