



mla

# Arts Brief

A Publication of Maryland Lawyers for the Arts: Left-Brain Support for Right-Brain People

VOLUME 1 | ISSUE 4

FALL 2008

INSIDE

Artists Who Play Fair May Still Pay a Price (p.1)

Prince Goes Crazy Over YouTube Use (p.1)

McCain Campaign to YouTube: Review First, Take Down Later (p.3)

Arts Action Fund Releases Report Card on Candidates (p.4)

Orphan Works Act Abandoned by House (p.5)

Discuss Amongst Yourselves: Donating Your Art (p.6)

Harry Potter Lexicon Infringes Rowling's Copyright (p.7)

Calendar This! (p.7)

Suggestion Box: An Idea on Cleared Artwork for Local Artists and Filmmakers (p.8)

## Artists Who Play Fair May Still Pay a Price

by James B. Astrachan & Todd Jones-Prettyman\*

Since the emergence of the Pop Art movement in the late 1950s, artists have increasingly used pop culture as a source for social commentary. The role of the artist as illuminator of society's ills, triumphs, and obsessions is as ancient and intertwined with the genesis of art as shape and line. And, although this role was hardly invented by the Pop Art movement, the dilemma of the modern artist is unique to the times.

While in past centuries the artist's commentary centered on war, religion, and morality, to name a few, commenting on popular culture has caused a schism all its own — between the competing interests of copyright protection and the time-honored tradition of the artist

as social observer and/or critic. This is unique to the modern artist because most of the sources and images needed for commentary on popular culture are movies, magazine photos, or websites, which are usually the copyrightable works of other artists, photographers, and designers.

Therein exists the tension — between protecting the artist's work on the one hand and securing the artist's traditional role on the



Detail of "Niagara" by Jeff Koons

## Prince Goes Crazy Over YouTube Use

by Marcia Semmes, MLA Executive Director

A federal court in California recently refused to dismiss a suit by a YouTube user who alleged that Universal Music acted in bad faith when it issued a takedown notice against a 29-second video of her toddlers dancing to the Prince song "Let's Go Crazy."

In one of the first such rulings under the Digital Millennium Copyright Act (DMCA), the court ruled that Stephanie Lenz's misrepresentation claim could continue to trial. An allegation that a copyright owner acted in bad faith by issuing a takedown notice without proper consideration of the fair use doctrine is sufficient to state a misrepresentation claim under the DMCA, the court said.

Universal undisputedly owns the copyright to "Let's Go Crazy." After Lenz uploaded her video on Feb. 8, 2007, Universal sent YouTube a takedown notice. YouTube removed the video the next day and e-mailed Lenz that it had done so in response to Universal's accusation of copyright infringement. Lenz then sent YouTube a DMCA counter-notification contending that because her video constituted a "fair use," it did not infringe Universal's copyright. She demanded that YouTube repost her video. The company did so six weeks later. As of Aug. 20, the video had been viewed on YouTube more than 593,000 times.

Lenz contends that Universal issued the removal notice only to appease Prince, who is "notorious for his efforts to control all uses of his material on and off the Internet."

(continued on page 2)

(continued on page 3)

Founded in 1985, Maryland Lawyers for the Arts provides pro bono legal assistance to income-eligible artists and arts organizations, and educational workshops and seminars on topics affecting artists.

MLA is funded by the Baltimore Community Foundation; the William G. Baker, Jr. Memorial Fund; the Gladding Foundation; the Goldsmith Family Foundation; Mayor Sheila Dixon, the City of Baltimore, and the Baltimore Office of Promotion and the Arts; and by an operating grant from the Maryland State Arts Council.

