

United States Court of Appeals
for the
Fourth Circuit

RUSSELL BRAMMER,

Plaintiff-Appellant,

– v. –

VIOLENT HUES PRODUCTIONS, LLC, FERNANDO MICO, Owner,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
AT ALEXANDRIA IN NO. 1:17-CV-01009-CMH-IDD,
CLAUDE M. HILTON, SENIOR U.S. DISTRICT COURT JUDGE

**BRIEF FOR *AMICUS CURIAE* PACA, DIGITAL MEDIA
LICENSING ASSOCIATION, INC. IN
SUPPORT OF PLAINTIFF-APPELLANT**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c)(1), the undersigned certifies that PACA, Digital Media Licensing Association, Inc. d/b/a Digital Media Licensing Association states that it does not have a parent corporation, and that no publicly held corporation owns 10% or more of its stock.

s/ Scott J. Sholder _____
Scott J. Sholder

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STATEMENT OF INTEREST¹

PACA, Digital Media Licensing Association, Inc. d/b/a Digital Media Licensing Association (“DMLA”) (formerly known as the Picture Archive Council of America, Inc.) is a not-for-profit trade association that represents the interests of entities who license primarily visual content to editorial and commercial users. Founded in 1951, its membership currently includes over 100 companies in North America and internationally that are engaged in licensing millions of still images, illustrations, film clips, and other media content (“Visual Content”) on behalf of thousands of individual creators. Members include companies with large general libraries, such as Getty Images (US), Inc., Shutterstock, Inc., and Adobe Images, as well as more boutique image libraries with collections featuring nature, science, history, culture, sports, art, and motion. All members provide the media and commercial users with access to vast, in-depth collections of Visual Content, primarily in an online environment where users can readily search and find suitable Visual Content available for immediate licensing with a few keystrokes.

DMLA as part of its mission develops business standards, promotes ethical business practices, and actively advocates for copyright protection of Visual

¹ Pursuant to Federal Rule of Appellate Procedure 29(c)(5), no counsel for a party authored this brief in whole or in part, no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than *amicus curiae*, its members, or counsel, contributed money intended to fund preparation or submission of this brief.

Content on behalf of its members to ensure that fair licensing models thrive in this digital environment. In addition, DMLA educates and informs its members on issues including legislation, technology, tools, and changes in the marketplace, through webinars, conferences, and online materials.

SUMMARY OF ARGUMENT

Copyright is at the core of the image licensing industry. Having a fair copyright system that encourages licensing content over piracy is vital to DMLA members who invest substantial resources to make vast and diverse libraries of hundreds of millions of pieces of Visual Content readably searchable and easy to license for any purpose. To make it even easier for users to find licensable Visual Content, even of obscure subjects, DMLA offers a free search tool, “DMLAsearch.com,” to instantly find licensable Visual Content. Any user who might need to illustrate text or any concept with a visual reference, in still or motion, can go to www.DMLAsearch.com, and locate DMLA members who have Visual Content that matches the desired subject, where the search results are ranked both by the actual number of matches, and the relative number of matches as a percentage of the company’s entire collection.

However, rather than make any effort to find licensable content to illustrate its website through available resources like DMLAsearch.com, defendant-appellee Violent Hues Productions, LLC (“VHP”) simply helped itself to an image it found

online of the Adams Morgan neighborhood in Washington, D.C. Its purpose in this unauthorized copying was to visually enhance its website that promoted an annual film festival in the Washington, D.C. area. Unfortunately, VHP did what is all too common given the ease with which digital content can be copied in an online environment: it simply “right-clicked” the image, and copied and pasted a cropped version onto its own website. VHP did so without asking the photographer, plaintiff-appellant Russell Brammer (“Brammer”) for permission, and without paying an appropriate license fee for displaying the image on the festival’s website, which was specifically designed to attract festival goers.

When Brammer brought an infringement claim against VHP, rather than awarding Brammer the appropriate damages afforded him under the Copyright Act for VHP’s clear violation of the photographer’s exclusive right to authorize the public display of his photograph, the District Court recklessly misapplied the law. Instead of recognizing the harm to Brammer, the court rewarded VHP’s irresponsible behavior and found the infringing use to be a “fair use.”

