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Artwork courtesy of Chris Shaw/Wolfgang's Vault

**Not for Sale:** This 1997 Fillmore poster can't be used for 'The Art of Modern Rock.'

## Who Are You?

Photographers, poster artists and a collector clash over copyright law

By Todd Inoue

AT THE RECENT Live 105 BFD concert, the Yeah Yeah Yeahs' Karen Oh squirmed and screamed on the Shoreline Amphitheatre main stage while photographers snapped away. Later, some of the photographers in the pit would feel the similar pang of queasiness that Karen Oh displayed. They learned that past pictures they had taken for Bay Area concert promotion machine

Bill Graham Presents--live and backstage shots of rock stars and celebrities appearing at BGP-sponsored events going back a decade or more--were being reprinted and put up for sale on a website, no royalties paid.

It shouldn't be a big deal--99 percent of concert photographers are for-hire contractors paid between \$30 and \$500 per shot for either in-house documentation (those great pictures lining the walls of the Shoreline, Warfield and Fillmore) or marketing/advertising purposes. In return, photographers sign a contract pretty much allowing BGP to do whatever it wants with the pictures. The original photographs shot prior to 2000 are now being resold (and in some vintage-edition cases reproduced via "archival inkjet") on a website ([www.wolfgangsvault.com](http://www.wolfgangsvault.com)) for deluxe prices.

To some dedicated music-history buffs, this amounts to rock & roll treason. To rabid collectors, this is a dream score come true. To memorabilia dealers, it's stiff competition. And to photographers, it's a gross cash-out they won't benefit from. The brouhaha brewing with the photographers is familiar to some old-school concert-poster creators, who went through a similar bout of shock when Wolfgang's Vault premiered in 2003. The beautiful iconic collection of BGP posters was being sold online with no royalties being paid out. Some artists insist that the contracts (which apparently state their right to share in royalties) they had with Bill Graham are valid. Wolfgangsvault.com owner Bill Sagan acknowledges that select contracts they bought are to be honored and says the collection and copyrights are legally his.

"It all depends on what that particular photographer or poster artist had or did not have in his or her agreement with

BGP," says Sagan during a rare sit-down interview at the Wolfgang's Vault warehouse. "I've read some where the right to display in a gallery-type setting, not for sale, is approved. I've read many where it's not."

The recent addition of photography to the Wolfgang's Vault retail site adds a new twist in a controversy that involves millions of dollars in memorabilia, the living legends of poster art and photography, copyright law and rock & roll.

## Back It Up

After Bill Graham died in a helicopter crash in 1991, a handful of BGP executives bought the organization from the Graham estate for \$5 million in 1995. Two years later, Wall Street banker Robert Sillerman purchased the company from the partnership for \$65 million. He merged a loose network of independent concert promoters and formed SFX Entertainment, which, in turn, was acquired by radio/billboard/venue conglomerate Clear Channel.

Bill Graham was a notorious pack rat, and his organization had set up a scattered repository of concert memorabilia in its Market street office, later dubbed Bill Graham Presents Archives.

In 2002, Clear Channel sold the archives to Bill Sagan. Once a chairman and CEO of the medical-claims adjustment firm Benesight and later a CEO at financial-solutions company Fiserv, Sagan purchased the spectacular collection of rock history. Culling through everything from posters, T-shirts, photos and serigraphs to backstage passes, laminates, concert tickets, key chains, coffee mugs and other stuff, Sagan, archivist Katherine York and a staff of six spent six months

moving the cache to a 40,000-square-foot warehouse near SBC Park and creating a climate-controlled, meticulously organized layout and database. The name was changed to Wolfgang's Vault--a nod to Graham's real name, Wolfgang Grajonca, when he escaped Nazi Germany and arrived in America. Sagan opened up the Vault to the Internet marketplace in October 2003.

