



## **Comments responding to the Notice of Proposed Rulemaking: Proposed New Fee Schedules**

All too often photographers have been silent while their elected representatives have made decisions adversely affecting their ability to put food on the table. As a result of many factors too numerous to list here, the number of professional photographers has shrunk by some 25% over the last few years and the incomes of those remaining in the business has by any measure, gone down. The overwhelming majority of professional photographers are one-person businesses and earn well less than six figures, with many having incomes of \$50,000 or less.

As the economy has forced earnings to *decrease*, technology has caused instances of copyright infringement to *increase*. The outright stealing of professional photography is now an epidemic. No creatives' work product is used without permission or payment more often than that of photographers. The infringers are typically large media companies, newspapers, magazines, television networks and large consumer product companies. Additionally, those who infringe are usually well heeled with attorneys on staff and the financial means to dissuade most photographers from pursuing the legal rights.

The most potent weapon any creative has to level the legal playing field is the ability to bring or even threaten to bring, an action for copyright infringement. That right is embedded in the Constitution of the United States and pre-dates freedom of religion, the press or the right to bear arms. The Founders viewed the ability to copyright one's work as so important that they passed it at the Constitutional Convention *unanimously* even though 12 colonies already had their own copyright laws on the books. A registered copyright when infringed, gives the owner the right to pursue significant money damages as well as attorneys fees. The movie studios well know this and receive the *free* assistance of the FBI and all of its vast resources, to assist them in the pursuit of copyright infringers domestic and foreign. The large entertainment companies may also have the services of ICE (Immigration and Customs Enforcement) and Homeland Security in cases of pirated DVDs, CDs and so on, gratis. The Federal government lends no such free assistance to a solo

photographer whose creation has been similarly stolen. The sole avenue of recourse for the solo photographer is to register his/her work and hire an attorney to enforce your claim.

A proposal has been made to substantially increase the fees to register your copyrights. After centuries of encouraging creators to register their works the federal government is now seeking to raise revenues from the dwindling and economically stressed, creative community. This proportionally huge increase in registration fees simply does not take into account the miniscule to non-existent profit lines most creatives are laboring under. While large media and entertainment companies can pay these increased fees without blinking an eyelash, these increases will serve as a deterrent to photographers to register their works. The fewer works that are registered, the more works that will be stolen.

The public is best served by creators registering their works. Such has been the stated position of the federal government and the federal courts for well over 200 hundred years. Few photographers have anything close to a steady income particularly in the current economy. Now is not the time to increase fees on the creative class who can least afford them. The Founders held authors and creators in the highest esteem. They received and are entitled to special treatment by virtue of nothing less than the Constitution of the United States. Deterring registration to "raise revenue" serves only the interests of those who seek to appropriate the works of others and who will violate Federal law in the process.

\*\*\*\*\*

The proposed increases are almost 100% over the current fees and will create a disincentive to register. APA does not believe a fee increase is in a creator's best interest but any fee increase should be reasonable and not close to 100%. A graduated increase over time may be an option. A flat fee that is paid annually for unlimited registrations may be an option and even perhaps, there should be a two-tier system. Individual creators pay X and corporations pay 2X.

American Photographic Artists  
P.O. Box 725146  
Atlanta, GA 31139  
800-272-6264  
[ceo@apanational.com](mailto:ceo@apanational.com)

Edward C. Greenberg, LLC  
570 Lexington Avenue  
19th Floor  
New York, NY 10022  
[ecglaw@gmail.com](mailto:ecglaw@gmail.com)