

Untitled

Burning Man Blog Response to EFF  
<http://blog.burningman.com/?p=4599>

August 14th, 2009 | Filed under Photos/Videos/Media  
"Snatching Digital Rights" or Protecting Our Culture? Burning Man and the EFF  
Posted by Andie Grace

On Wednesday, the Electronic Frontier Foundation (EFF) issued a criticism of Burning Man's ongoing efforts to protect the rights of our participants, and our efforts to forestall the creep of commercialism into the foundations of our culture.  
Image by brillig, 2008

Image by brillig, 2008

Burning Man deeply respects the efforts of the EFF, and frankly, would ourselves like to embrace their opinion - but we don't think the issue is as simple as Corynne McSherry would have you believe. Just like the EFF, we honestly seek to think outside old paradigms and boxes of "creative property" in the digital age, but we view Black Rock City through a more complicated lens, and our view of issues facing creative ownership is not rendered in extremes of black and white. To us, the rights of the individual participant to privacy while in Black Rock City in this unique environment for free expression - and our philosophical desire to maintain it out of reach of those who would exploit that expression just to sell cars or soft drinks - happens to come first.

In fact, there are but two essential reasons we maintain these increased controls on behalf of our community: to protect our participants so that images that violate their privacy are not displayed, and to prevent companies from using Burning Man to sell products.

Livingbrush Woman Art by Scott Fray, Image by Bryce Hunt

Livingbrush woman Art by Scott Fray, Image by Bryce Hunt

As the manager of the volunteer team tasked with expressing and enforcing Burning Man's image use and trademark policies (essentially, the very "finger" that's resting on McSherry's dreaded DMCA takedown trigger), and as an acquaintance to several EFF board members and founders that prowl Black Rock City every year, I find this one-sided interpretation of BRC's camera/trademark policies a startling disappointment.

The gist is true on the surface: Burning Man retains rather an enhanced level of control over public image use of photos and video from the event than what exists in the public realm. Image use requests and trademark issues litter my desk year-round; more than 50 volunteers and another paid member of our staff support the Media and IP team efforts - and it's all done precisely in the interest of supporting individual creative expression, not suppressing it.

The narrow view presented by the EFF misses the point of Burning Man's concern by a wide margin. What's more unfortunate, it offers no viable suggestions for how to effectively address those concerns - concerns we did not invent in a vacuum, after all, but which were evolved in response to our years of interaction with our own participants (and, as participants, our interactions with camera users at our event).

One could nearly infer that the EFF places the rights of the photographer/videographer (who may or may not have been participants and contributors in BRC before arriving at its gates seeking a photographers' paradise) above any rights for the subjects of those images, the people and artists of Black Rock City whose creative works and self-expression are on display.  
Duck Flambe by Scott Cocking & Ken Beidleman, image by Ralf Ulrich 2008

Duck Flambe by Scott Cocking & Ken Beidleman, image by Ralf Ulrich 2008

## Untitled

Yes, our rules about photography are different from the outside world - but isn't BRC's unique environment what makes Burning Man transformative in the first place?

Believe me, I'd love to see a better solution than wading through piles of images to approve certain public uses (and turn down or enforce against others) every year, but after 10 years working with these licenses and observing their utility during the evolution of the digital age, the only thing I'm certain of is that the issue is not as simple as the EFF would like you to think.

Example: find me a participant who would vote "yes" on seeing a video or photo of the Man burning, or their own art car or sculpture, in a car commercial. You probably can't - but even the Creative Commons Noncommercial license wouldn't enable Burning Man itself to enforce against such use, nor the dozens of other similar violations it sees each year because the car company would claim (correctly) that Burning Man has no standing to enforce the Creative Commons license, only the photographer does - and what if the photographer was the one who sold the image to the ad agency in the first place? what if we couldn't locate the photographer to join forces with us? A Creative Commons license simply does not provide Burning Man the direct ability to enforce against such use - something we've unfortunately run up against many times as we work to keep such commercialist wolves at bay.

Further, our current license and approval framework allows us to protect participants from being featured as photographic subjects in ways that might violate their privacy or inhibit free expression in BRC. For example, it provided the very backbone of our case in 2002 when Voyeur Video surreptitiously obtained footage of dozens of nude participants over a span of several years and began releasing the tapes, under the name "Rainbow Fire Festival." Because of Burning Man's requirement that all motion video users in BRC sign a Personal Use Agreement and agree not to exploit such footage publicly for commercial gain without additional permission, we were able to prevail in this matter - not only ending the sale of the Voyeur Video tapes, but legally requiring its producers to agree not to return to Black Rock City.

Painted Girl in the Dust, image by Phil Steele, 2008

Painted Girl in the Dust, image by Phil Steele, 2008

We're proud that Black Rock City (a private event held on public land) is widely acknowledged as a bastion of creative freedom. I'm convinced that Burning Man participants have greater protection from the aforementioned kinds of exploitation than they are afforded at events elsewhere - but that protection does necessitate the acceptance of some general terms of engagement when it comes to cameras, and the use of logos and marks.

Carrying a camera in BRC bears a weighty responsibility: the cultural expectation that you'll ask first before you shoot has become second nature to Burning photographers/videographers; the newcomer with a camera seeking a news or documentary story undergoes an intensive acculturation process at the hands of Media Mecca, and signs an agreement that binds him/her to the Rights and Responsibilities outlined for all shooters at the event. Post-event, Burning Man maintains a mandatory review of all imagery to be used commercially prior to its publication - a time-consuming undertaking, but one that affords an opportunity to monitor for uses of footage and imagery that are exploitative of participant privacy or artists' rights, or are overtly commercial in nature.

And indeed, Burning Man is compelled (indeed, mandated, really) to enforce its own trademarks ("Burning Man" "Black Rock City" and "Decompression") from commercial exploitation as well - but we've never indicated any desire to interfere with tagging images with "Burning Man" on sharing sites or talking about it online - nor indeed, to censor anyone from engaging in criticism or negative commentary about the event on personal, editorial, or third-party sites, as the EFF seems to infer. This is where their argument really falls apart.

want proof? we've not engaged in trying to censor or remove certain third party

#### Untitled

sites containing criticisms of Burning Man using our trademarked names (some of these URL's even contain "Burning Man" alongside derogatory phrases, but they're obviously social commentary, and of little concern so long as they remain free of either violations of privacy or commercial content). We've equally never intervened on any of the many (hundreds? thousands?) of Burning Man related debates or criticisms on sites like Tribe.net or Facebook.

While we will work our tails off protecting these marks from being used to sell you a widget, we're frankly too busy engaging with all the good things people say and do around this culture to worry much about a few sour grapes...and often, we learn from constructive criticism and request it from our participants - heck, we're all Burners here too, so we've doled out plenty of it to ourselves over the years.

And when it comes to enforcement, our first approach in an interaction is nearly always just a personal and polite note or call. Most often, when people use imagery of Burning Man without permission for advertising or other overtly commercial purposes, they've done so because they're not aware of our particular policies prohibiting such use - and a friendly conversation with one of our IP volunteers is enough to reach happy resolution. Sure, some folks don't like it, especially those who haven't been to the event, but when we're dealing with a Burner, they tend to be understanding. When the "big guns" of the DMCA takedown notice come into play, it generally comes after we've exhausted all other options.

But how often does it happen? In the past year, Burning Man has issued five successful DMCA takedown notices to four independent websites, and one to YouTube. Three of those were porn-related sites containing nude photos that clearly violated the participant's privacy; the other two were commercial advertisements for unrelated products (including, in the case of YouTube, a blatant infomercial of a commercial-goods "gift" distributed for promotional purposes at the event, shot entirely without permission).

Granted, we can't say whether the Burners in those porn site photos would ever have found those images of themselves online, nor had the capacity or means to respond even if they had - but in such instances a DMCA was necessitated because it was clear that there were no model releases on file (indeed, subjects are frequently shot from far away and totally unaware of the camera in photos like these), and the content was presented in a salacious and/or pornographic manner. We feel strongly that Burning Man can and should be a place where there are controls to prevent this sort of surreptitious exploitation, and we act to incite quick response to protect that privacy.

When an image is used for advertising, we are no less firm, but mindful of the human touch in requesting removal; a DMCA notice is a last resort. For one such site taken down with the DMCA notice last year, the vendor, an outdoor outfitter, used the Burning Man symbol, photos of the Man, and text lifted from Burningman.com on their website to sell camping supplies. Our volunteer team made numerous friendly telephone calls and e-mails, and received multiple promises on the part of the site's owner that he would correct the violations. After a couple of weeks with no results, we finally decided that stronger action was necessary, and issued a successful DMCA notice resulting in the removal of all related imagery and marks.

If we did permit photographers to issue Creative Commons licensing for their Burning Man imagery, it would prohibit our ability to prevent both these types of exploitation. If a photographer decided to license a photo of the Man to Hummer for use in an advertisement, the only remedy available would be filing suit against the photographer for breach of contract - a much more expensive and loathsome proposition than the occasional Cease and Desist or DMCA notice - and more importantly, it would do nothing to remove the photo from the Hummer ad. I'm doubtful that participants would be keen on absorbing that kind of repeat legal expense annually in their ticket prices, nor on giving up the protections they've enjoyed in Black Rock City for over 10 years.