**Official Sponsor:**

**Art Miller & Associates**

**Court Reporters & Videographers**

**Members:**

Astrachan, Gunst & Thomas PC

Bowie & Jensen, LLC

DLA Piper

Fisher & Winner

Gallagher, Evelius & Jones, LLP

Goodell, DeVries, Leech & Dann, LLP

Gordon, Feinblatt, Rothman, Hoffberger & Hollander

Gorman & Williams; Hertzbach & Co., PA

Hodes, Ulman, Pessin & Katz

Kahn, Smith & Collins PA

Kramon & Graham

McGuireWoods LLP

Ober|Kaler

Semmes, Bowen & Semmes;

Venable, LLP

University of Baltimore School of Law

Whiteford, Taylor & Preston LLP

**MLA Arts Brief aims to educate and inform Maryland artists about legal issues affecting them. It is not intended as a substitute for legal advice. Artists with legal issues should seek legal counsel to address specific questions.**

Executive Editor: Marcia Semmes

Design Director: Gina Eliadis

Board of Editors: Cynthia Sanders, Esq., Ober|Kaler;

Jennifer Stearman, Esq., McGuire Woods; Michael S. Yang, Esq.,

Gorman & Williams

**Maryland Lawyers for the Arts**

113 West North Avenue | Baltimore, MD 21201

Phone: 410-752-1633 | Fax: 410-752-1090

Email: [info@mdartslaw.org](mailto:info@mdartslaw.org) / [www.mdartslaw.org](http://www.mdartslaw.org)

[www.myspace.com/marylandlawyersforthearts](http://www.myspace.com/marylandlawyersforthearts)

© 2008 Maryland Lawyers for the Arts

*(Artists Who Play Fair from page 1)*

other. This, in turn, has led to much confusion and frustration for modern artists as to when they can use a part of another's work in their creations without legal consequence and/or cost and when they cannot.

The answer to that question depends on the circumstances of the use, but even if a court finds that the artist did play fair in using another's work, the harsh reality is that there will still be a cost for doing so.

Take, for example, the case of a Los Angeles artist who likes to find provocative photos in magazines, copy them, and add her own distinctive touch to them. She might colorize another artist's black and white photo or enlarge one of the objects or subjects depicted in the photo, or add it to a collage. Is such a use fair?

Fair use is found in the Copyright Act as an exception to infringement, but it is not defined; instead non-exclusive factors are listed and a court can give them the weight it sees fit to determine if the use is fair. The idea behind copyright fair use is to allow some use of another's copyrighted work to fulfill the copyright's very purpose — promotion of the progress of science and the useful arts. The monopoly given to an author under the copyright law is really intended to benefit the public. An absolute monopoly on the use of a work would actually stifle, and not advance, the law's objective. People are allowed to draw on an earlier work to create a new work, but this right has limitations.

A recent ruling involving artist Jeff Koons, who has been in court for copyright infringement several times, shows how fair use tries to bridge the gap between the rights granted an author under the Copyright Act and the ability of artists to express themselves by using parts of works owned by others. Koons was commissioned by Deutsche Bank to create an exhibition of paintings. Koons selected images from advertisements and scanned them into a computer, then superimposed the scanned images against pastoral backgrounds. Next, he printed color images of the resulting collages. His assistants used the prints as templates for painting huge canvases measuring 10 by 14 feet.

One of these giant canvases was titled "Niagara." It consisted of cropped images set against a pastoral background with four pairs of women's feet and lower legs dangling prominently over images of brownies, donuts, and apple pastries. The legs were placed side by side, together filling the entire length of the 14-foot painting. The leg shots were the work of professional photographer Andrea Blanch, who shoots for *Vogue*, *Allure*, *Details* and *GQ*. She is the go-to photographer for advertisers like Revlon, Johnny Walker, and the fashion

house Valentino, and is the author of a photography book called *Italian Men: Love & Sex*. The legs were part of a slick fashion ad shot in the posh cabin of a private jet.

Blanch sued Koons over his use of the legs in the painting. Koons defended the suit on the grounds that his use was fair. He said that those legs represented a particular type of woman who is frequently depicted in fashion ads, and by using them in his painting he was commenting on the commercial images in our consumer culture.

Koons did not use the whole photo or any of the background of the photos — just the legs and feet. And still, he got sued for infringement, for using parts of Blanch's work without permission.

The jumping-off point for whether using a part of another's artwork is fair is the statutory factor that examines the purpose and character of use. Here, the central purpose of this inquiry is whether Koons's work merely superseded Blanch's photo, or did Koons's painting add something new? Did Koons's work change the purpose or character of Blanch's photo? In other words, did Koons use Blanch's legs as raw material and transform them into something new when he created his painting? Did he add new insights and new aesthetics?

Koons asserted, and Blanch did not deny, that his reason for using Blanch's leg shots was totally different from her purpose. She used the legs in a slick fashion ad to create an erotic sense; he wanted people to examine the legs and consider how similar photos affect their lives. Koons used Blanch's legs as fodder for social commentary relating to how the mass media enters our lives and affects us. He wasn't repackaging Blanch's photo or duplicating it and using it for the purpose Blanch created it.

It used to be that all courts were of the mind that if the use was commercial — in essence for the purpose of making money — then it could not be fair. But in 1994, the U.S. Supreme Court held that commercial use alone is not dispositive. That was good for Koons because his painting was appraised at \$1 million.

In Koons's case, the court determined that his use was fair. Although Koons won his case and the subsequent appeal by Blanch, it cost him a lot of money to defend his use of Blanch's work. And, although Koons might have been entitled to recover his legal fees, he did not try. So, if you want to use another's work in your artwork, you may be able to. But expect a challenge. If it comes, it won't be cheap. ■

*\* Jim Astrachan is the author of The Law of Advertising. He and Todd Jones-Prettyman are attorneys in the law firm of Astrachan Gunst Thomas, P.C.*

*(Prince from page 1)*

Universal argued that copyright owners can't be required to evaluate whether a use is fair before sending a takedown notice because fair use is merely an excused infringement of a copyright and not a use authorized by the copyright owner or by law. Such a requirement would rob copyright owners of the ability to respond rapidly to potential infringements, Universal contended.

Rejecting that argument, the court said that the purpose of DMCA Sec. 512(f) is to prevent the abuse of takedown notices. Requiring copyright owners to consider whether a particular use is fair will help ensure that the variety and quality of services on the Internet will continue to expand without compromising the movies, music, software, and literary works that are the fruit of American creative genius, the court ruled. ■

## McCain Campaign to YouTube: Review First, Take Down Later

The Digital Millennium Copyright Act (DMCA) entered the political arena Oct. 13, as the general counsel for the McCain campaign wrote YouTube complaining that "over-reaching copyright claims have resulted in the removal of non-infringing campaign videos from YouTube, thus silencing political speech." The campaign urged YouTube "to commit to a full legal review of all takedown notices on videos posted from accounts controlled by (at least) political candidates and campaigns."

According to McCain Campaign attorney Trevor Potter, the takedown notices involve videos that are clearly privileged under the fair use doctrine: They contain less than ten seconds of footage from news broadcasts and comment on the issues presented in the news reports, or on the reports themselves.

YouTube says it must take down videos when a copyright owner files proper notice of infringement to avoid liability for claims against its users. YouTube may restore the material if the uploader files a valid counternotice contesting the copyright claims, including a fair use defense.

Potter's letter notes that the DMCA — which YouTube's policies track — does not contemplate reposting of the video until at least 10 and up to 14 days after the counternotice is received, even if the infringement claim was bogus and the counternotice legitimate. "But 10 days can be a lifetime in a political campaign, and there is no justification for depriving the American people of access to important and timely campaign videos during that period," he said. ■

# Arts Action Fund Releases Report Card on Candidates

One month before the election, the Americans for the Arts Action Fund released its summary of the 2008 presidential candidates' arts positions. The group noted that while both candidates have made statements on federal support of arts education, only Obama has published policy proposals on the arts and made a statement on federal support of the arts.

In addition, the group said Oct. 3, only the Democratic Party includes a statement on the arts and/or arts education in its national party platform.

Comparing the candidates' Congressional records, the group cited Obama's co-sponsorship of the Artist-Museum Partnership Act in finding him pro-arts. Concluding that McCain does not have a pro-arts record, the group noted that he voted nine times between 1993 and 2000 to cut funding for the National Endowment for the Arts.



Image courtesy of the John McCain Campaign

## McCain-Palin Statement on Arts Education:

“John McCain believes that arts education can play a vital role fostering creativity and expression. He is a strong believer in empowering local school districts to establish priorities based on the needs of local

schools and school districts. Schools receiving federal funds for education must be held accountable for providing a quality education in basic subjects critical to ensuring students are prepared to compete and succeed in the global economy. Where these local priorities allow, he believes investing in arts education can play a role in nurturing the creativity of expression so vital to the health of our cultural life and providing a means of creative expression for young people.”

## Obama-Biden Arts Plank:

“Our nation's creativity has filled the world's libraries, museums, recital halls, movie houses, and marketplaces with works of genius. The arts embody the American spirit of self-definition. As the author of two best-selling books – *Dreams from My Father* and *The Audacity of Hope* – Barack Obama uniquely appreciates the role and value of creative expression.

### A PLATFORM IN SUPPORT OF THE ARTS

Reinvest in Arts Education: To remain competitive in the global economy, America needs to reinvigorate the kind of creativity and innovation that has made this country great.

To do so, we must nourish our children's creative skills. In addition to giving our children the science and math skills they need to compete in the new global context, we should also encourage the ability to think creatively that



Image courtesy of the Barack Obama Campaign

comes from a meaningful arts education. Unfortunately, many school districts are cutting instructional time for art and music education. Barack Obama and Joe Biden believe that the arts should be a central part of effective teaching and learning. The Chairman of the National Endowment for

the Arts recently said “The purpose of arts education is not to produce more artists, though that is a byproduct. The real purpose of arts education is to create complete human beings capable of leading successful and productive lives in a free society.”

To support greater arts education, Obama will:

- **Expand Public/Private Partnerships Between Schools and Arts Organizations:** Barack Obama and Joe Biden will increase resources for the U.S. Department of Education's Arts Education Model Development and Dissemination Grants, which develop public/private partnerships between schools and arts organizations. They will also engage the foundation and corporate community to increase support for public/private partnerships.
- **Create an Artist Corps:** Barack Obama and Joe Biden support the creation of an “Artist Corps” of young artists trained to work in low-income schools and their communities. Studies in Chicago have demonstrated that test scores improved faster for students enrolled in low-income schools that link arts across the curriculum than scores for students in schools lacking such programs.
- **Publicly Champion the Importance of Arts Education:** As president, Barack Obama will use the bully pulpit and the example he will set in the White House to promote the importance of arts and arts education in America. Not only is arts education indispensable for success in a rapidly changing, high skill, information economy, but studies show that arts education raises test scores in other subject areas as well.
- **Support Increased Funding for the NEA:** Over the last 15 years, government funding for the National Endowment for the Arts has been slashed from \$175 million annually in 1992 to \$125 million today. Barack Obama and Joe Biden support increased funding for the NEA, the support



of which enriches schools and neighborhoods all across the nation and helps to promote the economic development of countless communities.

- **Promote Cultural Diplomacy:** American artists, performers and thinkers — representing our values and ideals — can inspire people both at home and all over the world. Through efforts like that of the United States Information Agency, America’s cultural leaders were deployed around the world during the Cold War as artistic ambassadors and helped win the war of ideas by demonstrating to the world the promise of America. Artists can be utilized again to help us win the war of ideas against Islamic extremism. Unfortunately, our resources for cultural diplomacy are at their lowest level in a decade. Barack Obama and Joe Biden will work to reverse this trend and improve and expand public-private partnerships to expand cultural and arts exchanges throughout the world.

- **Attract Foreign Talent:** The flipside to promoting American arts and culture abroad is welcoming members of the foreign arts community to America. Opening America’s doors to students and professional artists provides the kind of two-way cultural understanding that can break down the barriers that feed hatred and fear. As America tightened visa restrictions after 9/11, the world’s most talented students and artists, who used to come here, went elsewhere. Barack Obama and Joe Biden will streamline the visa process to return America to its rightful place as the world’s top destination for artists and art students.

