

Comments on Remedies for Small Copyright Claims

Getty Images

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BACKGROUND

Getty Images is a leading creator and distributor of still imagery, video and music content. Getty Images represents more than 150,000 individual contributors (photographers, videographers, and musicians), and owns or represents more than 80,000,000 unique works. Our award-winning imagery can be seen at www.gettyimages.com, as well as our other websites, including www.istockphoto.com, www.wireimage.com and www.thinkstock.com. Copyright law protects the value of the works that we own and represent, and gives creators incentive to create.

We previously submitted comments in response to the Copyright Office's inquiry on the topic of adjudicating small copyright claims. We also participated in a public hearing on the topic. We strongly believe that a small claims process that offers cost-effective, streamlined adjudication would provide a more effective remedy for copyright owners with small claims than does the current federal litigation process. Getty Images continues to support the Copyright Office's inquiry into alternate remedies for small copyright claims. We offer below further comments to the specified subjects of inquiry.

SUBJECTS OF INQUIRY

- Voluntary vs. mandatory participation.

We believe the small claims process should be structured as a voluntary system where plaintiffs can elect whether to bring claims in the small court tribunal or in federal district court, and where defendants have the right to opt-out of the small claims process by removing the claim to federal court. Incentives should be offered to both parties to encourage participation in the small claims process. This type of voluntary system ensures that defendants are not deprived of rights they currently have in federal court. In the event that a defendant does not respond or appear in response to proper service of the small claims complaint, the defendant should be deemed to have waived the right to opt-out and the small claims tribunal should have the authority to enter a default judgment. This approach properly balances the rights of both plaintiffs and defendants, and ensures that the value of the small claims process is not undermined by defendants who choose not to respond to copyright infringement claims.

- Role of attorneys.

Getty Images believes that both parties should be permitted, but not required, to be represented by an attorney in the small claims process.

- Default judgments.

In the event that a properly served defendant does not appear or respond to a small claims complaint, the small claims tribunal should have the authority to enter a default judgment. The same procedural

safeguards that apply in federal court should be applied in the small claims tribunal, and the same remedies that would be available in federal court should also be available in the small claims tribunal.

- Unknown defendants

We frequently encounter infringement of images on websites where the infringer's identity is unknown, often because the domain name has been registered through a proxy and there is no valid contact information. For this reason, we believe there should be a mechanism through the small claims process to subpoena an internet service provider or domain name registrar to learn the identity and location of the infringer.

- Other issues.

Getty Images appreciates the Copyright Office's study of small claims and looks forward to providing additional comment on any other issues raised.