Kathy Jeffords
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Response to Notice of Inquiry on Copyright Protection for Certain Visual Works

My name is Kathy Jeffords and I am both an artist and a writer. Much of my art incorporates my original writing. I make a living selling both original paintings and prints of my digital work, as well as licensing my work in very specific arrangements where I retain the utmost control when it comes to quality (as I don't want anything out there with my name on it I wouldn't be proud of).

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

The most significant challenges I face related to monetizing and/or licensing my creative work is that I have to spend so very much time policing the internet and filing time-consuming takedown notices when I find other people (illegally) monetizing my work. And even when I file such notices, though the work gets removed, I am not compensated financially from their illegal use nor is there any easy and inexpensive way for me to seek compensation for the profits that have already been illegally gained from my work, talent, time, and creativity. I think most modern creators deal with this. They either have to choose: Ignore the infringements, which devalue their work, or spend more time trying to stop the infringements than they do actually creating and seeking legal licensing agreements that actually appropriately pay them for their work.

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

My most significant challenges enforcing my rights to control my intellectual property are the time and commitment it takes and the massive ignorance that exists when it comes to intellectual property. We live in an age where anything we want is at our fingertips, via the internet, and that is a wonderful thing. But, unfortunately, it has made us entitled and lazy. In a day where social media is king, we are conditioned to share, share, share. Share that song. Share that art. Share that poem. Take that cute animal picture and turn it into a meme and share it. And more often than not, this sharing comes with zero credit to the original creator. I would hazard a guess that most people don't even have a passing thought to the fact that an actual person took time and talent to create that thing they appreciate enough to share…but do not appreciate enough to give credit where credit is due.

When I put my art or writing online, I have my name attached to it in as many ways as I can. I put my name and website address on my images. I have copyright notices all over my web pages. And still, within several weeks of my putting up a poem or image, someone has taken it, removed my copyright management information, and shared it on Facebook, Twitter, Instagram, etc.

I have numerous times found my work credited to "unknown" or "anonymous", when a simple web search would have revealed that the work isn't unknown or anonymous at all…because the very first search results have my name right on them.

Another challenge I find impossible is when someone overseas takes my work and uses it illegally. I found my work being sold in another country (that is a member of the Berne Convention) and the owner of the website was not cooperative about removing it. I contacted the webhost and asked how

I could file a DMCA takedown notice with them. I was told I would have to contact their local police and seek a warrant to get anything removed from a website on their servers. So, to this day, they are still illegally selling my work.

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

The most significant registration challenge for me is the cost involved. When I first began putting my artwork online, I never dreamed it would find its way out of my webshop/blog/site and onto so many other places, because back then, social media was limited to Myspace. There wasn't Pinterest, Facebook, Twitter, Instagram, etc. So I didn't register my work. In the past year I have, but I have hundreds upon hundreds of older works that remain unregistered, because they are all published and I'd have to register them individually at $35 each. That is just too cost prohibitive for me. Now I register things in groups, before they ever get published, to save on fees, but that is unfortunate, too, because I can't sell work no one can see. And while I wait to create enough work to register them as an unpublished batch, I'm not earning any income from these works.

4. What are the most significant challenges or frustrations for those who wish to make legal use of photographs, graphic art works, and/or illustrations?

This is not applicable to me, but I do not feel that copyright law should be dictated and/or swayed by people who are not creators themselves. If a creator wishes to keep tight control over their work and not have anyone else use it in any way, that should be their right. If someone wishes to legally license photographs, graphic art works, or illustrations, there are plenty of legal avenues for them to do so as is.

5. What other issues or challenges should the Office be aware of regarding photographs, graphic artworks, and/or illustrations under the Copyright Act?

I think everyone can pretty much agree that copyright law is outdated and needs an overhaul so that it catches up with the worlds – both virtual and real -- we actually live in. However, I strongly believe that the basic rights creators now have to control their work need to remain. But their needs to be easier and more cost effective ways of protecting our work and enforcing that protection. The protections we have are great. The ability to control who uses our work and how is so very important. But those laws are useless if there is people are allowed to trample all over them with no consequence. If someone uses someone else's intellectual property without any kind of permission, they should have to pay for that usage…pay what the creator deems fair…without any kind of drawn out court proceedings or astronomical attorneys' fees to the injured party. If I were to eat at a restaurant and walk out without paying my bill, if caught, I would face serious charges. But this same thing is happening to artists every day…people are taking our art, using it, and walking out without paying the bill…and there is little to no recourse.