The court below committed error in applying each of the four fair use factors to the facts of the case at issue. Significantly for purposes of this brief, the court held that VHP’s use was for a different “purpose” and was “transformative,” ignoring the fact that the image was used to simply enhance VHP’s own website and promote its business – a use which is at the heart of commercial image

licensing. The DMLA members' businesses are based on the legal premise under copyright that the same item of Visual Content (an image or video clip) can illustrate and be licensed to multiple users for many different purposes. The District Court's error, if applied widely, would undermine the foundation of the Visual Content licensing industry, and eviscerate copyright owners' exclusive rights under copyright law. Compounding this error was the court's total failure to consider the market harm to Brammer, and the impact of this decision on all professional Visual Content creators and their licensing representatives in general, if widespread unauthorized copying of this nature is considered permissible.

Amicus and its members support the other *amicus* briefs of fellow visual artists and their associations and coalitions filed in support of reversal which address the myriad errors made by the court below in conducting its analysis of whether the infringing use was in fact a "fair use." DMLA joins the other associations to urge this Court to correct the errors below and reverse the District Court's decision. All are concerned with the widespread harm that will ensue from the court's support of the false notion that copying an image from one website to another without a license is permissible and can qualify as "transformative" for purposes of a fair use analysis. Such a rule supports willful infringement in general and erodes the market for licensable Visual Content,

harming those companies that have invested millions in offering licensable Visual Content for a license fee, and depriving Visual Content creators of their livelihood.

The ruling below will destroy the market for professionally created and curated Visual Content that the media, publishing, and advertising communities have come to rely upon, which in turn enriches, informs, and educates the public. Instead of fostering the purpose of copyright to encourage the creation of new works, the District Court's decision, if affirmed, will only encourage reckless disregard for copyright and the rights of creators, and will favor piracy.

ARGUMENT

I. THE DISTRICT COURT IMPROPERLY DETERMINED THAT VHP'S COPYING AND POSTING OF BRAMMER'S PHOTOGRAPH WAS TRANSFORMATIVE BECAUSE IT WAS USED FOR A "DIFFERENT PURPOSE"

The District Court's ruling under the first fair use factor's "transformative use" analysis represents a blank check for would-be infringers to engage in unlicensed use of copyrightable material with impunity as long as their end-use was somehow plausibly distinguishable from the author's original purpose. Use simply for a "different purpose" is not, and should not be, the proper measure for transformative use under the first factor; such a standard threatens to allow the fair use exception to swallow the copyright rule.

The District Court's reliance on use for a "different purpose" appears to misunderstand the fundamental underpinning of the transformative use test, *i.e.*,

whether the unauthorized use “adds something new, with a further purpose or different character, *altering the first with new expression, meaning, or message.*” *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994) (emphasis added). The District Court focuses on “further purpose or different character” and ignores the requirement that the new purpose or character must alter the original such that “new expression, meaning, or message” is created. *Id.*

Further, inherent in the Copyright Act is the notion that copyrightable works can be used in multiple ways. Indeed, copyright rights are, by their nature, separable in that a work can be used or licensed for many purposes and even by multiple parties. *See, e.g.*, 17 U.S.C. §§ 106, 201(d). A finding of fair use simply because the infringer’s use was superficially different would undermine the freedoms provided to authors under the Copyright Act, including alienation of some or all rights, the right of first publication, and, critically for DMLA and its members, freedom to license (exclusively and non-exclusively).

That Brammer’s purpose was deemed “promotional and expressive” and VHP’s purpose was purportedly “informational,” supposedly to inform festival attendees about the local D.C. area, should be irrelevant. *Brammer v. Violent Hues Prods., LLC*, No. 1-17-CV-01009, 2018 WL 2921089, at *2 (E.D. Va. June 11, 2018). Photographs inherently can serve multiple purposes such as these, and can be, and often are, licensed for one or both such purposes from the likes of DMLA’s

members. The ability to use an image for multiple purposes goes to the heart of the licensing industries in which DMLA's members operate, where numerous companies can use the same image in many different contexts.