Walking through the archives, the ghosts of rock & roll come alive. Photos of Janis Joplin, Jimi Hendrix and Kurt Cobain matted and framed line the walkways. Posters, handbills, T-shirts, backstage passes and tickets from practically every BGP show lie in rows and rows of map drawers and storage shelving. There are videos--Beta and VHS--from Shoreline, Fillmore, Warfield and Winterland concerts. Photographs are cross-referenced in a myriad of ways. The original door to Winterland hangs in the break room. York shows me a cutting-board block cut from the Fillmore East floor. "Smell it," she says. It has the barest hint of smoke from the firebomb that hit BGP offices back in the day. She later shows me one of her favorite mementos saved from the fire: Bill Graham's melted megaphone and walkie-talkie.

## Price Is Right

Since opening the retail website, Sagan has become a controversial figure in artists' and collectors' circles for his competitive price structure and protective practices. He's requested that the photographers, artists and poster shops comply with his demands or remove his/their images from their webpages. He has denied use of BGP posters from appearing in retrospective books.

Sagan claims that he's only protecting his copyright from what he calls "shoddy,

schlocky and spotty" reproductions that someone can download and reproduce. He's OK with the reselling of original Fillmore posters online. Just do it nicely, acknowledge the copyright somewhere and use a watermark.

"We have no right to control commerce. If someone wants to sell a poster, they can sell a poster," Sagan says. "We have never told someone not to sell a poster. It's about protecting the image, the legacy."

Stanley Mouse, creator of the Grateful Dead logo and an icon of the Summer of Love, recently felt the Vault's pinch of legality when he used elements of his Blue Rose art piece for *The Closing of Winterland* DVD. Mouse created the image, but with the resale of the archives, the copyright belongs to Sagan. Ultimately, the two parties came to an agreement allowing the Blue Rose use, but Mouse was left shaking his head. Mouse declined to comment for this story, but one person willing to speak on Mouse's behalf is his attorney, Sanford Troy. So who really owns the copyright to a Mouse/Alton Kelly '60s concert poster?

"Bill Graham, Mouse and Kelly own the copyright jointly," says Troy. "The contract specifically says that Bill Graham had unlimited use of the poster for the event. He can make a million of them, put them up all over the world, that's fine. The day after the event, they share any money."

Troy insists that when Clear Channel sold the archives to Sagan, the conglomerate transferred away title they didn't own. He compares it to selling your neighbor's house when they're on vacation. The new buyers ask for the title, and there's nothing to show. "There's nothing in the contract that prevents [Sagan] from selling it, but they have to give Stanley, Kelly and others a portion of the money," he says,

"and they didn't."

Sagan learned about the use of the Blue Rose image when he checked the DVD's pre-sale on Amazon.com. "No one called us, no one asked us, no one said, 'Bill, this is a special thing. We want you to license this for X dollars,'" Sagan says. "Or no dollars! No one called us. They went ahead and did it with nothing, no contact at all. And we called them on it."

Sagan can't comment on the details of the case, but he says something that could easily have come from the mouths of Mouse, Kelly or the other artists angry with him.

"You just can't take someone else's property and use it for your own commercial purposes just to make money and not pay them for it, or at least not ask."

## Art Shark

Across the bay, Dennis King runs a gallery in Berkeley and puts on exhibitions of concert poster work. He and Paul Grushkin are planning to release a compendium of poster-art images--*The Art of Modern Rock*--this Christmas. The coffee-table book--a follow-up to Grushkin's '60s-era collection *The Art of Rock*--covers the years 1985-present and includes artists like Frank Kozik, Emek, Derek Hess and others.

The *Art of Modern Rock* book has been a three-year odyssey. Sagan owns the rights to posters created before 2000, and he refused King and Grushkin permission to reprint them. Fillmore and Warfield posters released prior to 2000 will not appear in the book.

"The book didn't give the Bill Graham organization its due in the historical

picture," says King. "It hurt a few of these [poster] artists. Harry Rossit only has one poster in the book that he did for the String Cheese Incident. Chris Shaw is represented in the book, but there are historically significant posters he did that aren't in the book: early Pearl Jam, his Kiss poster, Foo Fighters. It's unfortunate they weren't given the space they needed."

"The book was the hugest thing," says poster artist Chris Shaw. "I know 30 poster artists who were devastated. It was going to be about 50 percent BGP/Fillmore. Now there are pieces selected that came after 2000."

