What types of creative works deserve copyright protection in the digital age? On March 20, 2013, the Register of Copyrights, Maria A. Pallante, posed this central question to the 113th Congress in her testimony calling for an overhaul of the United States Copyright Act. Pallante testified that reform of our current copyright framework is needed to address new and novel copyright issues brought on by the rise of the internet and the growing trend towards digitizing creative works. In addition, the United States Copyright Office put forth a set of priorities and initiatives to provide leadership and impartial expertise on questions of copyright law and policy. These initiatives also serve to address current complexities in the copyright framework and to develop new ideas for meeting the copyright law challenges of the future.

In 2011, the U.S. Copyright Office launched a key initiative to develop a new copyright framework for works of digital authorship. These works include the creation, dissemination and sharing of creative content through websites, blogs and social media. As the internet and technology continue to evolve users are increasingly able to access creative material from anywhere in the world, incorporate it into their own works and disseminate their creative works instantly across the globe. This new trend of digital authorship and the issue of copyright protection recently raised a concern for users of the social media platform, Instagram. Instagram, a photograph sharing application, allows users to edit photographs and share them on the internet and through other social media platforms. In December 2012, Instagram changed its terms of use and privacy policies to allow for the repurposing of user content for use in advertisements on their website. Following this change there was an immediate backlash from Instagram (continued on page 3)
Smithsonian Loses $2.8M in Government Shutdown

Institution Also Loses 800,000 Visitors

Along with national parks and monuments, the Smithsonian Institution was forced to close during the shutdown of the Federal government. The 16-day shutdown has cost the Smithsonian Institution 800,000 visitors and an estimated $2.8 million in lost revenue. The Smithsonian received 400,000 visitors the week before the shutdown and was expecting to receive double for the holiday weekend that the shutdown affected. $2.8 million in lost revenue was calculated from lost sales at gift shops, cafeterias, and theaters across its 19 museums and the National Zoo.

http://tinyurl.com/malc010

Lost and Found

Jewels Found in French Alps from Mid-Century Plane Crash
A French mountain climber found a small metal box containing rubies, sapphires, and emeralds near Mont Blanc in the French Alps. The climber turned over the estimated $332,000 cache to local police. French authorities believe the jewels most likely are tied to one of two Air India plane crashes in 1950 and 1964, and are in contact with Indian authorities to trace the owners or heirs of the jewels. Under French law, if no owners or heirs are identified, the jewels may be given to the finder.

http://tinyurl.com/malc009

Oldest Wine Cellar to Date Uncovered in Israel
Archaeologists have discovered a 3,700 year old wine cellar in the ruins of a palace in Northern Israel. The oldest wine cellar previously known was 3,000 years old in Egypt, a region with no wild grapes. This find bolsters the theory that Canaanites developed winemaking and exported it to other regions. Fragments from the ancient wine jars were analyzed and found to contain traces of compounds of additional ingredients added to the wine, such as mint, honey, and herbs. With enough data, scientists may be able to recreate the flavor of the wine.

http://tinyurl.com/malc016

Van Gogh Discoveries

1888 Van Gogh Painting Authenticated
“Sunset at Montmajour,” thought to be a Van Gogh fake for more than a century, was recently declared a genuine work by the master by the Van Gogh Museum. It was once owned by Van Gogh’s brother Theo. His widow sold it in to a Paris art dealer who sold it to a Norwegian art collector. Shortly after the sale, it was declared a fake and the art collector put it in his attic where it stayed until 1970. The painting was authenticated in part by a July 4, 1888 letter Van Gogh wrote to his brother describing the scene at sunset on Montmajour.

http://tinyurl.com/malc007

Eykyn Maclean Gallery Displays Van Gogh’s Transition
Van Gogh’s residency in Paris greatly influenced his work toward brighter palettes and expressive brushstrokes. The Eykyn Maclean Gallery tells the story of Van Gogh’s transition with selected paintings by the artist and his contemporaries.

http://tinyurl.com/malc008 (video)