Two analogies are instructive here. First, a magazine feature including an interview with a celebrity may include a newly commissioned photo spread but may also be interspersed with older photographs showing the course of the actor's career. Those older photographs are being used as historical reference points as opposed to current or newsworthy images of the same celebrity – a different purpose from that of the original use. This is a very common occurrence and the older photographs are – or should be – licensed for this use.

Second, if a newspaper publishes an article, other media outlets cannot simply copy that article in full and re-run it because it is an editorial re-use – arguably a purpose different from the first publication. While the other media outlets can reference the first article's reporting, they cannot simply republish it, call it “factual” and avoid having to pay a license fee. The same rules must apply to photographs and other audiovisual content. Visual content by its nature enhances textual content. From the beginning of the newspaper days, images have been paid for and licensed to illustrate, inform, and educate the public. Taking them for free is not fair but infringing.

II. THE DISTRICT COURT IMPROPERLY DOWNPLAYED THE SIGNIFICANT FINANCIAL HARM TO THE VISUAL CONTENT LICENSING INDUSTRY IF WIDESPREAD USES LIKE VHP'S WERE ALL DEEMED FAIR USE

Despite the judicial trend in recent years of focusing on the first fair use factor's "transformative use" analysis, the fourth factor has historically been considered "the single most important element of fair use," *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 566 (1985), and other courts are starting to return to this premise. *See Fox News Network, LLC v. Tveyes, Inc.*, 883 F.3d 169, 179 (2d Cir. 2018). The District Court rightly acknowledged the critical nature of the fourth factor, *see Brammer*, 2018 WL 2921089, at *3, but this is where the correctness of the District Court's analysis ends. The importance of the fourth factor coupled with the substantial existing market for licensable Visual Content makes the District Court's error highly significant.

A. A Robust Market Exists for the Licensing of Visual Content

DMLA and its members create and license a wide array of copyrightable Visual Content. There is a vibrant market for the licensing of Visual Content, which for still images alone "is predicted to hit \$4.5 billion before 2020."² This

² *See Stock Photography Industry Needs A Technology Revolution*, NEWSBTC (Feb. 20, 2018), <https://www.newsbtc.com/2018/02/20/technology-revolution-stock-photography-industry/>; *Top 3 Emerging Trends Impacting the Global Still Images Market From 2017-2021: Technavio*, BUSINESSWIRE (Mar. 31, 2017), <https://www.businesswire.com/news/home/20170331005099/en/Top-3-Emerging-Trends-Impacting-Global-Images>.

market, which the District Court completely ignored, would be imperiled if this Court affirmed the District Court's ruling that VHP's unlicensed copying and public display of Brammer's photograph was fair use.

The proliferation of computing technology over the last decade – particularly mobile technologies such as smartphones and tablets – has made it possible to view, download, create, and share Visual Content effortlessly; and this newfound ease with which to engage with the audiovisual medium has created a tremendous demand for Visual Content which continues to grow as technology evolves. Visual Content – in particular photographs – is everywhere, especially on social media platforms like Facebook, Twitter, Instagram, and Snapchat. Critical to DMLA and its members' businesses is the fact that a significant amount of licensable Visual Content is made available both directly from the artists and through “freestanding” stock content houses³ – *i.e.*, digital media content aggregators like Getty Images, iStock, Shutterstock, Pond5, Adobe, and Wazee – many of whom are DMLA members.⁴ Sites like these house tens of millions of

³ *Association of Commercial Stock Image Licensors*, Global Survey of Stock Footage Companies 3 at 24 (2015) (hereinafter “2015 ACSIL Study”).

⁴ Companies like these have existed for decades and serve an important service by licensing photographs to save producers the expense and time of creating the content themselves or providing genuine historical imagery for news and documentary projects.

still images (and millions of video clips), contributing significantly to the overall Visual Content licensing market.⁵

Much of the non-UGC Visual Content that is available in today's media-rich environment is licensed for use from these online aggregators, who act as licensing agents for professional photographers and filmmakers.⁶ Content aggregators run the gamut from large collections with millions of images and videos covering myriad subjects, such as the libraries maintained by Getty Images, Adobe, and Shutterstock, to niche libraries specializing in subjects like nature, science, history, and news. They also provide Visual Content relied upon by publishers, broadcasters, and media companies to illustrate newsworthy events and stories of public interest; moreover, current shifts in the media and newspaper industries have resulted in ever-increasing reliance upon these aggregators for content that can no longer be offered by staffers.⁷

Anyone seeking licensable Visual Content can search through online databases to find the material that best suits their needs.⁸ DMLA itself offers a lightning-fast search tool, DMLsearch.com, to help users find licensable content

⁵ See 2015 ACSIL Study at 32.

