

# Creating the wrong image

Today's technology makes it tempting to alter visual content. But at what cost? BY KAREN HEGMANN

The recent scandal concerning the doctoring of a photograph of Olympic athlete Myriam Bédard has put changes in the communication arts under a spotlight. Multimedia and the use of digital technology are forcing the buyers and sellers of images to rethink the way they select and purchase photographs and illustrations. Contracts are complex, and professionals have to be extremely skilled to be able to manoeuvre through these changing markets.



agreement in which copyright is not clearly defined, you could be faced with litigation from a third party.

Most contracts include a clause that clearly indicates that no photograph, or any

part of one, may be altered either directly or indirectly without the prior written consent of the photographer. This clause provides a strong warning to anyone who may want to alter an image without first obtaining permission.

**Read the fine print:** Before you sign, be sure the contract includes guidelines for media placement and quantity, duration of use, territory covered and clauses for exclusivity and/or non-exclusivity. Production fees and terms of payment should also be outlined.

Canadian photographers and illustrators are working closely with two copyright licensing agencies—CAN-COPY (the Canadian Copyright Licensing Agency) and TERLA (the Electronic Rights Licensing Agency) to simplify the system for image buy-

ers and creators. These agencies help reduce the costs to both parties by taking on the administrative aspects of doing business.

The evolution of the multimedia industry will depend in part on where the courts decide to draw the line with respect to the digital manipulation of images. In order for multimedia users and creators to feel comfortable with the digital imaging process, the legal profession must decide at which point ownership of an image changes.

The very infrastructure of the multi-

media industry encourages temptation. New questions will be raised in the area of ethics as more people gain access to tools that allow digital manipulation. In the digital world, any unauthorized manipulation or reproduction of an image could constitute a violation of copyright. Now it is up to the courts to decide the penalty.

KAREN HEGMANN works on national membership and promotions for the Canadian Association of Photographers and Illustrators in Communications in Toronto.

The advent of digital technology has made it easier for images to be downloaded, manipulated and reproduced. Agencies and marketers are faced with a complex range of licensing and copyright issues as more people gain access to content. Photographs and illustrations are two of the building blocks of content. And, by definition, the artists are content creators. New technologies will lead to more changes in the way content is created and in how it is distributed. In an increasingly fast-paced world, speed and delivery of content may soon determine whether a deal is won or lost.

The existing system outlining copyright ownership in Canada will have to be radically altered to reflect the complexities posed by the multimedia industry. Section 13 (2) of the Copyright Act in Canada states that first ownership of copyright belongs to the person ordering the photograph "unless there was any agreement to the contrary." It also says that to ensure these rights, valuable consideration must have been made to the artist. This means the artist must have been paid for the work. To protect against copyright infringement, Canadian photographers should negotiate separate contracts for each image they create and sell. Two examples reflect the complexity of these issues.

In the first case, a photographer and a highly respected advertising agency sign a contract that clearly outlines usage rights for an image. The agency violates the agreement by ignoring these limitations and doesn't get approval from the photographer to use the image in additional materials. After repeated warnings, the photographer threatens to sue. Both parties settle out of court.

In the second case, a photographer sues a corporation for copying images from his Web site and posting them on its own without getting permission. Copyright notices had been attached to the images but were removed as they were moved to the corporate site. This offered a clear invitation for visitors to download and reproduce the images.

Two things can be learned from these cases. One, read and respect the contract you sign with image creators or you may be liable for litigation. Two, watch for copyright notices in the digital realm, as the unauthorized reproduction of protected images may lead to future legal disputes.

To protect against possible litigation, you should adhere to these guidelines: **Understand what you are buying:** In order to protect themselves, both buyer (the "licensee") and seller must ensure a contract is signed that clearly outlines ownership of the copyright and the applicable usage fees. If you enter into an