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Proposal 4-1:

The existing laws relating to copyright were designed to protect the interests of those who create or own artistic resources. Essentially, the intention was to prevent those resources being used by others without payment, and to prevent individuals from profiting from someone else’s creativity. However, these provisions also restrict the use of such material where no such financial disadvantage arises; where the material is being used within a non-commercial framework; and in situations which would not realistically disadvantage the author/owners of such resources.

There are undoubtedly many examples of low use, low profile amateur productions which do not generate an income, yet rely in part upon the short-term use of copyright material. A case in point is found in the production of “Audio Visuals” by members of Australian photographic societies. “Audio Visuals” are essentially slide shows which aim to present the photography of amateur photographers in an animated or entertaining manner, and which are often accompanied by a soundtrack or other material. This accompanying material is often subject to copyright, and is sourced from the Internet or from privately held music libraries.

These A/V productions are created with the intention of promoting and encouraging the artistic development of amateur photographers. They are produced within a totally non-profit, educational environment and have no commercial basis. Audio Visual producers compete against each other within that limited environment, on a strictly amateur basis and without any financial rewards or incentives. The production costs are generally non-existent thus enabling participation by those whose resources are limited. Frequently, amateur photographers are retirees, and generally individuals participate on a recreational basis with no commercial motive whatsoever. If payment of a fee were to become a part of this process it is likely that the genre would cease to be viable given the high cost of copyright, and the low profile of these productions. This would effectively stifle the genre as a forum for amateur artistic creativity, along with many similar amateur activities which draw upon copyrighted material in some way.

My contribution to this discussion is based upon my own experiences as a producer of Audio Visual Productions and my experience of copyright as it applies to this activity. It has been my experience that members compile Audio Visuals in a manner which may well be illegal in terms of existing copyright laws, yet to do otherwise is simply not feasible. Locating and paying copyright holders would not only be financially prohibitive but the mechanisms involved are daunting and often impracticable. Often the sounds are sourced from various dispirit avenues, and the duration of such sound tracks may well range from only a few seconds to less than ten minutes. The end results are not commercially viable creations but amateur productions with no commercial element whatsoever, yet technically they are subject to the same copyright laws directed towards commercially motivated producers.

The subject matter for Audio Visual productions is often little more than a slide show of a member’s recent holiday, accompanied by a suitable soundtrack. Productions have a strictly limited, short life span with productions being viewed within the club environment or restricted to family and friends. Realistically, the copyright owners are not deprived of an income as members would be either unable or unwilling to pay license fees for such limited market productions.

As a producer of amateur Audio Visual productions myself, I initially attempted to adhere to the provisions of the copyright act but found it to be costly, prohibitive and impracticable. Permission to use soundtracks was offered on a time limited basis with a base fee of several hundred dollars. Given that an Audio Visual production might be screened only a handful of times, and to an audience fewer than 20, this made the whole fee structure disproportionate to the actual usage. As the fee required exceeded the annual subscription for membership of a photographic society, it is clear that charging a significant fee for such a low profile and limited exposure was not only unjustified, but unjustifiable. In such circumstances, the obvious approach by participating amateurs is to ignore the copyright issues altogether on the basis that limited non-commercial use should rightfully be classified as “fair use”.

A similar copyright issue arises with amateur productions uploaded to You Tube. You Tube clearly contains many tens of thousands of illegally used sound tracks and images, and yet the majority have been created by amateurs for purposes other than generating an income. I have uploaded Audio Visual productions myself which have contained copyright material. These productions have been immediately identified as such by You Tube using sophisticated software. However, rather than removing the material, which benefits no-one – You Tube policy appears to provide a more sensible solution which is to place an advertisement before the uploaded material. Proceeds from this advertisement are subsequently divided between the copyright holder and You Tube resulting in a win-win situation for all concerned. This is the sort of “common sense” approach which needs to be applied to copyright material and which should be part of an evolving “fair use” approach.

There is no doubt that those who develop or own intellectual or artistic material should be rewarded for their efforts. However, there is a broader principle which suggests that the overall benefit to the community and the encouragement of artistic expression should also be factored into this equation. The oppressive nature of existing laws simply stifles those who might otherwise become more creative in their own right. Rather than assuming that there should be a direct and immediate benefit to the copyright holders, the law should consider the longer term benefits of cultivating and fostering creativity within an affordable environment.

The framing of any revised legislation should recognize that “fair use” of another’s work should be a legitimate exemption from payment of copyright fees. In defining “fair use” factors to be considered should embrace matters such as the purpose and extent of such use and whether or not there has been any intention to profit from using the copyrighted material. The circumstances of use should be such that while artistic expression is not stifled, the legitimate and realistic rights of the copyright owner remain protected.

Proposal 4-2:

Proposal 4-3:

Proposal 4-4:

Question 4-1:

Question 4-2:

Proposal 6-1:

Question 6-1:

Proposal 7-1:

Proposal 7-2:

Proposal 7-3:

Proposal 7-4:

Proposal 8-1:

Proposal 8-2:

Proposal 8-3:

Proposal 9-1:

Proposal 9-2:

Proposal 9-3:

Proposal 9-4:

Proposal 9-5:

Proposal 10-1:

Proposal 10-2:

Proposal 10-3:

Proposal 11-1:

Proposal 11-2:

Proposal 11-3:

Question 11-1:

Proposal 11-4:

Proposal 11-5:

Proposal 11-6:

Proposal 11-7:

Proposal 12-1:

Proposal 12-2:

Proposal 12-3:

Proposal 13-1:

Proposal 13-2:

Proposal 13-3:

Proposal 14-1:

Proposal 14-2:

Proposal 14-3:

Proposal 15-1:

Proposal 15-2:

Question 15-1:

Proposal 15-3:

Question 15-2:

Proposal 16-1:

Question 16-1:

Proposal 16-2:

Question 16-2:

Question 16-3:

Proposal 17-1:

Additional comments?:

File 1:

File 2: