

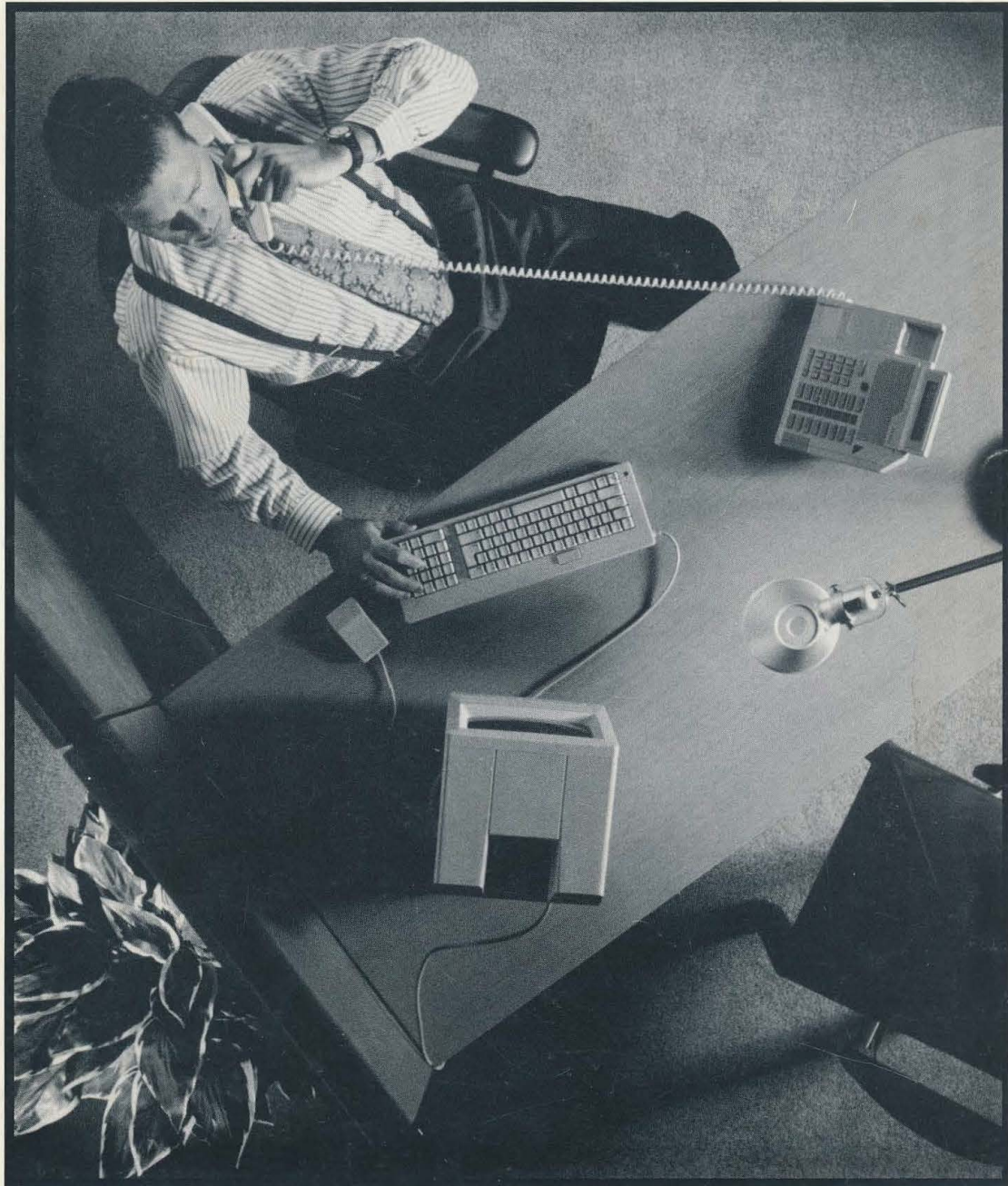
# STUDIO PROBE

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\$ 2.50

January / February 1992

THE VOICE OF PROFESSIONAL PHOTOGRAPHY



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## PROFILE

*Richard  
Desmarais*

## EXPOSÉ

*Anne King*

## COLUMNS

*Brian Greer*

*Andrew  
Haydon*

## PRODUCT PROBE

*Elinchrom*

## CLASSIFIED

## COMMENTS

## MAIL

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## FREQUENT INFRINGEMENT

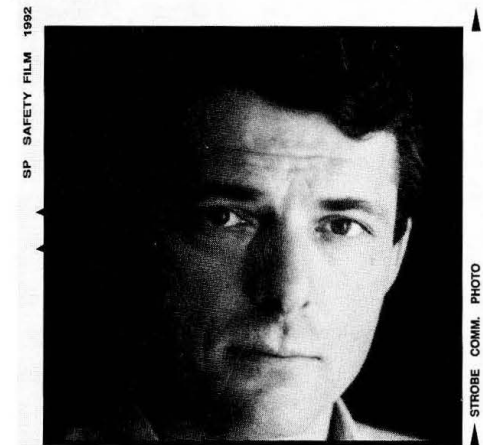
By Brian Greer

**L**ike most photographers, I have a tendency to hope that clients will call because I have blown them away with my photography. On the other hand, I am intelligent enough to understand the fact that I have a business to run, and ultimately, bills to pay. To do so, I must pay attention to legal and professional issues as well as my own artistic pursuit of excellence. Copyright is a prime example.