Of course, there's another way we could get the necessary privacy and noncommercial

## Untitled

protection – and some have suggested it over the years: we could prevent any taking of photographs at the event. Certainly you’ve seen similar prohibitions at concerts and other types of events. After all, Burning Man is a private event (with 40,000 of your closest friends). But we don’t want to do that – photography and filmmaking are forms of self-expression too, ones we value very much from our participants. But the EFF seems to think that anyone attending any event somehow has an absolute right to take photographs, and then to do whatever they want with those images without any effective restriction or manner of enforcement. While we believe that such rights do make sense for any of us taking pictures in purely public spaces, this is not true in the private space of Burning Man – if it were it would mean that Burning Man couldn’t protect participant privacy or prevent commercialization of imagery.

Another important fact to note: despite having this policy in place for years (this policy is far from new), the EFF, when it comes up with the parade of what Burning Man could do under the strict terms of our photo policy, has no examples of anything that Burning Man has done while enforcing the policies that it claims are wrong. That’s because, as I discuss here, we work hard to ensure that these policies are narrowly enforced just as to serious violations.

We don’t remove images from pages just because they criticize us (I’ve never been involved in taking down an image from an editorial blog criticizing Burning Man, and it’s certainly not because there haven’t been any!). We’re also not at all interested preventing participants from sharing their personal imagery or impressions of the event on third party sharing sites in a noncommercial manner, so long as they observe the concerns about privacy and commercialism. We’re delighted to see people sharing videos, stories, and pictures on our official Facebook page, and we know that it, along with Flickr, YouTube, Vimeo, etc. are representative of the way many of us share personal imagery in the digital age.  
Folksingers on Center Camp Stage, image by Susan Becker, 2008

Folksingers on Center Camp Stage, image by Susan Becker, 2008

Frankly, we’d rather gouge out our own eyes than get in the way of that kind of personal expression in our community. That’s why we’ve engaged with groups like the EFF and Creative Commons to continue exploring and evolving our policies to reflect the evolution of intellectual property itself. In fact, Burning Man’s lead attorney on intellectual property, Terry Gross, was the EFF’s first General Counsel – and he wrote the very licenses to which Ms. McSherry objects in the post, but she unfortunately fails to mention that their ongoing conversation behind the scenes has, even before her post, been helping us to frame the next step in evolving the licensing of image use at Burning Man.

Earlier in 2009 Burning Man’s Executive Committee undertook an examination of these issues, and we began to talk about evolving the language and the spirit of those agreements to more accurately reflect the changing digital rights landscape, while retaining our right to protect our participants and the spirit of the Burning Man event. This work continues and will heavily advise our image use/trademark enforcement processes in the coming years.

At the South By Southwest Interactive festival in March, I attended a panel called “How to Protect Your Brand Without Being Evil,” which was hosted by members of the EFF, the Creative Commons, and Lawyers for the Arts. After 45 minutes of enraptured listening, I stood in the audience to address them with this very issue – “But how can we evolve along with these issues in the digital age while still protecting our participants and artists in such a rare environment for self-expression?” while nobody in the room seemed to have the answers (nor did they take me up on my offer to buy them dinner and hammer it out, sadly – guys, if you’re reading, I’d love to hear from you!), we did seem to agree that Burning Man occupies a rare and unusual corner of the digital rights landscape, one without simple answers.

Elevation by Michael Christian, Auriah Milanes, Scottie Chapman and David Andres, image by Mario Valenti, 2008

Elevation by Michael Christian, Auriah Milanes, Scottie Chapman and David Andres, Page 4

image by Mario Valenti, 2008

We hope the EFF – and you – will join us in a dialogue about how to attend to the desires of our participants for an atmosphere of free expression while accommodating for this evolution. For 2009, because we still think it's the right thing to do, the licenses and ticket back agreement remain basically as they have been – in the interest of protecting your right to freely express yourself in Black Rock City. As much as I love and appreciate a lawyerly brain (ask anyone), I hope that forward-thinking legally minded folks like Ms. McSherry will step out from behind the legal lens of this narrow interpretation, and dialogue with us about how we might continue to evolve alongside this new digital culture while still remaining true to the foundation of respect for self-expression that has made Burning Man a cultural phenomenon for so many years.

The issue of personal rights of privacy, and the preservation of experience over the rights of commercializing that experience is a subject that affects more than just Burning Man participants. Your thoughts on the EFF post and our response are welcome! Or, if you have concerns, questions, a counterpoint, or indeed, violations to report, please drop us a note at [ip@burningman.com](mailto:ip@burningman.com).

(Note: all images are courtesy their photographers and the Burning Man Image Gallery – visit to view each page containing the photographer's website and contact information.)

(EDIT: The author regrets her failure to acknowledge Dan O'Day, Rosalie Barnes, Lightning Clearwater, and Marian Goodell for their significant contributions to this piece.)

comment rSSRSS for this entry's comments

Tags: digital rights, Electronic Frontier Foundation, photography, videography  
75 Responses to ““Snatching Digital Rights” or Protecting Our Culture? Burning Man and the EFF”

1. Halcyon Says:  
August 14th, 2009 at 4:36 pm

wonderful response. Whenever I see photos of Mardi Gras, I find myself grateful for the Playa photo policy. So many personal expressions are undertaken within the (well-earned) trust of the event. But that trust is fragile and, sadly, needs protection outside of Black Rock City.

P.s. Did my packaging for “Black Rock Boobie Bourbon” get approved? I need to fulfill these orders.

- (Report comment)
2. Michael Holden Says:  
August 14th, 2009 at 5:26 pm

As a long-time burner, photographer and EFF supporter, I thank you for your well-worded summation of the complex legal, technical and social issues that surround this topic. See ya on the playa!

- (Report comment)
3. Roxanne Graham Says:  
August 14th, 2009 at 5:38 pm

You rocked it out of the park! Excellent and thorough discussion. Thank you.

- (Report comment)
4. Jaya Says:  
August 14th, 2009 at 5:40 pm

Erudite reply, targeting the concerns about changing the policy while

Untitled

displaying evidence of how it has been enforced. This policy is one of the few walls that separates the playa from the default world, and a critical wall to defend. If it can one day be replaced by a better defense, then excellent, but it must be defended. Sending gratitude for manning the front lines for the thousands of us who call that desert "Home".

(Report comment)

5. Lady D Says:  
August 14th, 2009 at 5:51 pm

Brilliant response...

(Report comment)

6. Lonny Eachus Says:  
August 14th, 2009 at 6:26 pm

I understand that you are trying to think outside the box, and honestly attempt to enforce this licensing issue for the good of your customers/participants.

The issue is that there is a conflict between the INTENT of your agreement, and what your agreement actually says. The intent of the agreement may be "you are now safe in Sanctuary", but the letter of the agreement says, in effect, "All Your Base Are Belong To Us."

where the problem arises is: how do you intend to guarantee that, 10 years from now, some future group or committee does not decide to change the actual practice of how that agreement is used and enforced? This is why entities like EFF raise alarm. They have ample experience and historical records of laws and contracts that were written very broadly, and we can presume with good intent, but which were later abused because the language on the documents made it possible.

And the result of that experience is the attitude that if it is never intended to be used that way, the letter of the law or contract should make it very clear that it CANNOT be used that way. It is interpreted in a "narrow sense" because it should be WRITTEN in a narrow sense, allowing only what it intends, and nothing else.

what you have is not a "law", but the same concerns apply. Whenever laws or contracts have been written over-broadly, and remained in effect over a long period of time, they HAVE eventually been abused. There are probably exceptions but if so I am not aware of them.

I do not claim that is an easy task to narrow your licensing or agreement terms to something that would not allow abuse. But there must be some way to do it. And if you can manage it, I am sure that your customers/participants will be somewhat grateful today, and it is likely that they will have reason to be extremely grateful in the future.

(Report comment)

7. Young Robert Says:  
August 14th, 2009 at 6:29 pm

To Quote another Burner; Kevin Thomas - "The BM leadership is as thoughtful as the EFF leadership is rabid. Stay strong!"

what esle is there to say? Nicely put!

(Report comment)

8. J. Lasser Says:  
August 14th, 2009 at 6:45 pm

I just love the dissonance between the comments here and at BoingBoing's response at <http://www.boingboing.net/2009/08/14/burning-man-responds.html>

Untitled

(Report comment)

9. Brian M. Wise Says:  
August 14th, 2009 at 6:50 pm

Frankly, I believe that the EFF's challenge to Burning Man was far less about the issues surrounding information theory and control and more of a marketing issue regarding intellectual property and freedom.

It was a clearly self-promoting post that hacked on an organization with no clear rationale to it and describing an issue without leaving any other side.

I realize this is a clear legal tactic that's common in legal practice, but for an organization that purports to protect electronic rights and freedoms, it's a massive failure.

(Report comment)

10. Hardware Barbie Says:  
August 14th, 2009 at 6:55 pm

Well said, well thought out and thank you for taking the time to respond in such a manner.

I no longer ride in critical tits due to all the filming that goes on, which is sad as I so enjoyed getting together with my fellow boobie owners and riding.

Its so sad that men or people in general feel the need to share their every moment with others. Rather than be in the 'now' of what they are experiencing and actually allowing themselves to experience something and partake in the joy of others, they are too busy filming or photographing thinking of what others are going to think of what they saw...

Just last year I caught some guy filming me while I was showering at my camp. I stopped my most enjoyable shower (long day- DPW) and walked up to him and told him either erase the camera or I erase his head... I was really hoping for the second choice by then.

The violation I felt in a community that I love and expect to finally be free in was subtracted from this man's thinking.

