

There are intellectual property battles raging over embroidery (and other digital artwork) – with both stock design companies and individual embroiderers ending up the victims of piracy and of purchasing pirated designs. Learn what you need to know to stay above the fray.



Might Makes Copyright

By Daniel Walsh

About two years ago, Leah Paley's friend ordered a design off eBay and asked Paley to embroider it for her. The friend knew nothing about embroidery, Paley says, but she knew that Paley, a mother of seven living in Virginia, had fallen in love with embroidery back in 2001. Paley said she'd produce the embroidery and figured that was the end of it.

A year later, Paley's friend got a letter informing her that she'd purchased a design that had been pirated and sold in violation of its copyright. The friend could either pay a fee of several hundred dollars or face a lawsuit. "The thing was so bizarre," Paley says. "She doesn't even own an embroidery machine." The friend contacted the Texas Attorney General's Office complaining about harassment, because the letter originated in Texas. (Like others

who received such letters, she declined to be interviewed for this story.) As Paley learned more about it, she was amazed to find other

embroiderers had received such threats. "To threaten little old ladies and stuff for purchasing a \$5 design on eBay?" Paley says. "Just tell them it's an illegal design and not to use it."

Settlement demand letters like these have become commonplace in the world of digital artwork over the last few years. Whether it's embroidery designs or stock photos, big companies and lone individuals

have learned not only that these letters get results, but that they may be the best way to crack down on copyright abuse and digital piracy. "The word has gotten out that settlement demand letters work," says Matthew Chan, a Georgia businessman and author who successfully fought such an effort by Getty Images

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Ed Levy, Digitize4U

and subsequently launched the website www.extortionletterinfo.com. “It’s not just stock photos or embroidery. They scare people. They just work.”

Companies such as Getty Images and Masterfile Stock Photos have used settlement demand letters to go after people they believed were taking images meant for personal use and then reselling them to others at profit.

In the embroidery world, no company has led that charge like Bernina, which owns several embroidery and sewing-related companies, including Great Notions, an online catalog of digital designs. Bernina organized the short-lived Embroidery Software Protection Coalition (ESPC), a group of several companies that went after alleged copyright abusers in 2005 and 2006. The proliferation of pirated designs around the Internet, often sold on sites such as eBay and Etsy, has deflated profits for companies that produce and sell them legitimately. “Today, you find free designs all over the Internet,” says Martin Favre, president of Bernina USA. “It’s getting more difficult to make money off this business.”

While it’s simple to observe that digital piracy is rampant, crafting a solution isn’t nearly as simple. Many who received settlement demands claimed to have purchased designs innocently – and not knowing about the copyright issues – without plans to profit from them. They say that those issuing these settlement demands are practicing “extortion.” Those who profited by

knowingly selling pirated designs often got away and continue to do so. Amid outcries, the ESPC collapsed. Now, even Bernina, which accused others of piracy, faces similar claims that it stole others’ designs.

THE NITTY-GRITTY

Here’s how simple it is to pirate someone’s copyrighted image: Go to your local newspaper’s website. Right-click on any photo you see. Save it to your computer’s hard drive. Then, post the photo on your company website. That’s it!

As an embroiderer, you could buy or download a design and then sell it to others. Or you could buy a design, stitch it and then sell it. Maybe you’ll cross over into promotional products and sell them wide-scale, perhaps reproducing them for shirts and selling them as distributors do. All these are potential copyright violations if you don’t have permission to use the copyrighted designs. “In the home market, it’s clear: You cannot use a design for anything but your own personal use,” Favre says. “You cannot put it on a sweatshirt. You can’t put it on a hat. You don’t have the right to do it.”

The latter, of course, has become rampant in embroidery and digitizing circles. People see a design, and they realize they have the artistic talent to craft it and share – or sell – it. So people did it. Many saw nothing wrong with it. After all, it was their craft work, even if the design wasn’t. In an online culture where people are used to obtaining free information, that sentiment comes nat-

urally to many. “One of the things I argue is once you put something on a website, there’s an implicit consent that you can use it,” says Mike Meadors, who runs a fabrics business in Colorado and hosts a website called Tabberone’s Trademark & Copyright Abusers Hall of Shame (www.tabberone.com). Whether others disagree or not, that mindset is common online. “There’s no control,” says Ed Levy, owner of Digitize4U, a digitizing and embroidery company based in Montoursville, PA. “Companies that pirate software are often based in other countries. They’re pretty much untouchable because their servers are in China or other countries where you can’t touch them.”

As media companies began losing more money, they began looking for a solution. They found it in a program called PicScout. Developed in 2002, PicScout can scroll across the Web searching images. It can then crosscheck the images against a database of images belonging to the client. If there’s a match, the ownership of the Web domain can be checked in a worldwide registry, such as the one run by the Internet Corporation for Assigned Names and Numbers. An automatic notification can be sent to the company whose copyright may have been violated, which can then automatically trigger a letter to be sent to the person accused of using the digital artwork in question. PicScout made available the means for tracking copyright violators and pursuing payments from them, and most of it could all be done through automation.

PLAY IT SAFE WITH COPYRIGHTS

With pirated designs proliferating around the Internet, it’s very easy to unknowingly use a pirated design or have someone use it on your behalf, such as a Web developer building your website. However, avoiding use of those images is in some ways just as easy. “Check to make sure the people you’re doing the work for are truly licensed to use a copyrighted image,” says Ed Levy, owner of Digitize4U, a Montoursville, PA-based embroidery and digitizing firm. That means requesting documents showing the person who provided the image either created it or has a contract to reproduce it.