Business practices is what this column is going to be concerned with. If, by some off chance, you consider that to be boring, may I respectfully suggest you search for alternate means to make a living?

The next time someone asks you, "So what's the big deal about copyright?" you might consider this: copyright is the legal mechanism that grants and confirms a creator control of his or her work. This particular right is at the very basis of modern society's cultural and information industries. Copyright ensures the economic viability of continued creation, manufacture, production and distribution of these works to the general public.

Almost daily, new technologies are making it even more important that you, as a photographer, retain control over



your work. It is no secret that reproduction and digital storage technologies currently available are such that, in many instances, a copy is rendered virtually indistinguishable from the original.

It is entirely possible for me to scan an image of a sunset which you created, and use it as background to a product shot that I took on white seamless. If you do not happen to spot your photo in the reproduced composite, the odds are extremely favorable that you, my respected colleague, will never see a nickel for that unauthorized use of your hard work.

In Canada, copyright falls under federal legislation. As you may know, the current legislation stipulates that the party who commissions the photograph will hold the copyright unless there is an agreement to the contrary. You should therefore specify, in a written contract, the rights you are selling, and your invoice should restate the rights sold so that you can prove in a court of law that your client did not purchase all world wide rights to your photograph for a scant fifty bucks!

Future columns will deal with the mechanics of a number of situations. For now, I would like to bring you up to speed on a few items.

When Canada's copyright law was revised in 1987 by Bill C-60, the government stated that the Act was the first phase of a two-step revision. While

Bill C-60 did confirm moral and exhibition rights, it did not alter anything with regard to the actual ownership of the copyright of a photograph. The second phase of revision is to address these issues. As the second phase has not yet been introduced, photographers still have the opportunity to influence the government on what the next Bill contains. You should be writing and telephoning your Members of Parliament regularly to ensure they are aware you are concerned about these issues of copyright.

The Canadian Association of Photographers and Illustrators in Communications (CAPIC) has recently made a number of proposals to the government, including the recommendation that "First copyright must, and can only, vest in the author or creator of a work." No one would seriously argue that copyright in the Mona Lisa, if it had existed, would go to the Gioconda family. The fact that those who commissioned the work also chose

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the dress, background, and the subject's expression seems merely historically interesting. Mr. Da Vinci was the creator, and any reasonable person would agree that he should hold title to the copyright.

You are in the same business as Da Vinci. The next time you are negotiating with a client, bear in mind that you are being hired to create artwork for a fee and should therefore retain copyright.

CAPIC also recommended that "Fixed statutory damages should be established for both willful and innocent copyright infringement. Without limiting the ability of the litigant to sue for a greater

amount, these amounts should be substantial enough to represent a true deterrent to unauthorized use."

Under today's law, if someone infringes upon your copyright, you first have to catch them, then you must prove to a court that what they are looking at is infringement, and then that you have suffered financial loss. If enacted, the CAPIC proposal

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would see that once copyright infringement is proven by you, there would be a set penalty due you, without any further action on your part.

The last major CAPIC recommendation was that "Full credit to the copyright holder be published in conjunction with any reproduction of the copyright holder's work. This credit should be a requirement under law."

CAPIC was convinced there would be far fewer infringements if anyone publishing material of any kind were required to show the name of the copyright holder whenever their work was used. I can already hear the arguments from the designers, but have you ever noticed how many annual reports tell you what kind of paper they were printed on, but neglect to name the photographers?

You should be requesting copyright credit in reproductions of your work. I am not suggesting you reduce your bill for the free advertising, but that you let your client know this may be a successful starting point in ensuring his competition doesn't scoop the photo that he paid for, and start using it in their own ads.

If you don't think all this matters much to you, keep thinking. Colour photocopiers already produce near-

photograph quality enlargements at under five dollars a copy. What about in a year's time? As you can appreciate, this poses a particularly significant problem for those of you handling weddings and portraits. Commercial photographers should also be concerned, since equipment available today allows me to scan one of your prints, cut out a section, change the colours, stretch out the background, and lay my own image on top. Would doing this make me an artist, or a thief? The cost of such equipment is falling rapidly, and we are only a few years away from its affordability for any small business. It is a frightening reality that CAPIC is attempting to address.

So should you.

Call your MP. Tell people you meet. State your rights to clients and prospective clients with confidence and sincerity. No one can fault you for approaching your work, your lifeline, with professionalism and integrity. **SP**

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- Mr. Greer owns **Corporate Photography**, an Ottawa-based firm specializing in *People, Location, and the Advanced Technology Sector*. Currently, he is *Vice-President (Business Practices)* of CAPIC and regularly conducts photographic seminars on a variety of topics.

## **Feedback**

***Studio Probe Magazine wants to hear from you. Right now is the time to send us your letters, comments, articles, queries, announcements, suggestions or photos. For mail and fax information, see title page (p.3).*** **SP**