⁶ See *id.* at 30.

⁷ Some content is still created in-house or on assignment by staff (for example, by photographers and videographers employed by news agencies), but searching for and licensing existing Visual Content from online aggregators has largely become the norm. See *id.* at 30.

⁸ See *id.* at 48 (digitization of content results in increased efficacy, increased customer satisfaction, and increased sales).

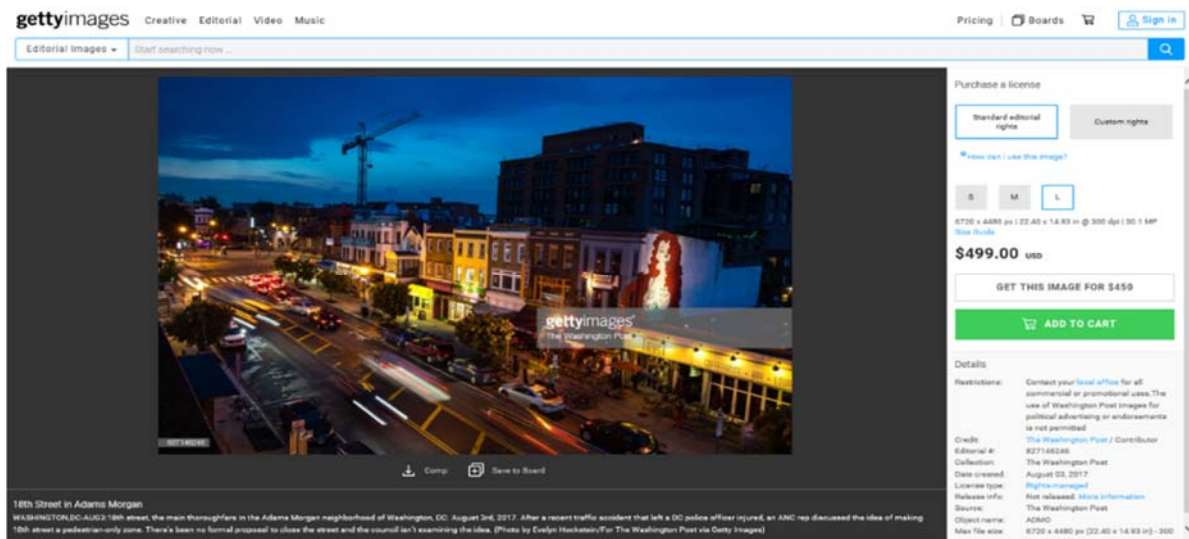
from DMLA members, from the everyday to the obscure. While the Internet offers efficiencies in compiling, searching, displaying, and delivering Visual Content to prospective licensees, it is through the efforts and investment of Visual Content aggregators that created searchable digital databases making nearly instant access to *licensable* Visual Content possible. The availability of on-demand, high-quality content is the heart of this critical industry that supplies the media and the public with important, newsworthy, and culturally and historically significant Visual Content.

B. Allowing Unlicensed Copying Like VHP’s to Proliferate as Fair use Would Constitute a Judicial Imprimatur on a Direct Market Substitute for Otherwise Licensable Visual Content