So keep up the great work, I hate to see an increase of 'damage' that can be inflicted by those of us that are getting really tired of those filming

Just a note a new method I am really enjoying using on these folks is a can of spray paint to their camera...

Much Burning Man Love  
HB

(Report comment)

11. Pyrokinetic Says:  
August 14th, 2009 at 7:12 pm

I call bullshit. I make a living in the stock photography industry, and if I took a photo of someone's art car at burning man to be used in an ad, I'd need a property release from them. If it was a person, a model release. If it was a photo of an existing piece of art, another release. If you're selling images or using them in a commercial context, you need permission left and right. (that's actually the idea behind creative commons)

The line is drawn - specifically for that reason - when it becomes undeniable that the car in the ad is recognizable. Burning man or not, I can't take a picture of a car and sell it for stock photography. Or a person at burning man.

Untitled

An example: I can't take a picture of a Jaguar driving down a road and expect to sell it commercially. Period. I can take a photo of a guy driving a car, but I have to make sure that I'm composing the shot so that any overt styling makes the car generic. I'd also have to photoshop out any logos or trademarks. And I'd need a release from the model. Even if it was at burning man.

Now, I wander around town with a camera around my neck all day, every day. I take tons of photos of people and things and places that I don't have a release for and that I won't make money from commercially. Now, I can sell those photos for an editorial use, or I can make a coffee table book and sell that, and that's totally legal. If that's what burning man has a problem with, that's total bullshit.

But, in the argument they're making, they're already legally protected. Or, rather, the people-who-built-an-art-car-and-would-rather-it-not-be-in-an-ad-types are already legally protected, whether burning man steps in or not. So I don't see why it should be a problem. Unless they want to be the arbiters of taste, which I think is pretty obvious, and I totally agree with the EFF on this one.

(Report comment)

12. Sioen Says:  
August 14th, 2009 at 7:13 pm

Thoughtful, considerate, informed – pretty much what I've come to expect from the folks developing and enforcing these policies.

Thanks for keeping Burning Man the special space it is.

(Report comment)

13. Lia Says:  
August 14th, 2009 at 7:16 pm

I have to agree with Lonny Eachus on this one. While you are spouting the nice jargon now that Burning Man is being put in a negative light, I notice you haven't changed the Terms and Conditions.

How about putting your actions in motion?

(Report comment)

14. Virginia Says:  
August 14th, 2009 at 7:29 pm

I just wanted to say that if it weren't for an independent documentary film. I would never have known what Burning Man was. I now follow the event with interest and hope to attend before I leave this Earth. As a writer and internet participant, supporter of the arts and artists, I applaud your efforts to protect the entity and identity of The Burning Man event. It is unique in all the world, and wonderful artsiness of the whole concept and the participants should never be exploited for non-Burning Man related commercialism. Burning Man promotes itself and thank you who volunteer for protecting the participants and the art that is alive due to Burning Man.

(Report comment)

15. westside Says:  
August 14th, 2009 at 7:32 pm

thanks for standing up for us. i think some people don't get that heavily tattooed/pierced and otherwise "decorated" people are walking artwork! or that their malformed need to steal peoples images interferes with our open expression, and playful PURRticipation in life as well as burning man. it's become a real drag for me to go into center camp to grab a cup of coffee, cuz i know as soon as i do i'm going to have to duck 20 \*\$\$holes w. big fancy camera's, half of which won't even ask for permission (no purrs for that!) to take a pic. they act like just cuz they

Untitled

want to "grab" a shot of me that god almighty is on their side, like they have some kinda constitutional-devine right to take my picture. so i don't hang in center camp much, and i'm getting really annoyed at balding old men on the playa try'na steal my image!! so thanks for all the work that you all go thru to protect my right to b without hassle, copyright infringement, or disrespect to my purrson. and in this same way you protect all those "professional (no purrz!) photographers from getting my foot stuck in thier intestines!

(Report comment)

16. Sioen Says:  
August 14th, 2009 at 7:33 pm

Cross-post from BoingBoing of my more complete thoughts:

Thanks for the protection and the thoughtful application. I've been attending since 1996, and I want it to stay the special space it is.

One of the reasons it IS so special is because of the hyper-consensuality among participants - and this policy is just a written-down form of that.

It's lovely if you want to take photographs, but that isn't a right you have any more than it's my right to have sex with you because I want to.

Burning Man is a private event. That means consensuality extends to the event as a whole, as well as with individuals. All the event is asking is that you take and use photographs in ways we are comfortable with.

This seems to me simple. It would be different if this was a public event - then I would be jumping up and down with anger and supporting EFF (as I usually do because they rock).

But this is our event. Play with us consensually or go home.

(Report comment)

17. James Says:  
August 14th, 2009 at 8:09 pm

Sorry EFF has the legal precedent and the quote "Commercialist wolves" is laughable. The case isn't one of not wanting anyone to make money at burning man, but a case of not wanting anyone else but Burning man to make money at burning man. I dare you to say in the same breath that you are protecting us from the commercialist and tell me the ticket price. It's not a secret that some burners take a salary all year long, sounds like a job, sounds like a buisness to me. I chose to come to burning man to be free and anyone who happens to take a picture is a witness to that freedom we are not all the cowards you think we are. So, thanks for the "protection" but you should have some damn pride in what we do out there. It the same thing as going to disneyland and not being able to take a picture. You may find the analogy ofencensive but Burningman is my Disneyland. I have while there witnessed a couple who were married and I saw them harassed by a group of burners for trying to keep a momento of thier day. Try to look at this objectivly and not make it a us against them thing like your trying to do. it only sways the most naive of us. Thanks

(Report comment)

18. NOLA Slag Says:  
August 14th, 2009 at 8:37 pm

My support is for BRC.

I have been attending since 1996 and have always taken photos for personal use - never commercial.

The efforts of the enlightened people who protect the BM community are legendary and just.

Thanks BRC ...

See you in a few weeks !

(Report comment)

19. John Gilmore (EFF founder) Says:  
August 14th, 2009 at 8:55 pm

Hi Andie! It's great that Burning Man folks come to EFF events occasionally too. I'm glad that we can all stay friends and have fun while working this stuff out. We tried letting your lawyer and ours work this stuff out in the background, and learned a little about each others' concerns. But I learned more from your posting today (and the public commentary on various sites) than I knew before. Maybe a public airing will be a better tonic than those private conversations. Both the EFF and BM communities know more in the aggregate than either of our staffs knows alone. All I know is, when I want my rights protected, I don't run to the Burning Man Org; and when I want the best party of my life, I don't run to the EFF. See you on the playa!

(Report comment)

20. Jomama Says:  
August 14th, 2009 at 9:18 pm

How does Black Rock LLC know which photos infringe on participants privacy and which don't? How do they justify taking 10% of the profits from the sale of photographs of participants without their permission? They're only against commercial use that they don't share in the profits of. COMMERCIAL USE OF PHOTOS AT BURNING MAN HAPPENS ALL THE TIME.

They keep harping on the "for your protection" and "commercial use" subjects, when their contract doesn't even allow NON-COMMERCIAL exhibition of images. "personal use" as per their contract means not showing the photos to anyone ever. Strange they didn't mention that.

Its about BRANDING. Burning man doesn't give a shit about you. They only care about how the event is portrayed in the public eye to protect their brand.

Commercial use is already prohibited without these policies. Commercial use would require a model release and a property release. Black Rock LLC in fact regularly violates these requirements. Please post signed model releases for the photos on this page Andie.

Photographers understand the rights and liabilities in making images. Most readers of this blog do not. That's how the LLC can get away with spinning all of you like this and get away with it. You may be buying this BS, but I am not.

Why am I anonymous? Contrary to what is stated in this blog, you WILL get blacklisted from the event for making such statements.

(Report comment)

21. A burner & EFF financial supporter Says:  
August 14th, 2009 at 9:27 pm

Dear Mr. Gilmore,

Thanks for taking time to provide your input. Regarding this comment:

.. "All I know is, when I want my rights protected, I don't run to the Burning Man Org; and when I want the best party of my life, I don't run to the EFF. See you on the playa!"..

I apparently missed the memo that says EFF has the sole franchise on protecting peoples' privacy. When the EFF helps someone out when a naked picture shows up on WildNudesAPoppin, please issue a press release so we'll all know.

(Report comment)

Untitled

22. Andie Grace Says:  
August 14th, 2009 at 9:40 pm

JoMama (blacklisted? You \*vastly\* overestimate my superpowers, alas...)

The professional photographers who shared the posts images with our archives made a legal agreement binding them to obtain and file model releases on those subjects. If I showed you the kinds of images I have seen abused over the years, you'd see quite clearly how we can tell which images are a violation of privacy. The vast majority of images are not violations; some are, though, and I still don't hear a solution in your post, and your assessment that "'personal use' as per their contract means not showing the photos to anyone ever," is entirely incorrect. If you'd read the post you'd know that.

(Report comment)

23. Trevor Says:  
August 14th, 2009 at 9:51 pm

I've never been to burning man, it looks like a hoot and I'd love to one day attend.

I'm a professional photographer in Canada. I don't do commercials and would certainly never help to sell anything for some of the companies named above. Obviously, someone should grant permission for their image to be used in a for profit ad campaign, and I am including the photographer in this, as well as the subject.

I don't however, feel that enough of a divide was illustrated in this piece to distinguish the difference between editorial type work (media/photojournalism) and commercial work (not media). I can assure you, the media photographer is doing it out of love and not to get rich. The road to riches as a freelance photojournalist can be extremely long when your only making \$10 - 15 000 a year. Without media presence, I can also assure you you would not be able to boast 40 000 of your closest friends. It would be the same handful of people who began it years ago, which is fine, but 40 000 was pointed out and it seemed to be in a positive spin. 40 000 I promise, is not a figure arrived at by mere word of mouth from attendees.

Another concern I have, as a photojournalist, is that there was no mention of who owns Black Rock City. I'm not from the area, and as I've mentioned have never attended so please forgive my ignorance. But ownership of the property the event takes part on plays a huge roll in the legal side of this issue. Burning Man was compared to concerts. Concerts happen in both private and public spaces. Big concerts that happen in public spaces like parks are operating with permits and have often rented the space for the day or weekend. Once rented you can add your own security and rules, search people for alcohol or cameras or whatever else you don't want to see at the show.

I was under the impression that burning man just happened at the same place in the middle of the dessert (public space) and organized by the same people each year outside of the realm of a permitted event. If this is wrong, I retract this, but if it is in fact the case, than any person with a camera can go into that space and photograph anything they see, and then publish it in a newspaper or magazine or blog or hang it in a gallery. Again this excludes commercial use, and a newspaper editor may end up in hot water for publishing controversial images. But if I am standing in the middle of a street or park or other public space that has not otherwise been rented, I can legally photograph anything I can point my camera at, and this includes inside homes or yards that are not otherwise shielding a line of sight with curtains or a fence. This law is similar, but with different wording in both Canada and the US.

Please don't mistake Media for those on a commercial endeavor. We're just at these events to show those who couldn't make it what they missed, and possibly what they might see if they one day decide to go. If you don't want to be photographed

Untitled

doing something in public - don't do it. And remember, most of you reading this, especially if you are in the urban US, have been photographed well over a thousand times in the last 24 hours, possibly even with your finger in your nose at a red light. Let's worry about that sort of personal invasion before you start getting worked up about a fellow artist who chose to paint with light instead of body paint.

Cheers!

(Report comment)

24. Danny Says:  
August 14th, 2009 at 10:33 pm

I think one of the issues here is of intent; I'm pretty sure that EFF (though here I speak for myself, not them) doesn't doubt the good intentions of BMO. But the problem remains that in order to solve the challenges you face, you're using a tool that is itself damaging to free speech - the DMCA takedown provisions. You've chosen the language you have, in gathering IP rights to your organization under these conditions, specifically because they allow you to bypass a cumbersome court process when fighting issues of privacy.

There are two problems with that 1) by doing so, you've taken advantage of a procedure that goes against the free speech tradition that you \*can't\* use the law to demand the removal of somebody else's speech without seeing a judge about it, and 2) in order to bend this (overbroad) intellectual property law to serve the purposes of privacy, you've ended up taking over a bunch of other rights from Burners.

My own feeling is that EFF, as an advocacy organization, is right to point out that use of the DMCA takedown to bypass judicial review is wrong. I understand that BMO has a complex and weighty task to fight, but deciding to use a bad law to cut out the middle-man, when the middle-man is a judge, is not something I would like BMO to do, and not something that the EFF could support an organization doing, whether its Burning Man or doctors attempting to chill criticism of their work by using the same DMCA takedown process.

I also think that, despite your obvious good intentions, EFF (as an organization supported by many Burners) is honor-bound to point out the second point; that their rights to their own photographs is absolutely contingent on your good intent for a very long time. I believe you're good people; but it seems unlikely that you'll be the person in charge in 70 years time, when that copyright in those photographs can still be taken up by whatever the Burning Man organization is like in 2079, or any time between then and now.

I think that you and EFF are likely to continue to have differences on my first point, and I think that's fine. On the second point, perhaps it makes sense to try and build into your terms and conditions more explicit conditions on your own (ie BMOs) actions? A truly equal contract between BMO and the people that make up what it seeks to protect would be one that placed conditions on BMO as much as those who buy the tickets. That sort of constitutional agreement would feel to me more in the traditions of Burning Man being a society to itself, rather than a central organization selling tickets whose T&Cs you can accept and decline. I'm sure you would be happy to have your good intentions reflected in the T&Cs, ticket-buyers would be happy to see you make a legal commitment to those intentions, and EFF would have one less group to worry about misusing IP law.

(Report comment)

25. Huey Newtron Says:  
August 14th, 2009 at 10:56 pm

@Halcyon "Whenever I see photos of Mardi Gras, I find myself grateful for the Playa photo policy." Really? You'd forbid photographing a parade down a public thoroughfare? One recalls soldiers putting out the eyes of those who dared to glimpse Lady Godiva.

Untitled

Perhaps you'll be shooting at the "commercialist wolves" from a helicopter. Sorry, from a human powered ultralight.

@westside Interesting response. I'm not quite sure if your comments are more ageist, anti artist or anti first amendment. They're a disquieting combination of all three, topped off with a threat of physical violence.

The image emerging of the participants in the event which takes place Black Rock Playa (no, I will not use your name, so as not to damage your precious trademark) is one of assumed privilege and entitlement, of the worst kind of holier than thou attitude, fueled by upper middle class hubris and wads of cash.

This is a misuse of public land.

(Report comment)

26. guywire Says:  
August 15th, 2009 at 1:07 am

I think it is great that the Burning Man organization is protecting the privacy of participants and enabling free expression but the majority of this post and defense is misleading. Pyrokinetic is correct in saying that the commercial defense is irrelevant. Photographers and videographers can't shoot people or art cars to be put in a commercial without releases. The burning man terms are completely unnecessary to prevent burning man imagery in commercials.

The other thing I find interesting is that the terms prevent personal use of images on photo sharing sites, and yet that apparently is not the intent nor the way the agreement will be used. It seems the terms should be rewritten, and you should rethink your argument since saying you are defending against people being shown in car commercials is ridiculous.

(Report comment)

27. Peter S Says:  
August 15th, 2009 at 2:17 am

I love you, BM org !

(Report comment)

28. MG NOS Says:  
August 15th, 2009 at 5:37 am

Ok, it was a bit complicated to wade through but 'a difficult topic'..OF COURSE NO ONE WANTS TO SEE A HUMMER BURNING MAN AD!...This is what happened to me...I've been a amateur filmmaker for years...hell, I was studying film at uc santa cruz the first time I went in 1999, but only too a few 35mm disposable camera shots for myself and my dorm room. In 2007 I did the whole official thing where I signed up for a camera permit and signed the 'camera use contract'..I just 'had' to make a burning man doc for myself, and I asked permission (explaining all that) from every person for which I wanted to do something' risque'

..One of the things I filmed was 'The Steam Punk Treehouse' (farmhandfilms on youtube), I got good responses from that particular cut. About a year and a half later I got a message from Discovery Channel asking me if I had the original footage of the steampunk treehouse thing I taped and edited...I've actually worked for Discovery before as a production assistant and innitially sort of confused the whole thing, thinking 'damn if Discovery is asking for this, it MUST be 'ok'...but 'no'. Not only did I not have the raw files, I realized 'the non commercial use' thing I signed just to use a camera period. I explained that to the Discovery channel chick and she said' oh, I did not know that!'.I wonder how much of that is true, but all in all, I was tempted at first then realized I was trying to be suckered by the Discovery Channel, all the blame would have fell on my person and I resent the Discovery Channel for even asking and not knowing better in the first place..

Untitled

But besides from that...I HAVE seen the odd Burning Man documentary on cable and wonder how much of that was 'ok' with bmorg..I agree, I don't want to see burning man get played out by advertisers trying to have a 'radical edge' with what they percieve to be their 'new alternative customer base'...that's lame...I hope 'Isuzu' learns and knows better than to try to take advantage of 'lay burners' like myself who just wanted to share something personal with their friends. -mg nos

(Report comment)

29. art predator Says:  
August 15th, 2009 at 8:05 am

It's a complicated issue (and dare I say an evolving one?) and I appreciate the time and energy everyone is putting into figuring it out.

Lots of fear on both sides. I too agree that a lot of the fun has been taken out of Critical Tits. Last time I rode in 2007 the men pressing in with cameras made for a dangerous situation and many of the women I talked to were uncomfortable with it.

(Report comment)

30. Robotech\_Master Says:  
August 15th, 2009 at 9:46 am

"I hope that forward-thinking legally minded folks like Ms. McSherry will [...] dialogue with us [...]"

FYI, "dialogue" is not a verb.

(Report comment)

31. Drunken Economist Says:  
August 15th, 2009 at 9:48 am

Ah, BM, EFF and BB: The id, ego, and superego of the Boomer movement. Based on the prattlings of that Gillmore geezer of the EFF, all just the same guy having a bad trip.

Only BM 'Incorporated, LLC' would try to copyright a private wank on public property'. The photog's right, you guys are a bunch of wankers. 'Cultural heritage', hah!

Only the EFF would waste time on fussing about a copyright enforcement of a private wank on public property. Now you know why I don't believe or give to you self appointed 'protecting my privacy' tossers.

Finally we have BB, the same buncha tossers who would not only fling useless, out of context - what context? Bits'n'Bytes around, and if you don't like what they think they have to say, then one Teresa Wanks Tossen will 'disemvowel' 'em.

Look at you now. 'The man'. Go ahead and copyright your tossings. The less who know about your 'generation' the better off the country will be.

The next time you do this wank, can we wall you all off and pitch some guns over the side of the wall? Then you can self correct all this Darwin style.