Earliest Account of Van Gogh’s Self-Mutilation in 1888 Parisian Newspaper
A Van Gogh researcher found the earliest news report of the artist’s self-mutilation. The Le Petit Journal reported the following on December 26, 1888:

“Yesterday evening someone called Vincent, an artist-painter from Holland, after cutting an ear with a razor, went and rang at the door of a house of ill repute and gave his ear in a folded piece of paper to the person who came to open it, saying “Take it, it will be useful”. He then left. The police searched for this individual and found him lying at his house. His very serious condition necessitated his transfer to hospital.”

http://tinyurl.com/malc011

National Museum of Liberia Lost 5,800 Artifacts
The Director of the National Museum of Liberia disclosed that 5,800 artifacts were lost through looting during years of civil war. The Director claims most of the looted artifacts were smuggled to neighboring countries and some have ended up in U.S. museums, and hopes to retrieve them through diplomatic channels.

http://tinyurl.com/malc017
users who threatened to boycott the site. Specifically, users of the site believed they were entitled to retain copyright ownership of their content and that sharing it online did not negate their rights in the content nor did it negate their right to control how others use it. The backlash from site users caused Instagram to change its policies back to their previous terms. However, the copyright issues surrounding works of digital authorship, such as content on Instagram, remain a matter for consideration in reforming the Copyright Act.

In order to reform the current copyright framework to address these issues Congress will first need to determine whether works of digital authorship should be afforded copyright protection. If so, given the fast pace of the creation and exchange of content through the internet and social media and the ever changing nature of the content on these sites Congress will also need to determine the appropriate means of registration and enforcement of copyrights in works of digital authorship.

In this new digital age, it is increasingly easy to create works that are inspired or influenced by culture, styles, and expressions from around the world. The growing trend to digitize creative works and its increasing accessibility through the internet allows artists to participate in a global exchange of culture, art, and ideas for inspiration and appropriation into their own creative works. The global influences that can be seen today in various creative works presents a novel copyright issue of whether a cultural influence, a style, or even a particular feeling or mood invoked by engaging with a creative work should be afforded copyright protection. This is the question posed by the case Williams v. Bridgeport Music, Inc. The case concerns the hit song, Blurred Lines, by R&B singer Robin Thicke, hip hop artist, Clifford “T.I.” Harris, Jr., and producer Pharrell Williams. The song is often mistaken by listeners for the 1977 hit, Got to Give It Up, by the late singer Marvin Gaye. The confusion of the two songs became so widespread that it caught the attention of Marvin Gaye’s heirs who are now claiming that the hit Blurred Lines infringes the copyright of Got to Give It Up. Thicke and company argue that the song is not infringing and in fact does not even contain any samples from the Marvin Gaye song. Robin Thicke has publicly admitted that he was inspired by the Marvin Gaye song, however, he argues that the song served only as an inspiration that he used to recreate the feeling to get up and dance that listeners experience when listening to the Marvin Gaye song. Furthermore, Thicke argues that this does not constitute infringement because you cannot own or copyright a feeling or mood evoked by a work. This case was filed in August 2013 to address a novel issue of copyright law. Specifically, this case will afford the court with an opportunity to address whether it is possible to copyright a mood, or feeling evoked by creative works associated with a particular culture, artist or style of music and if so, does the presence of these influences in a work constitute infringement of the original work.

The Register of the U.S. Copyright Office has also called on Congress to develop a new copyright framework to address the issue of orphan works. The movement of graffiti art into mainstream culture and its recognition as a valid art form presents unique issues of copyright protection and the challenge of dealing with orphan works. Graffiti art made the transition to the mainstream art world when other artists used various means to capture and document graffiti seen on streets, buildings, subway cars and other public spaces. Graffiti art began to be redistributed by these artists through other mediums such as photography, film,
(continued from page 3)

