Snap judgments

Digital photos can look great, but some labs won't print those that appear too professional

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One of the benefits of digital photography – the fact that amateurs can take better-looking photos and doctor them using photo-editing software – is also becoming a bane. Photofinishing labs increasingly are refusing to print professional-looking photographs taken by amateurs.

The reason: Photofinishers are afraid of infringing on professional photographers' copyrights.

Amateur photographer Zee Helmick encountered that problem when she went to pick up photos she had ordered at a Walmart near her home in Henderson, Nev.

She had taken the photos of her son that morning to use as head shots for an audition for a TV commercial. She had used her photo-editing software to add his name, information about him and even her own copyright to make the image look more polished, Helmick said.

She uploaded the 8-by-10-inch photos to Walmart.com, which

A photo lab refused to print one of the images below.

Which one was rejected? Why?

Answer: The black-and-white photo was rejected because the photo lab thought it was done by a professional and didn’t want to violate copyright law.
prints photos sent to the site at a nearby store for customers to pick up.

At the store, Helmick said a clerk told her, "We can't release the pictures to you."

"What's wrong?" Helmick asked.

"We can't release the pictures to you without a copyright release form signed by the photographer," the clerk replied, according to Helmick.

The clerk said the photos looked like a professional had taken them, Helmick said. And no matter how much Helmick protested that she, an amateur, had snapped the shots of her son, she said the clerk wouldn't budge.

Helmick didn't have a copyright release with her, so she offered to write a note stating that she had taken the photos. She said Wal-Mart refused even that.

In the end, Helmick went home without the photos and printed them on her home printer for her son's audition the next day.

"Who's to say what's professional-looking and what's not?" she asked. "Just because it's not all blurry doesn't mean it's a professional photo."

Helmick isn't alone. There are a growing number of stories of amateur photographers being turned away by photofinishers for having photos that looked, at least in the eyes of a store clerk, too good to have been taken by anyone other than a professional.

Their photos have become collateral damage in the war on digital copyright infringement.

Digital photography has made it easier than ever for people to make unauthorized copies of professional, copyright photos. All it takes is a scanner, a computer and a printer or CD burner.

The photo can be scanned into a computer and then either printed on a home printer or taken to a photofinishing lab for printing. The results can look virtually as good as the original.

The Professional Photographers of America trade association has grappled with the problem of copyright infringement for a decade, after the technology to make copies became widespread.

No 'silver bullet'

One problem for professional photographers is that there is no one,
simple way to keep customers from making unauthorized copies of copyright photos.

"We are not aware of any silver bullet, any single piece of technology or software that will prevent this from happening," said Al Hopper, director of membership copyright and government affairs for the group.

Some professional photographers have even changed the way they charge for their work.

"There's been quite a bit of change in the business model over the last 10 years," Hopper said.

Photographers used to take photos and then charge clients for copies of the images, he said. Now, more and more professional photographers are charging for their time spent taking the photos.

The Professional Photographers of America sees education of consumers and photofinishers as key to preventing unauthorized copying.

The trade group sent a wake-up call to the photofinishing industry when, in 1999, it sued Kmart Corp., alleging that the discount store violated federal copyright law by copying images without the permission of the copyright owners.

In 2000, Kmart settled the case by paying $100,000 and agreeing to implement procedures to guard against the unlawful copying of professional photos.

"We just want to protect the rights of our members," Hopper said. "They just want to be able to make a living. When you copy their stuff and do it illegally, you're taking that away from them."

Photofinishers took notice. After all, most don't want to be held liable for copyright infringement.

Guidelines

Their trade group, the Photo Marketing Association International, worked with the Professional Photographers of America and other organizations to develop copyright guidelines for the industry. The groups have begun meeting again this year to update the 10-year-old guidelines.

The old guidelines, which are not binding, suggest, among other things, that photofinishers notify customers they will not copy photos bearing a copyright notice without the permission of the copyright owner.

Determining who was authorized to copy a photo was never much of a problem before digital photography. If a customer had the film or negatives to a photo, then photofinishers assumed the customer had permission to copy them.