(Report comment)

32. PAu1 Says:  
August 15th, 2009 at 10:33 am

hogwash. Burning man has no business involving themselves in licensing the works of others no matter what their lofty goals or who they aim to protect.

(Report comment)

33. Disgruntled Says:

August 15th, 2009 at 10:52 am

None of this explains why you directed cafepress.com to take down the store we had set up to order shirts for our theme camp campmates and to give away as gifts at Burning Man. One would think there would be some common sense applied to the enforcement of these rules where participants who are doing nothing to profit commercially from Burning Man, would not be prosecuted.

(Report comment)

34. Andie Grace Says:  
August 15th, 2009 at 11:29 am

Robotech\_Master: mea culpa. I verb nouns all the time, I know it's a lazy habit. See? I just did it again!

(Report comment)

35. Will Chase Says:  
August 15th, 2009 at 11:42 am

Robotech\_Master: actually, "dialog" IS a verb, as well as a noun:

<http://dictionary.reference.com/browse/dialog>

-will  
(taking my grammar fetish and going away now)

(Report comment)

36. Foo Bar Says:  
August 15th, 2009 at 12:22 pm

You just sound like another well-intentioned ass who imagines irresponsible and egregious powers for themselves but swears he will never abuse them.

You talk about the ways you carefully use your imaginary powers only for good ("we've never silenced a critic"). This is sickening. So, I guess you implicitly agree that you could do it, you just choose not to. And you probably also agree such imaginary powers would have staggering capacity for abuse - and that others will abuse them. This, by the way, is why they are imaginary (trust me, if you got to the Supremes, you would be forced to agree) and better stay that way.

If you have a trademark and someone is abusing it, that's settled law. Boring. So there goes your "commercialization" angle.

For the rest, you seem to want to create something new and unique that can't actually exist without a vile, egotistical and hypocritical trampling on human and civil rights. If rules against cameras, or on how photos must be taken and used, sound like Soviet/Chinese style totalitarianism, this is a clue.

If I want to do something outrageous or provocative, and I want to do it in public, I cannot even fathom having the audacity to prevent people from looking at me, remembering me, talking about me, or yes Virginia, photographing me, and even showing the photographs to others (gasp), no matter what my venue (even the mystical realm outside of common sense that burning man seems to wish to create). So there goes your "privacy" angle.

Yes it might be wonderful to create a safe space for people to be crazy in large groups without having to have their employers or friends or parents see the pictures later. However, this is not possible, without limiting free expression, which is, in a word, evil.

Once again, the EFF shows its principles by not compromising even for a counter-culture event that I'm sure many members attend.

Untitled

(Report comment)

37. Burning Man and its photo rules | Kathryn Hill Says:  
August 15th, 2009 at 12:38 pm

[...] past week, the EFF called out Burning Man on their photography rules and Burning Man defended itself. Honestly, I'm surprised it took this long for the issue to get this much attention; [...]

(Report comment)

38. Brian O'Reilly Says:  
August 15th, 2009 at 2:04 pm

You eloquently make the case for your claim of unusually broad rights away from the participants at Black Rock City, but seem to miss entirely the point of the EFF's criticism; namely, that you presuppose that the BMan org will continue to Do No Evil[tm](c) for the rest of time – a bet not many students of history would be willing to make about any human organisation, ever. It should be noted that the first signal of evil intent is usually a claim of some unusual right to compel third parties made under the auspices of Protection[tm](c) of their rights. :) It's gratifying to know that you are working so assiduously in our own best interests – what guarantee do we have that will always be the case, and what mechanism have you established for us to take these incredibly broad rights away from You (the royal You, no personal inflection intended) when Evil Returns[tm](c)?

Kind Regards,  
Brian O'Reilly

(Report comment)

39. Geoffrey A. Landis Says:  
August 15th, 2009 at 6:53 pm

Hmmm.

Quick summary is that Burning Man has made a stunning rights grab, and their response is to say, we're only going to use our powers for good, not evil. Very likely true. I believe you.

Nevertheless, their policy essentially boils down to, "all your base are belong to us."

(Report comment)

40. Sarah Says:  
August 15th, 2009 at 7:31 pm

If this was omn private land, I'd say you have the right to enforce whatever rights-restricting rules you want. On public land, even at a private event, I say no. I side with the EFF.

(Report comment)

41. JimB Says:  
August 15th, 2009 at 9:03 pm

In order to "safeguard" freedom, you take it away? It sounds like so much political lawyer speak and not part of the natural reality that BO says it wants to help foster. Its a sledge hammed used on a fly sitting on a table, in an effort to "safeguard" the table. I don't think those in charge really see the harm they are doing and the people who will now not come.

I bet the BO will be happy, all the way to the bank as they tally up the receipts for all the ticket sales. Ya right, they are protecting people privacy, bullshit, they are protecting the almighty dollar that they want to continue to flow into their hands.

Beware, others have lost more for doing a lot less. Do the right thing and limit what is on the back of the ticket before you find that it doesn't matter because those that you think you are safeguarding have fled in fear.

Untitled

(Report comment)

42. Halcyon Says:  
August 15th, 2009 at 9:47 pm

@Huey Newtron - Did I need to be more clear? I mean the photos of naked breasts at Mardi Gras. Presumably, a woman is having a BLAST, intoxicated and with the encouragement of the crowd around her, she shows some skin. Maybe it is the first time she has done so. Good for her! What a glorious moment in her personal development towards freedom from shame!

Alas, her photo is captured and now posted on a website (and RSS feed & blog network & ...) with the caption, "DRUNK SLUT TIT ACTION..."

The point of Burning Man (to me) is to create an environment so fertile and supportive that people blossom in ways they never knew they could. The event (and community) creates many rules to try to foster this environment - the photo rules being some.

As participants, we all agree to these rules.

Not only that, we are invited to attend meetings and voice concerns year-round.

And if we feel the organizers are no longer to be trusted with this incredible power of images, we can simply not attend.

I have shared MANY photos and MANY videos online. I have asked for (and received) permission to create commercial works with footage I captured at Burning Man. I have seen my likeness in commercial works, as well. I have never had issues. The organizers have earned my trust.

-halcyon

my Burning Man media: <http://Lustmonkey.com>

(Report comment)

43. Andy Pischalnikoff Says:  
August 15th, 2009 at 10:31 pm

As another photographer who attends the burn and takes photos with permission, I agree to the conditions that BM HQ require. It is a special event and part of it's charm is it's lack of commercialism.

I make sure I get releases whenever possible and ask permission before taking photos. Also people expect it and respect requests.

I am honored each year when I get permission to create a show of my photography and I do my best to treat others with respect and proper professionalism.

I hope Burning Man continues for many more decades,

Andy Pischalnikoff

(Report comment)

44. oh boy Says:  
August 16th, 2009 at 12:52 am

The land is owned by the federal government and is patrolled by government rangers (law enforcement) during the event.

Every person, place or thing at this event while on federally owned land can in fact be photographed without consent.

For those photographers (professional and amateur) who do not agree with this rights grab I encourage you to voice your concern with your Senator and Congressman and ask them to have the Department of Interior stop the use of public land for this event.

For an event that promotes free expression you sure are attempting to prevent  
Page 17

the art and expression of photography.

(Report comment)

45. oh boy Says:  
August 16th, 2009 at 1:12 am

Here is the link to the DOI permit for the Burning Man event. Page 24 of the document specifically states that this event is conducted on public lands.

A permit does not constitute the authority of a private business to trample/over-step the rights afforded to the people granted by law while on private land.

[http://www.nv.blm.gov/Winnemucca/NEPA/burningman/3\\_Burning\\_Man\\_EA.pdf](http://www.nv.blm.gov/Winnemucca/NEPA/burningman/3_Burning_Man_EA.pdf)

(Report comment)

46. Dos perspectivas diferentes para contrastar | nv1962 Says:  
August 16th, 2009 at 6:33 am

[...] Respuesta de la organización de Burning Man, que la verdad, me parece tiene bastante sentido. [...]

(Report comment)

47. Pamela Says:  
August 16th, 2009 at 7:16 am

Okay.

Burning Man (LLC, TM) wants to 'protect' the rights to any images of me and my artwork, so that I (x 40,000) will continue to return each year and create an event for them to charge \$x00 a head in which to 'participate'.

Does nobody realize that without me (x 40,000), any 'tourist' (and/or pornographer) who came to the event would receive precisely one plot of dust and a porta-potty for their ticket price?

Artists, performers, freaks, and fry-heads...PLEASE look with a critical eye here, even for a moment.

They (TM) are \*making money\*, left and right, off of us. Burning Man (TM) is a \*commercial enterprise\*. Does nobody see this? Yes, the BMORG does a lot of good deeds, and donates money to schools, etc etc...but so does Coca-Cola (TM) and Target (TM) and Wal-Mart (TM).

Have you ever looked through the image gallery on the Burning Man (LLC, TM) site? What better advertisement for this event could possibly exist? Nobody has ever made any attempt to contact me in regards to images of me and/or my artwork that the Burning Man (LLC, TM) team may or may not be using in their mailers, advertisements, website, or other 'commercial' purposes that this CORPORATION can dream up. Has anyone else received such a request for permission? How on Earth would the media team (volunteer or not) know if a photog ever received MY permission to take any photos whatsoever in the first place? I have only ever given explicit permission on three separate occasions for strangers to take my photograph, in all the years I have been Burning (TM), and have actively stopped countless picture-snappers who did not ask in advance.

If I (x 40,000) did not arrive each year to make art and make merry, what sort of money would Burning Man (LLC, TM) make from their ice sales, and their coffee sales, and their t-shirt and poster and calendar sales?