- **Provide Health Care to Artists:** Finding affordable health coverage has often been one of the most vexing obstacles for artists and those in the creative community. Since many artists work independently or have nontraditional employment relationships, employer-based coverage is unavailable and individual policies are financially out of reach. The Obama-Biden plan will provide all Americans with quality, affordable health care. Their plan includes the creation of a new public program that will allow individuals and small businesses to buy affordable health care similar to that available to federal employees. Their plan also creates a National Health Insurance Exchange to reform the private insurance market and allow Americans to enroll in participating private plans, which would have to provide comprehensive benefits, issue every applicant a policy, and charge fair and stable premiums. For those who still cannot afford coverage, the government will provide a subsidy. His health plan will lower costs for the typical American family by up to \$2,500 per year.

- **Ensure Tax Fairness for Artists:** Barack Obama supports the Artist-Museum Partnership Act, introduced by Senator Patrick Leahy (D-VT). The Act amends the Internal Revenue Code to allow artists to deduct the fair market value of their work, rather than just the costs of the materials, when they make charitable contributions. ■

## Orphan Works Act Abandoned by House

In a surprise move, the U.S. Senate passed the Orphan Works Act by unanimous consent Sept. 26, but the House of Representatives, mired in negotiations surrounding the \$700 billion economic bailout package, failed to take action before adjourning.

The Shawn Bentley Orphan Works Act would allow users to display or employ so-called orphaned works after a thorough and documented search failed to reveal a work’s owner. The legislation provides specific search criteria, and the Copyright Office (CRO) is expected to post guidelines for the best practices for finding a copyright owner. The legislation also provides for court review to determine if an adequate search has been conducted in good faith.

Bill supporters contend that database registries will provide adequate means to search for owners of visual works and that the new law’s ease of searching and prospect of paying only reasonable compensation may reduce piracy. Opponents argue that photographs, illustrations, and other visual works are easily deemed orphan works because digitization and online display of visual works often separate images from copyright notices, credit lines, and other indicia of ownership.

The fate of the bill is uncertain at this point, but many observers expect Congress to revisit it after the fall election. ■

### SAVE TREES

To subscribe to the e-version of *MLA Arts Brief*, email [news@mdartslaw.org](mailto:news@mdartslaw.org) and put the word “subscribe” in the subject line.

### NEED MLA’S HELP?

Are you an artist with a legal issue? To find out if you qualify for pro bono legal services, visit [www.mdartslaw.org](http://www.mdartslaw.org) or call 410.752.1633.

the  
mla

## Discuss Amongst Yourselves...

**With this issue, MLA Arts Brief introduces a new column, "Discuss Amongst Yourselves," aimed at offering a jumping-off point for discussion on issues of importance to Maryland's arts community.**

*First up: Seattle artist Juan Alonso, who on Oct. 10 blogged about the seemingly endless requests he receives for donations of his art.*

*We understand and sympathize with his dilemma: on the one hand he wants to help arts organizations that are themselves helping artists. On the other hand, the artist is being asked to give away his life's work. One obvious solution? The time has come to enact the Artist-Museum Partnership Act, which Congress has repeatedly failed to pass for the last decade. The bill would allow artists to deduct the full market value of their work when it's donated to a nonprofit (see Arts Brief Vol. 1, Issue 1, p. 5)*