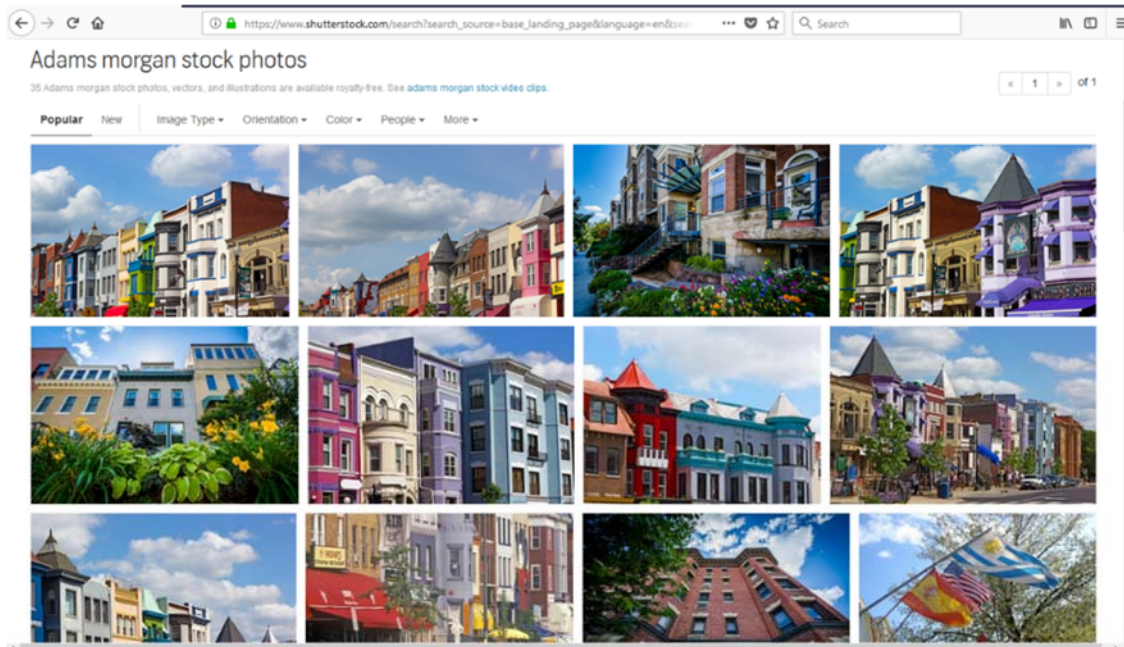
The fourth fair use factor directs the courts to look at “the effect of the use upon the potential market for or value of the copyrighted work.” 17 U.S.C. § 107(4). This factor is concerned with the harm that results because the secondary use serves as a substitute for the original work, and courts must also analyze the effect of an allegedly infringing practice if it became widespread. Indeed, “a use that supplants any part of the normal market for a copyrighted work would ordinarily be considered an infringement.” *Harper & Row Publishers, Inc. v. Nation Enter.*, 471 U.S. 539, 568 (1985). Here, the District Court did not find that VHP’s use of Brammer’s photograph had an adverse effect on the “normal market”

for such photographs because it clearly did not understand – or even consider – the nature of that market.

While the parties below did not establish a record regarding alternative photographs of the Adams Morgan neighborhood that VHP could have found and licensed, there are many such publicly accessible images that VHP could have licensed for “informational” purposes to illustrate the neighborhood. Such images are widely available on platforms of DMLA members such as Getty Images, Shutterstock, and Adobe, among many others and for a price far less than the cost to litigate whether a use qualifies as fair use. For instance:



18th Street in Adams Morgan, GETTY IMAGES (Aug. 3, 2017), <https://www.gettyimages.com/detail/news-photo/18th-street-the-main-thoroughfare-in-the-adams-morgan-news-photo/827146246> (last visited Oct. 29, 2018).



Adams morgan stock photos, SHUTTERSTOCK, https://www.shutterstock.com/search?search_source=base_landing_page&language=en&searchterm=adams+morgan&image_type=all (last visited Oct. 29, 2018).

The District Court failed to consider the larger impact of its holding on the market for Visual Content – a market literally at VHP’s fingertips. To allow the District Court’s decision to stand would “materially impair the marketability” of Visual Content, including photographs like Brammer’s. *A.V. ex rel. Vanderhye v. iParadigms, LLC*, 562 F.3d 630, 643 (4th Cir. 2009). *See also Cambridge Univ. Press v. Albert*, No. 16 Civ. 15726, 2018 WL 5095004, at *6 (11th Cir. Oct. 19, 2018) (noting that, “in weighing and balancing the relative importance of the factors, [the district court] undervalued the ‘severe’ threat of market harm posed by the University’s ‘nontransformative’ copying.”).