Levy learned the hard way to ensure that he had that documentation. In 1996, authorities raided his business because it didn’t ensure it had a sublicense. Charges were eventually dropped because there was clearly no intent to abuse copyright, Levy says.

If you receive letters from someone claiming you misused a copyright, make sure to check that the letters are legitimate. In recent months, at

least one apparent scam has proliferated in the form of a settlement demand letter ostensibly written by a female lawyer from Texas, but that clearly using spellings of words consistent with Great Britain, not the U.S.

Oscar Michelen, an attorney and instructor at New York Law School who has handled numerous digital copyright cases involving settlement demand letters, says many such letters have questionable legal standing. He says many people simply outlast their pursuers by ignoring them, but that comes after quite a bit of pressure, including sending debt collectors to secure settlements from alleged copyright infringers. “They’ll find your phone number and e-mail and step up contact,” Michelen says. “They’ll send it to a lawyer. If you’re willing to hold on through all of that, you’ll get through.” But if you have the image in question on a website somewhere, there’s one other key step. “We advise all our clients to just take it down,” Michelen says. “Even if you’re right, just take it down.”

Bernina caught on and formed the ESPC with some of its subsidiaries and outside companies, including Tacony Corp. and Pulse Microsystems Ltd. The ESPC sent out numerous settlement demand letters. “One of our customers got one of those letters from the embroidery coalition,” says Angie Sims, a moderator of a popular online sewing forum who used to work for a Brother dealer in Nashville, TN. “She didn’t contact an attorney. She just contacted the embroidery coalition and sent them \$300.”

Meadors, who has received and successfully fought similar demands from companies claiming he infringed copyrights, said that’s a common response. “Most people would rather pay the \$300 fine, as the ESPC calls it,” he says. “It’s basically copy-

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George P. Riddick III, Imageline

right extortion.” Such sentiments hurt the ESPC. For every person selling pirated designs online, there were others who claimed to be innocent crafters. “We got badmouthed many, many times over for being a big corporation going after these 65-year-old women,” Favre says.

In 2006, the Electronic Frontier Foundation (EFF), a nonprofit group protecting digital rights, stepped in to fight the ESPC on behalf of embroiderers. “We got involved in a specific nuance of this,” says Corynne McSherry, an attorney with EFF. “Our clients were involved in a Yahoo! group formed to talk about this. The ESPC found out about this and tried to subpoena identities of the people in the group.” McSherry says the ESPC had filed the lawsuit against numerous John Does.

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Then they went to the Internet service provider to secure the identities for the lawsuit, since “Before you can get someone’s identity, you have to show you have a legitimate suit,” McSherry says.

The ESPC eventually collapsed due to bad publicity from its efforts, Favre says, but the message got out. Embroiderers and digitizers shared news of the lawsuit threats on online messaging boards. Even those who faced accusations of digital piracy recognized something needed to be done. “These people need to be put out of business because this is obviously piracy,” Meadors says. “What the ESPC was doing is going after innocent people for very mundane things and threatening people with lawsuits.”

TABLES HAVE TURNED

George P. Riddick III can be different things to different people. Copyright expert, businessman, copyright extortionist, shakedown artist – again, it all depends on who you ask. He has a company called Imageline that he says pioneered clip art in the early 1990s, and he claims copyrights on the vast collections of digital clip art he says his company developed during that time, and he has followed the example of Getty and the ESPC by using PicScout and threats of litigation that come with settlement offers. He has sued or threatened to sue various companies and individuals for violations of copyrights he claims. “We started researching the embroidery design industry as a new market for us and were blown away by the amount of copyright infringement,” Riddick says.

Riddick says he only goes after people distributing Imageline’s copyrights for money. One of those targets is Bernina, which he accuses of using his clip art without permission. “They take the artwork,” Riddick says. “They modify it. They then

turn around and license it.” After he contacted Bernina dealers to tell them they were violating his copyrights by selling the designs, some got scared, so in August Bernina sued Riddick and his companies.

Riddick’s critics say his operation – and his copyright claims – are very questionable. Many say Riddick makes a living today primarily through such lawsuits. As of press time, one could go to Imageline’s website, www.imageline2.com, and see the message, “Major website upgrade coming in November 2009!” The phone number listed on the website has been disconnected. “We haven’t used or updated that website or phone number in years,” Riddick says. “We’re making some organizational changes.” Riddick declines to specify what those changes are, but says they’ll be revealed in 2011.

As of press time, the Bernina-Imageline case was still open in a federal court in Illinois. U.S. District Judge Milton I. Shadur has already invalidated some of Riddick’s copyright claims. “Riddick’s mass registration of clip art does not give protection to the individual pieces of clip art in the collection,” says Oscar Michelen, an attorney and New York Law School instructor who has handled numerous digital copyright cases, including one for Riddick. A federal judge in New York ruled similarly in an unrelated case in May, and the rulings could become precedents in other cases.

Riddick has fought the judge’s ruling and initially represented himself in the case. “I probably know the copyright laws of the U.S. better than most people and most lawyers,” Riddick says. Shadur disagreed and ordered him to hire an attorney, according to court documents, saying that copyright law “doesn’t seem to work the way you seem to think it does.”

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