### **To Whom it May Concern:**

I feel lucky and blessed to be an artist and have the opportunity to create for a living. It is part of my philosophy as an artist to give back to my community, from local to global. In the last 18 months I have sold some and donated over 30 works of art to organizations (some art related, some not) and fundraisers, and have done so willingly. That is more work given than work sold. The issue is, and more so now with the current economic crisis, it seems every organization believes that artists are the first professional group of people to ask for donations for their fund-raiser, no matter what the cause is. It has gotten out of hand. I don't know of any other business group, as a lot, that is automatically called when money needs to be raised. Perhaps there are some out there. Perhaps people raising funds don't realize that artists are single-person businesses for the most part and that as a general rule, artists are on the lower end of the income levels, and that every piece given away to help a worthy cause is also income we are not bringing in to our business. Perhaps fund-raising organizations don't realize that so far there is no tax incentive for artists to donate our own work. If another individual donates my work, they get to deduct it from their taxes. If I donate my work, the only thing I can deduct is the cost of my materials, which I would do anyway at the end of the year. Under current laws, our skill, talent and labor is seen as worthless and it might be a good idea for some of the organizations asking

artists for work to start lobbying governmental agencies to change their policies. As far as I know, Artist Trust is the only one doing so. How about artists being able to deduct a percentage of the price for which the piece sold? How's that for determining fair-market value?

Until recently, I gladly gave and even served on acquisition committees for a couple of art-related organizations. At this point, however, I'm suspending all donations of my artwork in order to make a living at my job as an artist. I hope that other artists also realize that the "exposure" incentive or the 10% back just doesn't cut it anymore. I hope organizations start tapping other, wealthier sources for enriching themselves and that the IRS finally comes to realize that artists are assets to the community as a whole.

*Respectfully,  
Juan Alonso*



*Image courtesy of Juan Alonso*

### **SPEAK UP!**

**Have another idea for solving the cleared artwork problem? Think there are more pressing problems facing artists in today's insane economy? We'd like to hear from you. Send your responses, or some other call to arms, to [info@mdartslaw](mailto:info@mdartslaw). We'll publish a selection of them in future Arts Briefs.**

**November 15:  
FREE Legal Clinic at  
the Creative Alliance.**

Calling all artists!  
Filmmakers, musicians,  
writers and painters!

Got a question for a lawyer? The volunteer attorneys from Maryland Lawyers for the Arts turn off their meters and donate their time. Bring your contract, copyright and other legal questions, and sit down for 25 minutes of hardboiled but sympathetic legal counsel. Come prepared with any and all paperwork related to your legal matter.

Sponsored by MLA and the University of Baltimore School of Law. Appointment required. 1-4:30 pm. FREE!

Check [www.mdartslaw.org](http://www.mdartslaw.org) for details.

**To volunteer  
your time  
or to make a  
tax-deductible  
donation to  
MLA  
Maryland Lawyers  
for the Arts,  
visit  
[mdartslaw.org](http://mdartslaw.org)  
or call us at  
410.752.1633.**

## Harry Potter Lexicon Infringes Rowlings's Copyright

by Marcia Semmes, MLA Executive Director

A federal court in New York permanently enjoined the publication of a Harry Potter "Lexicon" Sept. 8, finding that it infringed author J.R. Rowlings's copyright and that defendant RDR Books failed to establish a "fair use" defense to infringement. The court awarded Rowlings \$6,750.

Written by Steven Vander Ark, the Lexicon is essentially an encyclopedia of the people, places, objects, and events of the seven-book Harry Potter series. The Lexicon originated as a web site for fans of the series. Rowlings herself said that sometimes while writing the latter books in the series she would slip into an Internet café to check a fact in the Lexicon.

According to the court, Vander Ark at one time said he would not publish the Lexicon in book form, but he changed his mind after Roger Rapoport, president and publisher RDR books, reassured him that it was legal. Rowlings and film copyright holder Warner Brothers filed suit to stop them.

In finding infringement, the court was persuaded by the sheer quantity of copying in the Lexicon, which draws 450 manuscript pages' worth of material primarily from the 4,100-page Harry Potter series. Most of the Lexicon's 2,437 entries contain direct quotations or paraphrases, plot details, or summaries of scenes from one of the novels.

