Submission to United States Copyright Office
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Obstacles that photographers face when navigating the digital landscape.

I write as a photographer for 30 years and chair of the British Photographic Council, an umbrella body whose members represent well over 20,000 full- and part-time photographers working in the UK. We regularly survey photographers in the UK and probably have the most comprehensive research in this country on photographers' experiences of sale and copyright of their work.

Almost all professional photographers, at every level - around 90%, from our most recent survey of UK photographers - still depend on retaining copyright as a central part of their business model. They also require that copyright protection is automatic from creation and not requiring any formal registration. Long-term ownership and control of their work, the ability to determine how their work is used into the future, who uses their work when and where, whether they want it commercialised, and if so for how much, is key to their branding, marketing, pricing and income. These principals are embodied in the Berne Convention.

The most significant problem of working in the digital area identified by photographers is unauthorised use of their work. Most photographers report this. The examples range from misunderstandings by social media users and bloggers, to commercial image theft on an industrial scale. The most common causes they identify include:

- Systematic removal of metadata - in particular author information - from images though software, social media and other sharing activities. This is widely believed to be a problem that can be fixed by some legal and technical changes alongside an awareness/education programme. The removal of metadata should be viewed in the same way as deleting a signature from a painting or tearing out the title page from a book. Metadata is a critical economic driver and needs to be understood as widely as possible. Removing it creates orphan works, often unintentionally or unnecessarily. Until this issue is dealt with, any widespread exploitation or commercialisation of orphan works is likely to cause problems for the future.

- Copying of works from one website to another. In most cases, individual usage fees are too low to cover the cost of work creation, even if that usage is on the web. Creators depend on the fact that even if they have been paid once for usage, there should never be an assumption that that work can be freely re-used.

- Lack of reasonable sanction or compensation for unauthorised use. Even in cases where the misuse is deliberate, systematic and commercial, penalties

are often no greater than the fee that would have been paid for authorised use. So there is little motivation for those who misuse work to attempt to pay for it unless and until they are caught. It's difficult for a profession where the copyright owners are mostly freelances and sole traders to act together to work against copyright abuse. This contrasts with the movie industry where warnings and knowledge of abuse, and firm legal action against abusers, is common.

- The decreasing use of credits and bylines. Photographers report that only a minority of their works are identified or credited on publication, but 83% think that all works should be legally required to be credited.

Photographers also report difficulties when working for state and government bodies, who they feel should set the best example of fair practice when dealing with creative professionals. They draw attention to:

- Government and its departments routinely requiring full assignment of copyright when commissioning.

- The use of other often inappropriate licensing models, for example the routine application of a Creative Commons licence when digitising archives. Mass digitisation of works which may be in copyright is fraught with problems; each image is an individual created work with enduring value, one that embodies its own story, and should be treated as such.

Many photographers are concerned that social media and search services make it too easy for amateur and even professional photographers unintentionally to allow commercial use of their work with no compensation. This distorts the market. Most people never read the terms and conditions of social media services in full, and submit images not knowing that they are passing ownership or commercial usage rights to these services. Even those who do have an understanding often don't realise the long-term implications, until they see their own work in the media or advertising and there's nothing they can do about it. There's a strong case for requiring social media companies, who now have as much an impact on people's lives as public services, to be more fair and transparent about their terms of service.

Photographers report a significant threat to their income from clients, both commercial and public sector, requiring full copyright assignment, or the equivalent licence that allows re-use without further payment. In provisional analysis of responses to our recent survey from over 500 working photographers, they estimated that the average cost to their income of these unsatisfactory agreements was £2400 per annum.

Our understanding is that new proposals by the US Copyright Office would do little to address many of the above problems and could in fact make things worse. Any requirement to register your work with a private organisation would significantly increase the cost of professional practice, and reduce photographers' control of their work long term. It also appears to be a step towards undermining the Berne

Convention. The proposals on mass digitisation open up significant future problems and we agree with the analysis by one of our member organisations, Pro-Imaging, that the proposals could work against the interests and rights of creators, encourage unintended usage and infringements and reduce compensation. Until there is a widespread understanding of metadata and the control and ownership of works, any mass exploitation of orphan works is premature.

I write from a UK organisation to the US Copyright Office because copyright is now international. Our fear is that creating a significant opportunity for copyright infringement in the US will lead to problems around the world. Activities may be nominally based in the US for the purpose of exploiting mass digitisation. The global balance could be upset by these changes.