

Untitled

EFF

August 12th, 2009

Snatching Rights On the Playa

Commentary by Corynne McSherry

<http://www.eff.org/deeplinks/2009/08/snatching-rights-playa>

In a few weeks, tens of thousands of creative people will make their yearly pilgrimage to Nevada's Black Rock desert for Burning Man, an annual art event and temporary community celebrating radical self expression, self-reliance, creativity and freedom. Most have the entirely reasonable expectation that they will own and control what is likely the largest number of creative works generated on the Playa: the photos they take to document their creations and experiences.

That's because they haven't read the Burning Man Terms and Conditions.

Those Terms and Conditions include a remarkable bit of legal sleight-of-hand: as soon as "any third party displays or disseminates" your photos or videos in a manner that the Burning Man Organization (BMO) doesn't like, those photos or videos become the property of the BMO. This "we automatically own all your stuff" magic appears to be creative lawyering intended to allow the BMO to use the streamlined "notice and takedown" process enshrined in the Digital Millennium Copyright Act (DMCA) to quickly remove photos from the Internet.

The BMO also limits your own rights to use your own photos and videos on any public websites, (1) obliging you to take down any photos to which BMO objects, for any reason; and (2) forbidding you from allowing anyone else to reuse your photos (i.e., no licensing your work no matter what is depicted, including Creative Commons licensing, and no option to donate your work to the public domain).

Moreover, the Burning Man Terms and Conditions also strip attendees of their trademark fair use rights. The ticket terms forbid any use of Burning Man trademarks on any website, which means that ticket-holders can't label their photos "Burning Man 2009" or even use the words "Burning Man" on their Facebook walls or Twitter updates.

We do empathize with BMO's desire to preserve the festival's noncommercial character and to protect the privacy interests of ticket-holders. But by granting itself ownership of your creative works and forbidding fair uses of its trademarks, BMO is using the "fine print" to give itself the power of fast and easy online censorship.

BMO's not the first to misuse the DMCA this way. Some doctors recently have begun to use the DMCA process to take down negative comments patients post about them to websites like RateMDs.com. How can they do this? Under the same theory BMO is using, each doctor demands that patients assign to the doctor copyright in anything the patient writes online about the doctor. It's bad enough that some companies routinely trot out contracts prohibiting you from criticizing them, but it's another thing altogether when they demand that you hand over your copyrights to any criticisms, so that they can use the DMCA to censor your own expression off the Internet.

The BMO's motives here may be more laudable than those of the paranoid doctors. But the collateral damage to our free speech is unacceptable. Using take-it-or-leave-it fine print to assert veto rights over online expression is no way to promote a "society that connects each individual to his or her creative powers." Burning Man strives to celebrate our individuality, creativity and free spirit. Unfortunately, the fine print on the tickets doesn't live up to that aspiration.

Update: Burning Man has responded to our post, arguing that the terms are necessary to protect Black Rock City culture, prompting a lively debate in the comments section and at BoingBoing.

[Permalink] [Email this article]