These days, the question of who owns the copyright to a photo isn't so cut and dried.

"It's a judgment call on the part of the processor," said Steve Noble, the Photo Marketing Association's executive of regulatory activities.
The fact that digital photography has helped amateurs produce better photos than ever before makes it even tougher to tell the difference.

With a digital camera, an amateur photographer can see his or her photos on a screen immediately after taking them. A bad shot can be deleted and taken again. After a digital photo is uploaded to a computer, photo-editing software can be used to crop the photos, remove unwanted objects, increase the brightness or even add words.

And, unlike with film photography, digital photographers generally don't print all of the photos they take. They choose only the best ones, making them appear to be much better photographers because there are no out-of-focus photos or ones that cut off someone's head.

Further complicating matters is the fact that all photos – including those taken by amateurs – are automatically protected by U.S. copyright law. So the copyright owner isn't necessarily a professional photographer.

"Technically, every image is copyrighted by somebody, so you don't always know who owns it," said attorney Philip Moilanen, who wrote a summary of copyright law for the Photo Marketing Associating.

**Older photos**

Also adding to the confusion is the change to copyright law Jan. 1, 1978. Photos taken before that date are subject to different copyright rules from photos taken afterward.

The law allows customers to copy professional photos commissioned before 1978, unless the photographer and the customer had an agreement to the contrary, Moilanen said.

The law doesn't apply if the photos weren't commissioned. That might occur when, say, a photographer was shooting pictures of children on a playground, then later sold a mother a copy of a photo, Moilanen said.

In both cases, the photographer retains the copyright to the photo.

Part of the problem is that it's not always easy knowing whether a 50-year-old photo was commissioned and what the agreement was.

"Today, how would anybody know the circumstances?" Moilanen asked. "Yet it makes a difference, so you're in a dilemma."

The result is that some photofinishers are more cautious than ever about copyrights, even if it means turning away a legitimate customer.

"Part of what we deal with is people who are erring on the side of caution, because you really don't know what the copyright situation is with the photographer," Noble said. "Nobody really wants to get sued or have their name splashed that they're violating copyright, so processors are taking a more conservative approach."

Noble remembers one case in which an amateur photographer was helping make a directory for his church. The man contacted the Photo Marketing Association after an online photofinisher refused to print his photos because they looked too professional.

**Tough policy**
Wal-Mart has one of the toughest policies.

Spokeswoman Jackie Young said Wal-Mart is "a littler tougher than the copyright law dictates."

"We want to protect professional photographers' rights," Young said. "We will not copy a photograph if it appears to be taken by a professional photographer or studio."

She related the case of a bride whose wedding photos were rejected by Wal-Mart because they "looked like high-resolution quality."

"It caused a little bit of a stink," Young said.

It turned out the bride's brother, an amateur photographer, had taken them. After the bride complained to her local newspaper, she finally got her photos from Wal-Mart – but only after her brother signed a release form.

"It happens from time to time," Young said.

It happened to David Watson earlier this year as he tried to get old photos of his mother printed for her funeral. The photos were of his mother, taken years ago by family members, some since deceased.

Like Helmick, he had uploaded them to Walmart.com, then went to pick them up at his local Wal-Mart in Charlotte, Mich. Watson said the manager of the photo department "felt" that three of the photos were possibly taken professionally. One of the photos in question was of his mother 50 years ago.

"I offered to sign anything, but there was just no way around it for them," Watson said. "They were not going to print them. We left what they had printed there and went on to a real photo printer who had no problem with the printing or use of these photos."

Virtually all photofinishers have policies against reproducing copyright photos. Those whose photos have been rejected for simply looking too professional say some photofinishers have gone overboard in policing for copyright images.

Helmick, whose photos of her son were turned away by Wal-Mart, said the episode made her feel as if she had done something wrong.

"I felt like I was a criminal, when I really wasn't," she said.

Both Helmick and Watson said they have found another photofinisher to print their photos in the future.

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