If there is copyright reform, it desperately needs to give creators more rights and assistance, not less. We don't have much as it is, except words on paper and the ability to get infringing content removed from websites. That is not enough. There needs to be easier filing and stiffer penalties. Law says that registering content with the Copyright Office is not mandatory and that our work is copyrighted to us from the moment it is fixed in tangible form. But a lawyer won't even look at a case unless you have that registration. And without a lawyer, other than filing a takedown notice, there is not much an

individual creator can do about infringement. So a more cost effective way of registering work would be hugely helpful.

I am an artist. I can paint a picture and sell that picture. Then I can sell unlimited copies of prints of that picture. I can even be found by a major company and get paid for them to license that picture to make figurines and other items based on it. These things are how I earn my living. I, in fact, still regularly sell prints of work I created in 2008. Seven years later, I am still able to make money from that work.

For artists, the value of a work and income-earning ability, extends far beyond that work.

Unfortunately, the income-earning ability is exists and is being exploited by people who did not create anything at all. I've found my work on unauthorized pillow covers, iPhone covers, t-shirts, wooden signs, stickers, coffee mugs, and on and on and on. There are so many instances of infringements, I cannot even begin to remember them all. It is heartbreaking, emotionally, and devastating, financially. We creators need help. We need more rights. We cannot afford to have any taken away from us. It is difficult enough as it is.

Imagine this world without any art. Without any music. Without any books or poetry. It would be a pretty bleak place. Please give us creators a reason to keep creating. Please help us keep creating. Offer us protections that actually work in our current world. Help us defend ourselves and our work. Help us keep earning income from our work and help us figure out a way to easier prohibit others from earning income from our work illegally (or make serious consequences for doing such).

If I could really and truly control how others used my work – and have more time to create instead of policing the internet -- my income potential would indeed be limitless. I could put my art and writing on just about anything. But if I should choose to make mugs with my art on them, is it fair for my mugs, featuring my art, to have to compete with illegal, cheaper, mass produced mugs I did not authorize using my art and am receiving no compensation from? I sincerely do not think so and I hope you don't, either.

There has been much buzz on the internet about an Orphan Works act. Many say it is inevitable and some say that no such legislation is on the horizon. Either way, I'd like to speak out on this. There is a saying that gets used over and over and over amongst creators and that is, "If you don't want your art stolen, don't put it online." But if I don't put my art online, I can't make any money from it. That's how I sell. Online. Before the internet, I never ever dreamed that making a living as an artist and writer would be possible. But it is. It is very true, however, that I know that there is a clock that starts ticking every time I put a new work online…it's counting down the moments until someone takes it and misuses it, more often than not removing my digital copyright management information. When people take my work and "share" it on Facebook or Twitter or Instagram or Tumblr with no mention of me, it sets off a domino effect of my work getting spread here and yon…with no mention of me. I have had it happen with some of my works that they get "shared" so much without any credit (or credited to unknown or anonymous), that when you do a reverse image search or a word search, you find hundreds upon hundreds of hits to my work…but you cannot find that the original source is me. My work, where I originally put it online, where it clearly states that I am the author, is buried by all of these other instances. And all of that begins, not because of my own negligence -- because I am vigilant about making it clear that my work is indeed mine – but because one person was either 1) too lazy to attribute the work (in the case of them just typing up one of my poems and sharing it on Facebook) or 2) felt nothing wrong with cropping my copyright notice from my image before sharing

it. In those cases where my work is on the internet and the source cannot be found, through no fault of my own, is it really fair or right for it to be at risk of being deemed an “Orphaned work”? Once again, I do not think so. When we creators protect our work the best we know how, we certainly should not be punished or risk losing any rights or ability to defend those rights due to the thoughtless and careless acts of others. Deeming such works – or even unregistered works – orphaned would be much like saying if you see a car on the street and its owner isn’t around, it’s free for the taking. The way copyright law is now is if you didn’t create it, it isn’t yours to use (with a few specific exceptions, of course) without permission. And that is most definitely, in my mind, how it should and must remain. I create because I love it but I also create to earn income. It’s infuriating now when I find other people making money from my work. I don’t create so others can profit. I cannot imagine how many creators would simply stop creating if others profiting from their work without their consent became legal.

Thank you,

Kathy Jeffords