Chris Shaw produced around 60 posters for Clear Channel/BGP beginning in 1992 with a Neville Brothers New Year's Eve ditty. He still makes posters for them today. Shaw is trying to unite the artists-- a process he likens to herding cats--who are frustrated by Sagan's strict policies.

Sagan says he denied Grushkin and King access to the collection due to disagreements over which publisher to use and a broken BGP-only images book deal. Shaw feels roughed up by the experience.

"I feel if I put any of my posters on a business card I'll get sued," he says. "I almost want to do it just to see what would happen. That's a right I maintain in my contract. I want to test the waters but at the same time if I get a bunch of high-priced lawyers breathing down my back, giving me injunctions and cease-and-desist and whatever else, it'll screw up my whole thing. I don't make a lot of money; they'll roll me in a second, but I'll scream the whole way."

## Copyrights and Wrongs

Sagan and Wolfgang's Vault can legally

prevent others from reproducing and then reselling their posters. However, the first-sale doctrine allows the Eddie Vedder fan who got a Pearl Jam poster at a secret Fillmore show to display and sell it on his website. He just can't make reproductions.

San Francisco copyright attorney Roy S. Gordet tentatively agrees. "As part of his right to sell it, he has the right to scan it and put it up on eBay," he says. "Though it wouldn't surprise me that another copyright attorney or judge would say, 'Wait, I'll let you tell the world you have the 1973 Who poster, but I'm not going to let you scan it to show the world what it is.' But in my view, that's a fair use. In my view, it's not competing with the [original] image."

Wolfgang's Vault has pressured one competing retail site--Sixtiesposters.com --to either comply with their stipulations or take down BGP poster images. They did the latter.

As for artists using their works in retrospective form, fair use allows artists to create art from art: Warhol's soup cans or 2 Live Crew sampling Roy Orbison's "Pretty Woman," for instance. This could be a loophole that allows the concert poster to be shown in galleries. Gordet feels everything hinges on a flimsy piece of paper called a contract.

"If there was a contract that allowed the artists to use them in a general retrospective, then clearly they have the right to use it," Gordet says. "If there was never a contractual provision permitting them to use them in retrospectives, then it comes into an inquiry of fair-use doctrine. It sounds like we don't know, and without all the facts, it's difficult to know how a judge will interpret it."

Shaw claims to have the wording just so

on his original contract. "The contract is wonderful but is also a little vague, which is where we have the problem," he says. "The artists reserve the right to use their work for self-promotion and any retrospective.' So it comes down to: what's a retrospective? My lawyer says the key word is 'any.' That means you're not limited to doing just a physical exhibition." Sagan claims to have never rejected an artist's use of copyrighted material for a gallery request. Number of gallery requests in past two years: one.

## The New Bill

The odd thing is that Sagan likes Shaw. They've tried to hash out differences in the past. Shaw is one of two poster artists who has reached out to Sagan in the two years the Vault's been in business. "If a poster artist would call me--any artist, say Mouse and Kelly--and say, 'Bill, you got a lot of my stuff. How about if I come down and sign 100 of them and you pay me three-four bucks for every one I sell,' I'd do it in a nanosecond," he says.

Ultimately, the artists and photographers hope to come to some financial and artistic agreement--bread up the artists with a percentage, be less strict about copyright use--but Sagan isn't obligated to do anything. The music business is as real as a Bill Graham face-to-face cuss-out. Graham cared about the artists and the audience experience, but he was also a cutthroat businessman. And even though Sagan says "intellectual property" more than "rock & roll," and the "dust in the wind" venting by pissed-off purists, Sagan knows the sentimental value of his investment. There are things in the collection he'll never sell.

"Look at the walls, those are the only ones of those we have of Elton John and Janis Joplin," Sagan says. "You walk through

this place and see those four Jim Marshall photographs in my office--those will never be sold. Those are the only ones we have. We have more photography than poster art up in this building because the photographs are beautiful, they're old and they're going to stay framed, matted and protected for as long as I own this company."

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