I second the earlier request for proof of model release for the pictures used in this eloquent but misguided response to the EFF.

Untitled

You at the BMORG (LLC, TM), who have clearly drank the Kool-aid (TM), are now helping the serpent to eat its own tail. Can you protect us from yourselves? Can we at least get a kick-back when you use images and artwork which are NOT generated by the BMORG members, to promote your event?

This situation, and the glossy-glossy speech surrounding it, hints at a much deeper illness within the Burner (TM?) community...

Of the Big Ten, my favorite has always been radical self reliance. Before my first Burn (TM), I studied every single word of every single page I could find on this event. I built a dome, made some amazing artwork and costumes, gathered my survival gear, took the Big Ten to heart, and drove into the desert, not knowing another single living soul who would be in attendance. I conducted myself (as I continue to) with utmost respect for all of the Big Ten.

If everyone who attended Burning Man (LLC, TM) actually read, respected, and self-enforced each of these principles, there would be no need for regulations. Period. However, the 'community' (TM) has become dilute with people (artist and tourist alike) who have little to zero regard for any such principles...so the need arises for external 'enforcement'. Poor Mr. Harvey (TM) must lay awake nights just thinking of the dizzying variety of lawsuits that Burning Man (LLC, TM) could incur. I feel for him/them/you, truly.

This very real fear, brought about by the explosive growth and simultaneous dilution of the event, which in turn was brought about by Burning Man (LLC, TM) advertising itself (radical inclusion does mean everyone...tourist ticket money is just as green as artist ticket money afterall) by using documentation (photos, videos, stories) of my (x 40,000) 'participation', has brought us such issues as:

- \* Lengthy Disclaimers on Tickets (or, come to think of it, tickets at all...)
- \* the need for someone to 'curate' the art (um...immediacy and direct experience, anyone?)
- \* Registration and pre-approved placement of theme camps and art installations (and the destruction thereof)
- \* the Dust Plume Citations (maybe they ought to just issue a Common Sense test before issuing a Gate-Entry Ticket, for those who don't get the 'we all have to live in this petrified fish shit for a week, how about not kicking more into the atmosphere' thing)
- \* Food Worker / Health Cards if you want to gift comestibles (my chances of injury or death from any number of other things at Burning Man (LLC, TM) is faaaar greater than getting food-borne illness from a non-'lemon' snowcone)
- \* The Image-Use Debacle (a car ad? really? that's the \*most likely\* scenario? As though Lexus (TM) or Hummer (TM) doesn't have enough money to just hire models and fire dancers and jugglers and steelworkers to make their own freak-o-mercial if they so chose?)

The list of these constraints continues to grow each year, as does the list of excuses for their necessity. And whenever I (x 40,000) attempt to have an actual solution-oriented debate or offer suggestions for change, it seems the response is usually one or more of these patented BMORG lines:

- \* It's for your own good (thanks but no thanks, BM)
- \* Burning Man (TM) is not a democracy (no kidding)
- \* If you don't like it (whatever 'it' happens to be at the time), feel free to start your own event

Untitled

In lieu of starting my own event, I have discovered another option. After careful consideration over the past several years, for reasons detailed above and for many more, I have decided that Evolution (TM) will be my last Burn (TM).

I will take the lessons I learned through my years of participation with me, and will always be grateful for them.

I will also take my artwork, my performances, and my participation back to the default world, where Burning Man (LLC, TM) can no longer regulate nor profit from them.

Someday perhaps the other (X39,999) participants will do the same...then the BMORG can blissfully divest themselves of the horrible burden (I never asked) of 'protecting' the hoardes of artists who make the admission price worth every penny, and hold reign over a public plot of dust and a porta-potty or three. All will not be lost...they can bill it to the tourists as the theme of "Minima".

A twist on Orwell comes to mind, concerning the 'evolution' of the Burn from the Cacophony days until now:

"All corporations are equal...but some corporations are more equal than others."

and also a quote from my bad-ass grandma:

"The road to Hell is paved with good intentions."

Best of luck to the EFF and the BMORG in hammering this out on behalf of the other (x 39,999) participants. You won't have to worry about pics of my ugly mug any longer. ;)

- Pamela

(Report comment)

48. allaboutthymeow Says:  
August 16th, 2009 at 7:56 am

Dear Disgruntled:

We are fairly careful about pulling down cafepress.com sites. We tend to start with correspondence, and when we better understand the use and issue we go from there. I don't know of the site of which you speak, but i'd bet it's not as clear cut as the Project simply having your site pulled down. It's likely related to your use of the logo, whether it was communicated to be just for your theme camp mates and whether you were therefore managing to control the sales to those in your camp only. An email to press@ asking for more information would give you perspective.

We're all about making gifts, and some of that happens on commercial web sites. It's what and how you engage with it that matters.

Meow

(Report comment)

49. Andie Grace Says:  
August 16th, 2009 at 9:15 am

Pamela,

Actually, I kinda thought Voyeur Video was the most extreme example in my post. The others are worst-case-scenarios to illustrate a point, but there are countless examples that are less pithy and more realistic, and without the ability to turn some of them away over the years, I daresay you might have given up on "what Burning Man has become" years ago. I think it's helped it to remain vibrant and immediate for a long time.

Untitled

I'm not saying I don't think copyright law is a hamfisted way to try to keep something precious, nor am I saying some things don't need to evolve. But don't add this to the list of "new" restrictions - it's been our policy for many years. From my own perspective as someone who's grown up on the internet, I have to say the main reason I was eager to post this was to take a deeper look at it than we ever have.

Thanks for posting your thoughts. For both you and us, here's to...whatever comes next.

(Report comment)

50. Andie Grace Says:  
August 16th, 2009 at 9:26 am

To everyone: we are generally very strict about enforcing our Comment Policy ([http://burnblog.burningman.com/?page\\_id=1615](http://burnblog.burningman.com/?page_id=1615)). However, this is a particularly highly charged issue, and in the interest of being as open as possible to all sides of this discussion, we're choosing to err on the side of leeway in this post.

Please don't take advantage of that. This is a conversation that we can't benefit from unless it's kept civil, and we're under no obligation to anyone to provide you a space to insult others.

(Report comment)

51. Peter Says:  
August 16th, 2009 at 9:44 am

It would be trivial for Burning Man to make the following blanket grant:

If the photographer of a photo, the participants in a photo, as well as the owners of all artwork in the photo agree, Burning Man agrees to grant them the right to use, distribute, modify, and sublicense the photo in any way they see fit.

In other words, I take a photo of my brother at Burning Man. Burning Man owns the rights to the photo. But if I ask my brother, and he agrees, we can both place that photo in the public domain, and use it as we see fit (including porn, advertising, or whatever else).

This would eliminate all of the issues Burning Man came up with. This would also eliminate all of the issues the EFF came up with.

Burning Man's argument about limited enforcement bears little weight. The fact the Burning Man has not yet enforced its legal rights does not mean it won't enforce them in 5 years when policies change, or in 20 when it is bought by TicketMaster. It has a chilling effect. A lot of people won't engage in illegal projects (especially expensive ones) if they have the risk of being shut down on somebody else's whim.

(Report comment)

52. Drunken Economist Says:  
August 16th, 2009 at 8:35 pm

@Andie Grace: I'm sure everyone appreciates what you are doing in allowing even the more outlandish vents, like mine to stand. You \*might\* want to promote that comment to the start of the thread so that everyone understands. The Disemvowelers might wanna take notes as well. Just sayin.

Now to the beef, now that I have less vino in my gut and Mighty Boosh in my brain:

\* "Unintended Consequences". That's why the EFF butted in. But, in butting in, and putting attention on this issue, they may set legal precedent either way it just makes life harder for your kids. why the hell did dad and mom bring this crap up? we had laws on the books, and the courts of Nevada, and life is the USA is litigious

enough...

\* "Conflict of Interest" slash what I call 'critical ass' or Drunkio's Law of too many agendas turning something into a can of worms. Would the EFF have butted in if their bigwigs weren't going to a burn? Other events try to do this all the time with limited success and DON'T have disclaimers... which brings me to...

\* Enforcement. Money talks and bullshit walks. You, like \$AAPL, and other Boomer enterprises can make all the rules you want. You're making a structure that WILL inevitably be tested, and again your kids suffer the consequences. Example. DRM, and the resultant Bushy DMCA. Setting the future back by 10 years at least.

\* Circumvention: This discussion has brought out the 80% of us photog and legal and even lay folks who have informed you that there are holes and circumventions to what you're trying to do.. Sure it's an 'event' but as 'oh boy' and others say, it's on public land. In geek UNIX terms, you're trying to 'jai'l the event, and a number of folks have shown you how easy a 'jailbreak' is.

And however that enforcement comes out when it's tested- it will inevitably strain your credibility. That's why AAPL's appstore comes under fire, BB gets called on their 'disemvoweling' and why this discussion is so heated.

\* what you guys [and BB, and APPL and other systems] need to understand is that you're hearing criticism from the people who care about this. The weasels, shysters and pornographers will just continue to go about their "business" as usual.

Sorry for being so long-winded...

(Report comment)

53. Mackerel Says:  
August 16th, 2009 at 8:37 pm

I have a question. One of the images above is on the front cover of the latest issue of a paper magazine. You can see the cover here:

<http://www.commongroundmag.com/>

Is this an allowed use?

They credit the photographer and mention his website,  
<http://www.burnmonkey.com/>

Is his website (open to the public) an allowed use?

