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ImageRights International provides copyright protection and enforcement services. We register our clients' images with the US Copyright Office, search for use of the images online, assess potential infringement claims, and pursue copyright infringement claims through our legal network.

Our clients are professional photographers, photo agencies and publishers from around the globe and we contend with the issues contemplated in this NOI daily.

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

- One of the most significant challenges is the broad public perception that images found on the internet are free to use or are public domain. Arguably the largest source of copyright infringement are the image search engine online. Image search engines have taken minimal, incremental steps towards trying to alert consumers of content that images displayed or linked to through their image search services may be copyrighted; but greater requirements to ensure that search engines more openly present the copyright holder and licensing information would serve to inform those who may otherwise think the images are free to use.
- One option worth further investigation would be to not display in the results any images that have been stripped of metadata. This would mitigate the proliferation of orphaned images and of infringing use. This would be technically simple and financially feasible for the search engine providers to implement.

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

- The economics of pursuing a claim: since the average value of these types of visual works is low relative to the cost of prosecuting an infringement claim, infringers are emboldened to use without paying for a license and copyright holders are deterred from pursuing infringement claims and enforcing their rights. I would certainly support a low cost, small claims court option for pursuing infringement claims.
- While recourse to pursue enhanced damages (i.e. statutory damages and attorney's fees) was intended to encourage creators to contribute copies of their works to the public record managed by the Library of Congress, in practice it is having a debilitating effect on those photographers who haven't registered due to the complexity and/or cost of registering their images with the USCO. For the infringer, lack of timely registration is a veritable get out of jail free card because they know that the potential damages available to the copyright holder will likely not cover the cost of pursuing the claim.

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

- The registration process is too perplexing and convoluted for most photographers, leading to a high abandonment rate or to the submission of erroneous applications. A simplified, more dynamic application form, showing only what they need to submit based on the information they provide so they are not faced with complex, yet extraneous information. The applicant's inputs should dynamically drive the sequence of questions presented so as to present only that information that is relevant to that

application. As it is now, each subsequent page of the form to the uninitiated applicant presents a roadblock leading to abandonment. Or if not abandonment, the applicant may simply guess in order to continue with the registration process, which ultimately leads to more correspondence from the registration specialist and longer examination times.

- The alternative of seeking traditional legal counsel to submit the registration forms is cost prohibitive. Therefore, if they can't afford legal assistance and they can't complete the application, they are then deprived of the full protection of the law.
- The 750 image limit on the number of published photos that can be registered within a single filing. Digital photography has changed the way photographers work. It affords them the luxury of creating thousands of photos for a single event or shoot vs. years past when they were limited to physical film that had to be processed in a dark room and the images printed on paper. They are now forced to make a choice between paying high costs to file multiple registrations or selecting which of their images they want to protect, rendering a significant percentage of their works unprotected. There should be no reason they can't file an unlimited number of photos just as they are able to do with unpublished photos. A maximum total file size limit is reasonable, though the cost of storage and ever increasing internet speeds should perhaps ultimately eliminate the need for a file size constraint as well.
- The situation is even worse for painters, illustrators and other graphic artists. They are allowed to only register one published 2D work per registration filing. We work with artists who paint hundreds of pieces per month. While they could wait and register a batch of unpublished paintings at the end of each month, that would require them to keep finished paintings off the market, which means they are carrying inventory that they cannot sell or realize a return on. So this constraint has a very real negative impact on artists: do they deprive themselves of potential cash flow by batch registering unpublished works or pay the high costs of registering each individual work in order to get it to market more quickly? Given that the deposit copies for 2-D artwork can be submitted as digital files just like photographs, it is unclear why these artists must be faced with this constraint.

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

- Misunderstanding or even complete lack of awareness of copyright law for unsophisticated users of content.
- Inability to quickly or easily identify the copyright owner or licensee of a desired image found online by an otherwise legally compliant consumer of content.

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

- A major roadblock we face when pursuing copyright infringement claims is the fact that there is not readily available documentation that links an image to the registration under which it is covered. While the certificate serves as prima facie evidence of copyright ownership, the vast majority of copyright infringement claims don't reach trial. And the prima facie evidence argument often holds little sway when attempting to resolve a claim directly with an infringer or their legal representative, especially if the opposing party is unfamiliar with copyright law. A certificate with an exhibit containing the thumbnails of the images along with their file names and initial publication date, if published, would

resolve this. Or, if the additional costs to support this is too burdensome to the USCO, then provide it on demand as a purchasable and downloadable document from the eCO website.

At ImageRights, we speak with photographers every day who are stymied by the state of copyright in this country. They know they should register their images with the US Copyright Office; but they can't afford it and/or can't navigate the application process. They know they have to publish their images online to market their work, but the internet, image search engines, social media platforms and the pervasive public misunderstanding of copyright law inevitably leads to widespread unauthorized use of their work, leaving them embattled and overwhelmed.

While our mission at ImageRights is to eliminate these obstacles to protecting their work and enforcing their copyrights, implementing even just a few of the ideas presented here, by the American Society of Media Photographers and others who have responded to this NOI could go a long way to strengthening the resolve of these artists to continue their craft, and encourage others to join the arts, knowing that their work will be protected and respected.

Sincerely,

Joe G. Naylor

Co-Founder, President & CEO
ImageRights International, Inc.
@imagerights