

GRAY MATTERS

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Via Email Submission
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To the U.S. Copyright Office

Re: Comments on Remedies for Small Claims

To Whom It May Concern:

These comments are filed on behalf of the below-identified entities, each of which has many visual art designs registered with the Copyright Office, and each of which regularly encounters “small claims” situations where the cost of litigation is massively larger than recoverable damages. For example, we have regularly encountered situations in which a blatant infringement commenced prior to the date of registration, such that an award of statutory damages and attorneys fees is not permissible, yet the infringer’s net profit (and therefore the plaintiff’s recovery) is small.

We agree with the Copyright Office’s basic description of the problem, that it is often too expensive for a copyright owner to file an infringement lawsuit, given the small damages that the copyright owner will receive and the large amount of attorneys fees that the copyright owner will spend (e.g., paying \$100,000 to recover \$100).

However, we believe the Office has not adequately considered an underlying premise, namely that it is not often possible for a copyright owner to hire a contingency fee lawyer. Relative to the difficulty associated with creating a small claims court system, or the other similar proposals floated in the Notice of Inquiry, it would be much simpler to address the barriers preventing contingency lawyers from accepting these “small claims.” Simply revise the Copyright Act to allow a plaintiff to recover attorneys fees under any of these circumstances (alone or in combination):

1. The infringement is willful
2. The infringement is clear or beyond a reasonable doubt
3. The infringer has no meritorious defense
4. Defendant refuses to cease infringing acts after receiving clear and convincing (to a reasonable person) notice of the infringement
5. A copyright has been infringed, regardless of whether the registration occurred prior to the infringement

Another manner to address the “small recovery, high plaintiff attorney fees” dilemma is to promulgate registration rules that make that scenario less common. Specifically, the Copyright

Office could revise its registration rules to permit the stakeholders who most frequently encounter this problem (visual artists who create hundreds or thousands of creative works each year) to more readily obtain registration and thereby achieve a higher recovery when infringed. For example, the Office could allow registration of all works created during a calendar year.

Another solution, much less onerous than establishing a small claims court, would be to permit a fixed amount of attorneys fees to a prevailing party. As a model, certain state laws permit recovery of a set amount of attorneys fees for an open-book account.

Thank you for the opportunity to present these options to you.

Sincerely,

/s/

Megan E. Gray

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On behalf of Rube P. Hoffman Co., Inc., Classical
Silk, Inc., M.M.P., Inc., Claudia Koch (DBA
Zazou), and Surf Line Hawaii, Ltd.