books, gallery exhibits, social media and the internet. Based on our current copyright framework, it is unclear if a graffiti artist will always be able to bring a successful copyright challenge against others who use their works. Graffiti is an art form that thrives on appropriation. Artists will often riff on the styles of other graffiti artists to create a new work while also fostering a dialogue between graffiti artists. The style of graffiti art can also be specific to city or neighborhood with several artists in that location adopting the local style into their work. The prevalence of appropriation in graffiti art can pose a significant challenge when trying to determine when a work of graffiti art should be afforded copyright protection. Also, graffiti is often fixed on public spaces or private property raising the issue of how to determine ownership of the work – the artist or the property owner? Furthermore, graffiti art often involves the commission of a crime and some would argue that works created by illegal means should not be afforded copyright protection. This also means that the genre of graffiti art is filled with works by anonymous authors because claiming a work of graffiti art also means admitting to the commission of a crime. This presents an interesting orphan works challenge of determining whether artists should be required to seek out the original author of a work of graffiti art prior to using it or if graffiti should be automatically considered an orphan work due to the often anonymous nature of graffiti artists.

The advance of the internet, social media and technology has introduced entirely new ways to create, distribute and monetize creative works. Any copyright law reform will need to address the new ways in which we create and share creative works and balance those reforms against the interests of creators in order to address current and future copyright issues that may arise in this new digital age. This article does not cover the entire testimony and key initiatives of the U.S. Copyright Office and its call for copyright reform but rather it is a highlight of a few emerging copyright issues.

Exhibit Highlights Art, Not Artists

The La Maison Rouge, a private museum in Paris, is hosting an exhibit titled, “Theater of the World.” The exhibit highlights approximately 150 pieces from Tasmania’s Museum of Old and New Art (“MONA”). Art collector and MONA curator David Walsh has drawn controversy for displaying art without labels. Walsh says, “Categories are the first problem with museums… What they are in fact doing is showing what’s similar and asking you to see what is different. We’re asking you the opposite. We are seeing things that are different and asking you what is similar.” The La Maison Rouge is following MONA’s lead and is presenting the pieces without labels. Mr. Jean-Hubert Martin, curator of the exhibit, says, “Museum curators have long thought that the public couldn’t appreciate works of art if they didn’t learn art history… My point of view is completely different. There is something very central in art that everyone can experience.”

National Museum of Selfies Opens

A museum dedicated to “selfies” has opened in London, England. The museum is likely the first that is devoted to selfies – photographs the subject takes of himself or herself with a digital camera or cellular phone, usually in front of a mirror.

Our committee undertakes a variety of projects related to all types of museums and all types of art that are being affected by new developments. Naturally, this requires an appreciation for how those institutions and communities function in general. The Committee thus welcomes active participation from those involved in museums or the arts. In addition to attorneys and law students, membership is also open to non-attorneys who may join as Associates at:

Current projects the Committee is exploring include authenticating artwork, collecting digital forms of art, digitization for archival and commercial purposes, and copyright issues in ownership, derivative use, and online distribution.

Marketing Your Museum on a Shoestring

This online conference aims to provide innovative ways to attract larger audiences without spending a fortune on marketing and advertising, and how to get the most from your budget.

January 29, 2014  Arlington, MA / via Web

Museums Advocacy Day

Museums Advocacy Day brings awareness of the importance of museums to lawmakers. AAM provides policy briefings, special training, and meetings support. Free for AAM members.

February 24-25, 2014
Washington, DC

30 Years of SMA: Past, Present, and Future!

The Small Museum Association will be holding its 30th Annual Conference.

February 16 – 18, 2014  Ocean City, MD

About Us

The Museum and Arts Law Committee is within the Section of Science & Technology Law, one of 22 sections within the American Bar Association.

http://tinyurl.com/scitechmac010

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New England Museum Association

Marketing Your Museum on a Shoestring

This online conference aims to provide innovative ways to attract larger audiences without spending a fortune on marketing and advertising, and how to get the most from your budget.

January 29, 2014  Arlington, MA / via Web

http://www.nemanet.org/conference-events/lunch-nema/marketing-your-museum-shoestring/

American Alliance of Museums

Museums Advocacy Day

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http://www.aam-us.org/docs/default-source/advocacy/2014mad-support.pdf?sfvrsn=4

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http://www.smallmuseum.org/conference.html

Upcoming Events