(Report comment)

54. Doublejack Says:  
August 16th, 2009 at 10:16 pm

BMORG has my complete support in this.

I've been attending and participating since '93, and I'm sick of those impugning the BMORG as money-grubbers and getting all hand-wavey about what might happen in some potential future where the BMORG suddenly starts abusing these rights. I have my own frustrations with decisions the BMORG has made over the years, but I think they've handled the photography issue very well, and I thank them for it.

The T&C exist as they do now because they've responded to real challenges and this is what has been found to work best.

If as a photographer you don't like it, start your own festival. Or better yet, thank Burning Man for letting us take pictures at all, and for doing such an incredible job responding to a multitude of nearly intractable challenges like this

Untitled

one and continuing to find solutions that work.

Then go out there and take all the photographs you want and stop worrying about what \*might\* happen if ooh scary hypothetical booga booga.

(Report comment)

55. Burning Man Responds to EFF over fair use and photo rights attack | BLOGCHINA Says:  
August 16th, 2009 at 10:55 pm

[...] "Snatching Digital Rights" or Protecting Our Culture? Burning Man and the EFF (blog.burningman.com) [...]

(Report comment)

56. SkeletonMan Says:  
August 17th, 2009 at 3:37 am

Thank you for thorough, constructive and enlightening reply!

I would need much more time before I am able to come up with better suggestions.

(Report comment)

57. Daily links: 17th August « The Hope and the Glory Says:  
August 17th, 2009 at 4:02 am

[...] Burning Man and rights – Burning Man have a license for photographers that restricts their rights to their photographs, but it's well reasoned out as to why. Read the link to see how. [...]

(Report comment)

58. Dealing with heightened expectations « Enabling Creative Chaos Blog Says:  
August 17th, 2009 at 8:51 am

[...] Burning Man representative Andie Grace, aka Actiongr1, has responded on the Burning Man blog here, which has been linked to a follow-up post on boingboing [...]

(Report comment)

59. Pamela Says:  
August 17th, 2009 at 8:51 am

@ Andie,

First, I am well aware that the image rights policy is not 'new', and did not say anything about it being such. I make a habit to read the T&C every year, both the truncated version on the back of the ticket and the full version online. I did say that I have taken several years to carefully consider whether the growing list of regulations and legal infringements are something I am willing to continue tolerating. At this point, they are not.

I have not seen my central point addressed, which is the following question:

Can BMORG protect us (the artists/participants) from itself?

Here's a more succinct breakdown of what I mean.

\* Regarding pornographers, the 'image' of Burning Man (TM), etc: a brief perusal of the official BM, LLC image gallery will show countless images of partially or fully nude men and women, some in groups, some from behind, some from a distance. Has BM, LLC contacted each of these individuals and asked them if it's okay to show their naked bodies on the site for time eternal?

Untitled

Your Terms and Conditions say you don't have to.

You use the image gallery, as well as other sections of this site, to promote ticket sales to the event, thereby commodifying these people's naked experience, and offering the implicit promise that a ticket to Burning Man (TM) will buy you entry into the land where these things (and many others, like art cars and Thunderdomes) are commonplace.

How is this different than pornographers or voyeurs using pictures (for profit or not) without the permission of the people in them? I recall years ago seeing a photo in the official image gallery of two women holding a "Free Blow Jobs for the Needy" sign. What better advertisement, to a certain section of populace, could there possibly be for this event?

\* I agree with you that the car commercial analogy is extreme, and that there are other examples that are more realistic. Here is a very realistic example, involving a car:

I invest time, money, blood, sweat, and tears into building an art car. It's awesome. I take it to Burning Man (TM), and drive the ever-loving crap out of it. It garners lots of attention, and everyone loves it. They take lots of pictures and video of my awesome art car. I do the same.

A few months later, I decide to sell the art car, on Craigslist or eBay or my personal website.

According to the Terms and Conditions, not only can I NOT mention in my advertisement that it was an art car for Burning Man (TM), I also can NOT use \*my own photos and video\* of the vehicle, if I took them while within the perimeter of Black Rock City (TM) during the event.

If I am caught attempting to do so, I will receive one of your 'friendly' reminders that this is not okay, and have to take down the ad. If I do not, then there will be legal repercussions. I cannot even sue Burning Man (LLC, TM) for the rights to my footage/photos, it says clearly in the T&C that I cannot sue Burning Man for any reason, neither can my next of kin if I were to kick the bucket inside the trash fence. My hands are completely tied.

However, Burning Man (LLC, TM) clearly owns all rights to that footage and those photos, and is absolutely free to post them in flyers and mailings, put them in the image gallery, or grant rights to someone else to place the footage in a documentary film and profit from it.

How is this right or fair? How does this protect me/us at all?

These are things to seriously consider in the ongoing debate. I believe that Burning Man (TM) with all its brain power, can absolutely come up with a solution that is better suited to benefit both the LLC and the participants who provide nearly 100% of the content of their event, and I wish you all the best of luck in doing so.

(Report comment)

60. Dan Tobias Says:  
August 17th, 2009 at 9:43 am

If you're against the "creep of commercialism", how come your site is in a .com domain (implying a commercial entity) instead of .org?

(Report comment)

61. Andie Grace Says:  
August 17th, 2009 at 10:00 am

Pamela,

Untitled

I do hear what you're saying, but if the difference between images being used to promote the Burning Man experience itself vs the trademark being used to sell a car (even an art car) isn't evident, let me point it out. If there was a lot of profit to be made in running Burning Man, I'd see your point about us "selling" the experience with the image gallery, but if you look at the numbers, the "profiting on others" comment just doesn't bear out - we exist not to turn a profit, but to keep the culture going, and one can consider the photographers' submissions to the gallery a part of contributing to that.

Photographers are the ones responsible for collecting their releases, and they sign legally binding agreements that say that they have. Phil Steele, the photographer who shot the Common Ground cover image, has releases on file; he's a registered photographer who has shot at the event for years.

There is only one sure way to know if a nude person has given his or her consent to a photo, and that's to ask for a release. When we can't confirm the existence of one, we don't approve the image use. I don't have a staff of people to manage a photo licensing office, but we do the best we can - and the policies in place permit us to respond as fast as we can when someone's image shows up somewhere they \*didn't\* intend it to.

(Report comment)

62. nancy robinson Says:  
August 17th, 2009 at 11:06 am

You don't have my permission to photograph me. Ever. (Unless you ask nicely and I have final approval). Just because I am in public space does not mean I lose my right to privacy. And if it does, then Hello, Burka...

why is that so hard to understand?

(Yes, I "get" photography. I follow photo history, was wed to a photographer, and collect images. But I also "get" privacy. And until you open up a text book and see an image of your cooter giving birth...)

(Report comment)

63. Pamela Says:  
August 17th, 2009 at 12:27 pm

Hello again Andie,

This is just dipping down into age-old arguments, and all of these questions are not directed at you to answer, but are in fact simply points to consider:

I do look at the numbers. Burning Man does make a profit. If BM, LLC doesn't exist to make a profit, but only to protect our culture, why not file a 501(c)3 and settle that issue once and for all? There are lots and lots of nonprofit organizations that quite effectively protect lots and lots of cultures and subcultures and people and rights, and manage to pay healthy salaries to their employees, without needing to be registered as a for-profit LLC.

Another age-old issue is the head-in-the-sand stance that BM, LLC appears to take regarding money. And no, the difference still isn't evident, nor as clear-cut as some may believe.

Just as the BMORG uses ticket sales in order to gain cash to toss at the BLM and the toilet services, it is \*not possible\* for us (artists) to do what we do without money, and lots of it. Even physically getting there is more expensive for most of us than the ticket price. It takes tons...TONS...of money to put on the show that we do, and feed and clothe and protect ourselves from the elements, while using your trash fence and shade and toilets (personally I bring my own shade, but thank you, sincerely, for all the toilets). ;)

Untitled

In the example, I didn't want to sell my art car for 'lots of profit' either, and was simply trying to gain funds to create a new art car, and to attend the ever-more-expensive Burn (TM) again this year, to continue contributing to the culture as I have for years. Just like you might say BM, LLC and its ticket sales does the same.

How is this (and the INCREDIBLE amount of bake sales and yard sales and fundraising parties that theme camps and large-scale art installation crews and regular folks engage in) something which needs to be enforced against? Doesn't that harm and inhibit, rather than enhance and protect, the culture?

According to the T&C, I can't gain funds to continue contributing to the culture by using photographs of my art car that I took at Burning Man (TM), nor can I mention what the art car was (or could be again) used for. If I do, I will get shut down.

I have had direct experience with this recently, so I know that it happens.

Meanwhile, I can still do a Google (TM) search for Burning Man (TM) and find aaaall sorts of \*actual\* commerical enterprises, online businesses which are likely not associated with the Burn (TM) at all, in locations as diverse as Chicago and China, selling everything from glow sticks to fuzzy boots to geodesic domes to 'tourist' accommodations in theme camps for thousands of dollars, under the name and logo of Burning Man (TM) and using images from same. They are making 'lots of profit' indeed from this.

Just because you sometimes choose not to enforce the T&C in such cases, or enforce them on me but not commercial enterprise X, Y, or Z, doesn't mean that the verbiage of the T&C is any less overreaching and disturbing and 'hamfisted' as you aptly put it. I think that's the central point for lots of us.

