

# Copyrights

## Copyrights — Promoting Creativity and Protecting Assets

With a single keystroke, information, images, music, and more can be shared with millions. Evolving definitions of fair and transformative use, increased utilization of consultants and employees to create “works for hire,” and the inexorable growth of digital media have upended traditional notions of ownership. In a world in which content is king and tomorrow is too late, an effective, strategic copyright protection strategy is more valuable and necessary than ever.

The attorneys of Marshall, Gerstein & Borun LLP help a broad range of clients—from individual artists, illustrators, musicians, and writers, to global media and entertainment companies—develop, identify, protect, and maximize the return on their creative works. We also help online service providers, advertisers, design firms, research organizations, and marketing professionals ensure that they have obtained all necessary permissions to use the content they acquire, manage, and deliver.

### **Serving clients from every sector of the economy**

Virtually every company can benefit from copyright counseling on issues such as employee-created content, use of third-party materials in advertising, and the retention of independent, outside parties to provide imagery and text for catalogs, websites, and advertisements. In certain industries, including software, publishing, movies, television, music, fashion, apparel, and fine arts, the creation of copyrightable material is the very essence of a company’s business model. Marshall Gerstein attorneys have represented clients from almost every sector of the global economy, helping businesses mitigate risks and maximize opportunities in the context of their unique markets, competitive landscapes, and regulatory environments.

### **Reliable advice where change is the rule**

Copyright law in the United States, the European Union, Asia, and other regions is often several steps behind emerging technologies and distribution models. At the same time, recent judicial decisions have set new precedents and overturned old standards. Our attorneys’ deep knowledge of copyright law, our extensive, industry-focused experience, and our global network of legal resources empower us to provide high-quality, sophisticated counsel on a broad range of issues, including:

- Copyright protection and registration
- Copyright enforcement, including notice and takedown requirements and Digital Millennium Copyright Act safe harbors
- Fair-use, open-source, and public-domain determinations
- Rights of publicity and privacy
- Licensing, acquisitions, and portfolio management
- Litigation, including enforcement actions, resolution of ownership disputes, and conflict mediation
- International copyright laws and treaties, including the Berne Convention
- Parody
- First Amendment and free speech
- Work for hire

### **IP-focused strategic partners**

We begin by identifying our clients' desired end results and helping them understand what does—and does not—constitute protectable material. From there, we work in partnership to build a comprehensive strategy to secure, monetize, and/or acquire creative assets and to resolve disputes as effectively and quickly as possible. We are committed to developing long-term, effective client relationships and to providing efficient staffing that fulfills our clients' requirements without placing undue pressure on legal budgets. Finally, we work as a team rather than as individual lawyers, with the flexibility to expand or streamline our approach as necessary.

### **Representative matter**

- **Preserving and promoting an extraordinary photographic legacy**

Vivian Maier was a prolific amateur photographer who has become the focus of international acclaim following her death, intestate, in 2009. A former real estate agent in Chicago who had obtained thousands of Maier's photographic negatives and other works (in most cases, the only known copies) subsequently created a significant enterprise promoting, marketing, and selling prints of these photographs. He also produced and distributed an Oscar-nominated motion picture, "Finding Vivian Maier." In 2014, the Estate of Vivian Maier attempted to obtain information from the individual marketing Maier's work concerning possible copyright claims held by the Estate. Marshall Gerstein attorneys successfully completed negotiations on behalf of the Estate with the marketer. The settlement, approved by the Probate Court of Cook County, establishes a cooperative structure that continues to bring Maier's extraordinary photography to light while preserving her legacy.

## **Client Successes**

### **The Estate of Vivian Maier and John Maloof Reach Agreement**

Vivian Maier, a prolific amateur photographer who has achieved international posthumous fame and acclaim, died intestate in 2009. John Maloof, a former real estate agent in Chicago, obtained thousands of Maier's photographic negatives and other works, in most cases, the only known copies of the works Maier created. After Maier's death, Mr. Maloof created a significant enterprise promoting, marketing, and selling prints of Maier's works, including the production and distribution of the Oscar-nominated motion picture, "Finding Vivian Maier." In 2014, the Estate of Vivian Maier, which is being administered by the Public Administrator of Cook County David A. Epstein, issued citations to discover assets to Maloof and his company to obtain information concerning possible copyright claims held by the Estate. Thereafter, the Estate entered into extensive settlement negotiations with Mr. Maloof and the gallery representing Mr. Maloof concerning the past and future exploitation of Maier's works.

In March 2016, Marshall, Gerstein & Borun LLP's Partner [Gregory J. Chinlund](#) successfully completed negotiations on behalf of the Estate with Mr. Maloof, resulting in a confidential settlement agreement. In May 2016, the Probate Court of Cook County approved the settlement.

The agreement between the Estate of Vivian Maier and Mr. Maloof establishes a cooperative structure that allows Mr. Maloof to continue to bring Ms. Maier's extraordinary photography to light while preserving her legacy.