To: the Library of Congress
U.S. Copyright Office

Response to the Notice of Inquiry for Copyright Protection for Certain Visual Works

From: A Collective of National Geographic Photographers

The issues presented below come from a collective of National Geographic Photographers and problems they have experienced with copyright over the years. These concerns are organized in order of the Subjects of Inquiry presented in the Notice of Inquiry.

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

A. Social Media: It would be helpful to have a clarification as to whether posting a photograph on Social Media is considered publication for copyright purposes. (Website, Instagram, Facebook, blog, etc)

B. The Notice of Inquiry stated that the outlets professional photographers use to promote and sell their work differs from the outlets amateurs use. These outlets are melding - professionals are more often using blogging, Instagram and other social media outlets to promote their work. Professionals still expect to be properly attributed and compensated for their work displayed on social media.

C. The frequent infringements occurring online are eroding the licensing of visual media. There should be specific laws put in place protecting images used in social media. Is there a way to make it more difficult to download images from off the internet or on websites that are frequently used (ex: Facebook, Twitter, etc)?

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

A. Image Tracking - Image tracking involves multiple steps for the artists and takes an excessive amount of time especially when an artist is producing thousands of images each month. Sending notices to websites under the DMCA to remove infringing images is very burdensome.

B. International Misuse

C. Knowing whether or not a violation has occurred

Idea: 1. Artist can pay an extra fee for tracking software when registering photographs with the copyright office

2. If there were more substantial consequences for stealing images off the internet, such an initial fee on the perpetrator, it might make them comply to taking the image down right away and decrease the amount of images stolen.

D. Picture agencies and wire services are now using image-sale websites as distribution hubs. It is our experience that if an image is illegally posted on one of these sites - and the photograph is not registered – all subsequent sales of the image through the site are not counted as new violations but rather as part of the initial violation of posting on the image-sale website. Even if the photographer subsequently registers the image, and new post registration sales occur through the site, those sales – and new uses in separate publications – are not subject to statutory damages and instead are treated as derivative violations of the initial violation. The law should treat each post registration sale by the agency as a new violation subject to statutory damages and the full protection of Copyright Law. If this is not the case then the agency can continue to sell the image as often as it likes to as many publications as it likes with the only penalty being the potential loss of its profits. A violation by an image-sale site carries substantially more risk for theft and loss than a violation of publishing an image in a single print publication.

E. The requirement that registration be made within three months of publication in order to receive statutory damages deprives the artist meaningful remedies for the work that has been stolen.

D. This group supports the Copyright Office's initiative to create a copyright small claims court because the expense of litigation is a deterrent to enforcement.

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

A. There is no clear definition of what publication is and when an image is considered published (ex: is an image considered published if posted on Instagram / Twitter?)

B. Uploading a large quantity of images online (thousands). Some kinds of media are a compilation of thousands of images (like a movie or flip book) that all need to be copyrighted. With digital photography, image makers are creating many more pictures. Finding a solution to bulk uploading of images on-line would improve the process immensely.

C. It is costly for the artist to have to register published and unpublished photographs separately. The artist has to spend a great deal of time cataloging and keeping track of the images being published and the dates. This has become harder for the artist because organizations publish images from one story at various times and on various media.

D. The 90 day limit artists have to copyright their work after publication to receive protection for those 90 days should be extended - an artist should be able to register their work at any time and receive protection for the time the photographs were not registered.

E. Since artist are now able to submit all published work within one calendar year in one registration, artists could have upwards of 1,000 photographs that can be registered together. The 750 limit on group registration on published images should be levitated.

F. We would like to reiterate the significance of having no limit on registering unpublished images in one claim. Working as photojournalists, we usually have upwards of thousands of images per shoot. When a photographer is on assignment they take an average of 540 images a day and 3,780 images per week. Most assignments can last from one week to several weeks, creating an average of 3,780 - 22,680 photos per story. A huge financial burden would be placed on the artist if a limit were put on registering unpublished images. This would also slow down the registration process for photographers and create a substantial amount of work on their end.

Through these experiences, we have concluded that there are many aspects of the law that often protect the large corporation and burden the artist, making it easier to steal images than to protect them. It is hard to find anywhere else in our legal system where such a burden is placed on a owner of a piece of property in order to claim ownership and receive protection. We hope these comments give insight into the experiences artists have when dealing with copyright laws and registration.

Thank you for your time and consideration.