The District Court’s cursory justifications for its holding on the fourth fair use factor do not hold water. First, Brammer’s limited ability to “market the photo,” *Brammer*, 2018 WL 2921089, at *3, is of no moment; DMLA members and other Visual Content aggregators do this work on behalf of Visual Content creators because they reach wider audiences and have the infrastructure to sell licenses that an individual may not have. Second, that VHP, itself, purportedly did not sell copies of the photograph or generate revenue from it, *see id.*, also ignores the fact that Brammer, through an image library or on his own, could have generated revenue had he chosen to charge for the same use in which VHP engaged, but without paying any license.

Third, the fact that Brammer’s photograph was licensed twice after VHP’s use does not defeat market harm; this is a red herring, and the District Court erred in concluding that these post-use sales “demonstrat[e] that Violent Hues’ use did not affect the market for the photo.” *Brammer*, 2018 WL 2921089, at *3. Because of the nature of Visual Content licensing, particularly through stock, there is inherently a market for various licenses of even an image that was licensed before.⁹

⁹ The District Court leaned on VHP’s cropping of the image in its analysis of the third fair use factor (amount and substantiality of the portion of the copyrighted work used), *see Brammer*, 2018 WL 2921089, at *2, but that VHP used a cropped version of Brammer’s photograph does not lessen the market erosion engendered by the District Court’s ruling. Indeed, as noted in Section I, *supra*, Visual Content is often licensed for multiple purposes by multiple users, and commercial licenses permit cropping as part of their terms (with the exception of news images, for

Cf. Cambridge Univ. Press, 2018 WL 5095004, at *7 (noting that district court had correctly found previously that “the fourth factor strongly disfavors fair use” of unlicensed excerpts of works where “the publishers proved the availability of digital licenses”).

Nonetheless, under the fair use analysis there does not have to be effects on an actual market at all, just a *potential* market. See *Harper & Row Publishers, Inc.*, 471 U.S. at 568; 17 U.S.C. § 107(4). Even though particular Visual Content may not itself have been licensed (or licensed often), the fourth fair use factor is still implicated not only as to individual creators like Brammer, but also to content owners like media organizations and authorized licensors such as content aggregators. Every lost sale or license – or potential sale or license – of a piece of Visual Content is significant to creators and aggregators who seek to monetize those works; their income depends on their ability to license Visual Content and to publicize and exploit their materials to consumers.

Moreover, unlicensed distribution of copyrighted works causes a domino effect, in that the primary recipients of those works (here, internet users who accessed VHP’s website) can then make those works available to other users

integrity of news reporting), *see, e.g., Getty Images Content License Agreement*, GETTY IMAGES at ¶¶ 2-3 (Mar. 2017), <https://www.gettyimages.com/eula> (last accessed Oct. 27, 2018); *Shutterstock Terms of Service, Shutterstock License Agreement(s)*, SHUTTERSTOCK at Part I, ¶¶ 1 & 2 (Oct. 15, 2018), <https://www.shutterstock.com/license> (last accessed Oct. 27, 2018); photographs like Brammer’s are frequently cropped for platform design and layout.

through various means on the Internet, providing free content to exponentially more users in downstream markets.¹⁰ While the amount of money earned in connection with a single still image or video clip may seem insignificant – as it clearly did to the District Court and VHP – each dollar lost as a result of this unchecked distribution is extremely significant to Visual Content aggregators, and especially harmful to individual and independent creators who maintain smaller inventories of available Visual Content to license. These works represent their livelihoods, and license fees represent a necessary income stream to cover simple necessities like overhead and development costs. Even more troubling is the effortlessness with which these revenue streams are taken away. Given the ease with which still images can be copied, those works’ value can be appropriated with a few clicks in a matter of seconds.

VHP’s copy-and-paste approach provides a direct (free) substitute for the diverse and robust market for licensing Visual Content discussed above, which would otherwise be monetized by creators and authorized licensors. If such uses

¹⁰ See, e.g., Alex Wild, *Bugging Out: How Rampant Online Piracy Squashed One Insect Photographer*, ARS TECHNICA (Sept. 24, 2014, 9:00pm), <http://arstechnica.com/tech-policy/2014/09/one-mans-endless-hopeless-struggle-to-protect-his-copyrighted-images/2/>; *Industry-Wide Survey Reveals 67% of Professional Photographers are Affected by Unauthorized Use of Photos*, PRWEB (Nov. 16, 2015), http://www.prweb.com/releases/PPA_CopyrightMatters/PhotographersSurvey/prweb13066768.htm.