I hate to draw this analogy, but it's in the forefront of my mind, and relevant. The Patriot Act granted shocking abilities to the government to investigate, silence, and even 'disappear' us, but they pointed out that it could be used to quickly and effectively deal with the 'bad guys' among us, and that it was necessary for our protection, so many people (including lawmakers) nodded along. And they didn't appear to constantly abuse these abilities, so many people put up with it.

But it still sucked, and was absolutely overkill.

So, IMO, any solution to this issue must bring a satisfactory answer to the question: where are our protections from you, other than a non-legally-binding internet discourse wherein you say certain infringements aren't your intent? You (meaning BM, LLC) use big strong scary language in the T&C, granting you unusual and stifling powers, then wink at us and say "trust us, just because we \*can\* doesn't mean we \*will\*". Is it any wonder that many of us find that unsettling?

Seeing as I am not an expert in copyright law, I will leave the details of this answer in the capable hands of lawyers and LLC members and the EFF to hammer out.

BTW, I am truly comforted to know that you can get/have gotten evidence of model release from every photographer who has submitted images of the nude people you display in your image gallery, even without a staff to do so. That's amazing, if it's in fact true...and if it is, thanks.

Signing off,

- Pamela

(Report comment)

Untitled

64. Scott Says:  
August 17th, 2009 at 1:28 pm

Dear Andie,

were you able to keep a straight face when you proofed this "opinion"?

It is what it is and anyone thinking it is anything else is kidding themselves.

This event is for profit. No shame in that, right Larry?

Burn baby burn...

(Report comment)

65. Craig Says:  
August 17th, 2009 at 2:10 pm

The road to hell (or in this case, atrocious usage policies and usurpation of photographer rights & property) is paved with good intentions. While "trust us, we're just watching out for you" may be comforting and is probably something you even believe... your policies are an abomination against the creative expression you claim to embrace.

(Report comment)

66. Doublejack Says:  
August 17th, 2009 at 4:27 pm

Haters gonna hate. I laughed out loud at "your policies are an abomination..." and similar ridiculous hyperbole.

Hang tough, BMORG. Those of us who know what's at stake understand that the current policy is the least bad solution to the challenges faced by all artists involved with Burning Man, photographers included. (I note I'm still not seeing any workable suggestions for a better policy which still recognizes all the realities of an event like Burning Man.)

I do support the EFF and have donated money to them more than once, but in this instance they are radically oversimplifying things and stirring up a lot of unwarranted "controversy." And doing so, frankly, in a way that seems a little too calculated to draw just this kind of attention to themselves as the "white knights" who will take on even the wildly-popular-among-their-core-supporters Burning Man.

So BMORG, keep doing what you've done so well so far; continue to accept constructive criticism and evolve the event in positive ways, and try to take the eye-rolling, sarcasm and condemnation from so many commenters here and at being being with the salt lick they deserve.

(Report comment)

67. spotman Says:  
August 17th, 2009 at 4:32 pm

I honestly do not understand why people are so upset about this. Burning man simply wants to keep the vibe free from people like mtv and budweiser having a hayday showing a bunch of beautiful dusty people possibly dancing or having a bud lite. Sure this happens at burning man, but I think it would become polluted if it was used in tv commercials. This is the point, if I am not mistaken.

But beyond that, why are people upset? BM allows you to take as many photos as you want, and only asks that you be respectful of other peoples desires while taking them. Once you get home, you can send them to your grandma, the curious man in the yellow hat, or your theme camp. I mean there is tons and tons and tons and tons of freely available photos (ever been to burningman.com) so unless your intention is to

Untitled

make a profit off of the photos, I don't see why anyone should be upset.

Furthermore, burning man is expensive, so what? I feel like they provide so many services that I am surprised it doesn't cost more (city planning, infrastructure, dpw, health services, water trucks, port-o-potties, etc).. Honestly I don't even care if it pays peoples salaries to help this happen all year round in the bm offices, I hope larry is sitting on a giant lazy boy right now, and he should be.

The man burns in 20 days! Yee-haw!

just my .02 :)

Cheers!

(Report comment)

68. Ron Says:  
August 17th, 2009 at 5:03 pm

As a long time burner and attorney, I must say that your response was most appropriate. Too bad no one on the other side was willing to engage you for further discussion on the subject.

(Report comment)

69. salmon Says:  
August 17th, 2009 at 6:01 pm

Andie- "If there was a lot of profit to be made in running Burning Man, I'd see your point about us "selling" the experience with the image gallery, but if you look at the numbers, the "profiting on others" comment just doesn't bear out"

From what I've seen your revenues have NOT been posted in the last couple(three) Afterburn reports. We don't know your profits...because you haven't told us, AND for profit LLC's are under NO LEGAL obligation to truthfully disclose your financials

(Report comment)

70. SF Raver Says:  
August 17th, 2009 at 9:22 pm

JWZ of DNA Lounge wrote about this issue years ago.

<http://www.jwz.org/gruntle/burningman.html>

(Report comment)

71. SF Raver Says:  
August 17th, 2009 at 10:11 pm

"Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive." - C.S. Lewis

(Report comment)

72. Jomama Says:  
August 17th, 2009 at 10:59 pm

Andie... You're making my point for me. You said:

"[...] you'd see quite clearly how we can tell which images are a violation of privacy"

You can read a subject's mind by looking at a photo? Really?

If I were at burning man in a business suit (or whatever image you consider

Untitled

not a violation of privacy)... I still have a right to decide if I consent or not. You don't get to make that decision for me based on what a photo looks like.

Ok, so photographers promise to get model releases (FYI: I have the media package and contract, I know what it says and I understand it fully). You're using the images for commercial use promoting the LLC, you also claim ownership of the images. So SHOW ME THE MODEL RELEASES. You cant or wont? You just assure me that someone assured you that they exist somewhere? Wow!

I support you guys, even if I disagree with some of your policies... and to help you out I suggest you get releases on file in the event a subject sues you for the percentage of image sales you collect. Or for the millions in ticket sales you made by using their likeness to promote this commercial enterprise.

As for personal use. After I asked permission, you (the org) denied me the right to hang my photos on a wall where people may see it in a totally non-commercial environment without prior approval of every image. You're either misinformed or lying. Have YOU read the contract?

Clearly you know better than the subjects in the images what they consent to... or maybe you're just carefully crafting your brand image? Hmmm... I wonder which is the case...

As for banning people, maybe you cant personally do that... but its the only recourse since your contract is ultimately useless in affecting your stated goals because photographers have legal rights you cant infringe (such as press) and your only recourse is to ban them. There's a blacklist, its just not your job apparently. That does not mean it doesn't exist. In fact you'd be remiss not to have such a list if you actually practice what you preach as far as protecting us from ourselves.

As for the public vs private event. If its private, please tell the law enforcement officers and federal agents they're not invited. That would be great! Thanks in advance.

Your friend always,  
Terrified photographer who you intimidated into hiding his/her identity.

(Report comment)

73. Andie Grace Says:  
August 18th, 2009 at 7:22 am

JoMama - well, thank you for the help, but my word will have to do for now and we can pick it up in person or after the event on email. I'm curious about your frustrations with the system we have set up - that's why i've been talking to photographers about this for a year now.

And yes, that's the point of a legal signature - it's the reassurance that the releases exist, not just my word for it. Yes, I've seen releases from many photographers but am neither legally required nor human resourced to the point that I can maintain such files myself - hence, the legal clause requiring you the photographer to get them. I've required maintaining files for them in some instances (like books with nudes), yes. If you're that uncomfortable with something you see, write me an email with the photographers' names and I'll confirm post event or have the images removed, as I would in any other case where someone saw an image they were concerned about.

Come on down to Media Mecca, I'll show you any part of our operation you want to see. We don't sell images, so I think you misunderstand something.

As for your show, you know, the possibility exists that we didn't understand what you wanted to do, but we do review images before they're displayed in certain public contexts, and as you can read here, there are plenty of participants who are in support of that practice, AND I'm saying I'd like to figure out a better way

Untitled

forward. So maybe drop the animosity and the accusations and come talk to me about this if you have suggestions, eh? I'm easy to spot; Mecca's in Center Camp, and I assure you, there's very little reason to be paranoid about me, of all people.

(Report comment)

74. Andie Grace Says:

August 18th, 2009 at 8:53 am

should have read "have been talking to photographers and legal minds for a year now about having a forum of some sort to talk about evolving this stuff." And by that I mean coming up with solutions as a community, not just as a business – but remember, we are one, and in some ways I feel like my job is to help my community \*benefit\* from that fact – so far, I think it's helped foster a certain culture of immediacy to have these policies in place in BRC, and I'm loath to just whip around and change them without a very long conversation with everyone that has been affected by them, positively or negatively.

Stay tuned, for sure. Time to go finish packing the office up to move to NV...

(Report comment)

75. Frank Says:

August 18th, 2009 at 11:13 am

I'm a Canadian journalist and a frequent commentator on copyright law. I've never been to Burning Man and am unlikely to ever go. But I am affected by your organization's support of the repugnant DMCA.

Canada is currently considering new copyright legislation heavily based on the DMCA. Similar battles are being fought around the world, many of them balanced on a knife's edge. Helping to lend any credence to the DMCA at this point thus has the potential to do immense harm globally. Not easy to measure, perhaps, but painfully real.

You claim to be fighting for a certain kind of freedom. But all I can see is that you're perfectly happy to achieve it at the risk of reducing freedom for the whole world. Maybe it's time to recall the wisdom of the Pogo: "We have met the enemy, and they is us."

(Report comme