July 23, 2015

re: Notice of Inquiry on Copyright Protection for Certain Visual Works

Dear US Copyright Office:

As an independent still photographer who is transitioning to include video production services to clients, I am grateful to the US Copyright Office for allowing visual artists to share their business experience and insights via this Notice of Inquiry (NOI) request. I've submitted responses to the first three NOI questions.

Though art, photography, film, and journalism schools generally provide a fulfilling environment for students to learn their respective crafts, these schools are, sadly, *negligent* in not providing their students with substantive, real-world instructions on the legal and business matters of operating a freelance creative business. Consequently, many artists begin their careers with two strikes against them.

Without the business and legal guidance of professional creative organizations like the American Society of Media Photographers (ASMP), the National Press Photographers Association, American Photographic Artists, and Professional Photographers of America, working photographers would be further handicapped.

Of particular importance, ASMP introduced me to the benefits of registering photographs. And now, 15-years later, I continue to timely register my still and video works of authorship.

(1) What are the most significant challenges related to monetizing and/or licensing photographs, graphic artworks, and/or illustrations?

The opportunity to re-license my photographs is limited. To even have a chance to submit works, many media entities demand that my colleagues and I grant them very broad rights in perpetuity, including rights to prepare derivative and new media forms, in effect minimizing any chance to re-license our work. Though these agreements are not work-for-hire arrangements, per se, they are, in short, disguised as transferring just about our entire bundle of rights without it being an official transfer of copyright:

> *Photographer and Company agree that Photographer is an independent, non-employee photographer who retains the copyright to his photograph. However, Company is reserved the right to exploit Photographer's photograph throughout the universe, in all media now or hereafter known, including creating derivatives and new media forms. Company may sub-license or share photograph with affiliates and others, without any further consideration to Photographer, now or in the future. Though Company will attempt to include Photographer's attribution, Company is not liable if the attribution is not included. All demands, suits, and actions will be adjudicated in Company's city and under its state laws. Rights granted herein will last in perpetuity.*

Imagine if the situation was reversed and I presented Disney with these egregious terms; would it grant me a license to exploit its intellectual property rights?!

Today, perhaps more than ever, I have limited to no leverage to negotiate equitable deals with media entities. For those contracts that do require me to specifically transfer copyrights, the timeframe to recapture my works should be shortened from 35 to 25-years. This shorten term would allow me and my heirs to eventually benefit from the fruits of my creative labor.

(2) What are the most significant enforcement challenges for photographers, graphic artists, and/or illustrators?

It is too easy for third-parties to appropriate on-line photographs without permission.

Hosts, who permit its members to upload their user-generated photographs to social media sites, routinely strip metadata.

Creative Commons (CC) is a popular licensing tool for many novice photographers. At its core, licensees are required to attribute the work. To deter on-line infringements, all posted photographs from US-based websites should be statutorily required to include attribution (credit-line/metadata). Mandatory attributions would also help prevents new works from being *involuntarily* orphaned.

(3) What are the most significant registration challenges for photographers, graphic artists, and/or illustrators?

Previously, the cost to register a single or groups of unpublished works was $35 per application; I found this cost manageable. Once the fee jumped to $55, I had to take pause and re-evaluate my options.

The USPTO offers varying fees to register patents: Micro and small entities pay lower fees, while larger entities pay standard registration fees.

To be equitable and encourage more creatives with limited income to register their authorships, the Copyright Office should offer a similar multi-tier fee schedule to register single and standard works:

(A) Individual creatives, veterans, and non-profits would pay a *micro* fee.

(B) Entities with up to 250 employees, would pay a *small entity* fee; and

(C) Corporations with over 250 employees would pay a *large entity* fee.

Compared to freelance creatives who work out of their one-bedroom apartments, movie studios, software companies, and other large commercial entities can very easily absorb paying higher fees to register copyrights.

Both copyright and its licensing exploitations are directly linked to visual artists' livelihood. My gratitude to the Copyright Office for allowing me to express my concerns and solutions.

Sincerely,

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