of copyrighted images like Brammer’s photograph became widespread – and the “right-click license” is already notoriously rampant on the internet – it could destabilize the market for licensing such content as well as the relationships between Visual Content producers and organizations that aggregate and/or license that content. And this is precisely what will happen on a larger scale with respect to other types of copyrightable content, including graphic art, long-form video content, and even music, if this Court blesses the District Court’s flawed analysis, resulting in significant harm to the businesses and individuals making up the membership of DMLA, among others.

C. The District Court’s Analysis of the Fourth Fair Use Factor Contravenes the Constitutional Purpose Behind Copyright

The fourth fair use factor (like all the factors) must be assessed with an understanding that, if financial rewards are separated from content creation, authors may lose their ability to recoup the inevitable costs of creation and suffer a diminished incentive to create – an outcome directly contrary to the purposes of copyright law and the Constitution. *See Authors Guild v. Google, Inc.*, 804 F.3d 202, 212 (2d Cir. 2015) (“The ultimate goal of copyright is to expand public knowledge and understanding, which copyright seeks to achieve by giving potential creators exclusive control over copying of their works, thus giving them a financial incentive to create informative, intellectually enriching works for public consumption.”).

In his seminal article on fair use, Judge Pierre Leval explained that “the [proposed fair] use must be of a character that serves the copyright objective of stimulating productive thought and public instruction without excessively diminishing the incentives for creativity.” Pierre N. Leval, *Toward A Fair Use Standard*, 103 HARV. L. REV. 1105, 1110 (1990). However, because unauthorized users like VHP do not pay for the content they take, copy, and publicly display or distribute, authors may be disincentivized from creating new content or making the content available if the desire or willingness to pay for such content no longer exists. This phenomenon would also directly impact the ability of Visual Content aggregators to sustain their businesses.

In addition to diminished inventory, Visual Content aggregators like members of DMLA have invested significant time, money, and effort in organizing and digitizing their content, as well as maintaining it securely and ensuring that it is compatible with new platforms and new technologies.¹¹ Those who built online Visual Content libraries invested substantial labor to reach this point, and must continue to expend time, money, and human resources to ensure their collections meet demands and are up to technological snuff. If Visual Content can merely be

¹¹ Cf. *AP Announces Full Digital Expansion Of Its Stock Footage Business With Launch of New Video Archive Platform*, THE ASSOCIATED PRESS (Sept. 12, 2012), <https://www.ap.org/about/annual-report/2012/products-and-services.html> (Associated Press invested in “a multimillion-dollar upgrade to transform AP’s entire video business” into a digitized video archive platform that users can use to “search, organize and share research”).

taken based on an overly broad judicial interpretation of fair use, eventually there will not be enough revenue for content aggregators to continue to maintain content in electronic form, and their prior efforts in connection with technological advances will have been in vain.

In turn, a vast amount of history (particularly analog works that require digitization for preservation purposes) will be lost because there will be no financial incentive to invest in preserving the works if the licensing market is substantially eroded. Ultimately the public will suffer harm as well, being deprived of new and potentially valuable works.

A well-established, vibrant, and legitimate licensing industry was under VHP's proverbial nose; VHP chose not to pay for its image use, got caught, and attempted to conjure a post-hoc justification for its use. The facts of this case, coupled with the realities of the industries the District Court's decision would undermine, show that VHP's use was anything but fair.

CONCLUSION

For the reasons set forth above, DMLA, as *amicus curiae*, respectfully requests that the Court grant the relief requested by Brammer in his Brief of Appellant (Doc. 19).

Dated: October 29, 2018
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,237 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), as counted by Microsoft® Word 2010, the word processing software used to prepare this brief.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft® Word 2010, Times New Roman, 14 point.

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Dated: October 29, 2018

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Amicus Curiae PACA, Digital Media Licensing Association, Inc. in Support of Plaintiff-Appellant was filed electronically on this 29th day of October 2018. This certificate of Service is being provided to the Court and counsel through the ECF System.

/s/ Scott J. Sholder
Scott J. Sholder