The court did find Vander Ark's use "transformative." While Rowlings's work was meant as entertainment, the court said, the Lexicon is a reference work meant to make information about the intricate world of Harry Potter readily available to readers. Such reference guides are both useful and in demand, the court said, citing similar guides to the works of C.S. Lewis (*The Chronicles of Narnia*) and J.R.R. Tolkien (*The Lord of the Rings*, *The Hobbit*). However, the transformative character of the Lexicon is diminished because it was not consistent, the court said, and in any event, "A finding of verbatim copying in excess of what is reasonably necessary diminishes a finding of transformative use."

RDR Books has until Nov. 7 to file a notice of appeal. ■

### Right to Write Fund

Two days after the ruling, the nonprofit Right to Write Fund, which helped defend RDR Books in the Harry Potter Lexicon suit, announced that it will raise monies to help other artists faced with legal threats or lawsuits. According to its web site, the fund also will establish an educational repository and serve as a clearinghouse focused on fair use and other First Amendment issues confronting authors, especially when works move among print, the Internet, film, the fine arts, and new media. For more information see [www.righttowrite.org](http://www.righttowrite.org).



## An Idea on Cleared Artwork for Local Artists and Filmmakers

by Ed Bellafiore \*

**THE PROBLEM:** Finding cleared artwork to use in the set decoration of a film can be quite a challenge. There are many factors at play — the time period; the theme of the scene or character’s abode; and the style and personal tastes of the director, production designer, and set decorator.

Some movie sets, for example, call for an obscure piece of thrift store art that the set buyer lucks into at the local Salvation Army. The audience may not give much thought to this ambient piece or the effect it has on their subconscious viewing experience, but the director and producers know that the art department has helped to sell the mood of the scene by picking just the right piece of artwork.

What goes unnoticed is the struggle the art department coordinator has in finding out who owns the copyright on this piece of art and how the production company can obtain worldwide rights to it — also known as “clearance.” If the work is so obscure that no artist or copyright information is available, the gut instinct is to not use it.

But in the fast-paced world of movie production, the piece is often used and the scene is already in the can before a potential clearance problem comes to light. What happens next is a mad dash to clear it. If that dash is unsuccessful, the movie folks will either fix it digitally in post-production or hope that the copyright on the piece has expired (and it is in the public domain) or that their use can be considered legally “fair” or *de minimis* use.

**A PROPOSED SOLUTION:** Once the green light is officially turned on by a film studio and the production is up and running, an art department often faces a huge time crunch. The first wave of this is a furiously paced process of nailing down locations, getting sets and props built and painted on time and on budget, and decorating those sets appropriately. A catalog of local artists — with samples of their work and accompanying contact information — would benefit artists and filmmakers alike. It would increase the chances of artists getting their work in the project, and

give the art department crew for the film a head start on finding the right artwork, paying for it, and getting it cleared for use.

Art schools and the local arts community could work with the film commission in creating this catalog, which would become a valuable part of the set decorator’s kit, much like swatch books, carpet samples, and antique directories. It would provide the set decoration crew with a quick place to go for that first look. Putting the catalog online could give artists even more exposure. While there isn’t always going to be a perfect match and parties would still have to negotiate the prices and condition for use, having a directory readily available to the film crew when they come to town could make the initial connection and networking potential quicker and easier for both sides. ■

*[Ed. Note: Until a catalog for set decorators is developed, Maryland artists and film crews alike can take advantage of the Maryland State Arts Council’s Visual Artists Registry, which is maintained by Maryland Art Place. Visit <http://www.mdart-place.org/artists/index.html> for more information.]*

*\* Ed Bellafiore is currently a third-year law student at University of Baltimore. Prior to law school, he worked as the art department coordinator for four seasons of HBO’s *The Wire* as well as on many other feature films and television projects filmed on location in and around Baltimore.*

**THANK YOU!**

**MLA Arts Brief  
is made possible by a  
generous grant from the  
Maryland State Bar Foundation,  
produced with support from the  
Pro Bono Resource Center  
of Maryland, Inc.  
and the  
Administrative Office  
of the Courts.**

**Printing of *MLA Arts Brief*  
generously provided by  
Severn Graphics  
([www.severngraphics.com](http://www.severngraphics.com))**