

VISUAL ARTISTS IN AMERICA: THE UNTOLD STORY OF COPYRIGHT

A Briefing for the Creative Rights Caucus

American ingenuity and creativity have been the hallmark of this country since its founding, and central to that has been our commitment to protecting creators, while providing a system that encourages further creation. That system, while perhaps not perfect, has worked well for many creators. But it has not worked at all for others. It is the best-kept secret of Copyright in America.

The harsh reality is that our nation's one-size-fits-all copyright system leaves out most visual artists. The current copyright system in America may work for low-volume, high-value creators but does not work at all for high-volume creators — mom and pop businesses across our nation. These small business creators make up the vast majority of copyright industries in America.

You read that right. As it stands now, America's copyright system leaves out most creators. The current copyright review creates the opportunity to correct this inequity.

We applaud the House Judiciary Committee for conducting the copyright review and the U.S. Copyright Office for proposing draft legislation in an effort to address shortcomings with the current system. As the Committee continues to review copyright in America, three improvements are vital to the visual arts community:

1. Creation of a Small Claims Process for Copyright Enforcement

The creation of a small claims process for copyright enforcement is the single most important copyright improvement for the visual arts community. Without it, other improvements would be irrelevant. Because most infringements for our real-world, mom-and-pop creators would be valued at a few thousand dollars or less, the option of seeking remedies in Federal Court is a non-starter. A small claims option corrects this decades-long inequity in the law, and would extend protection under the law to hundreds of thousands of small business creators for the first time. Visual artists are entitled to an effective means of enforcing their intellectual property rights. The wisdom of this copyright review gives us the chance to correct this injustice.

2. Modifications to the Copyright Registration Process

The current copyright registration process is extremely burdensome to high-volume visual artists, such as professional photographers who can create more than 1,000 images in a single weekend, or graphic designers who can produce hundreds of creations in a given week. A couple of simple changes to visual arts registration procedures could greatly improve the process and increase the participation in the registration process among visual artists. The requirement to sort creations according to publication status and date (currently included in the statute) should be eliminated for visual artists, and the deposit requirement should be relaxed to allow visual artists to choose to deposit or to register creations with identifying material.

3. Modernization of the Copyright Office

The U.S. Copyright Office must be granted the resources and authority necessary to effectively administer the law. No real change can occur under the current structure. Unless we create a nimble Copyright Office with the administrative capacity to implement change, America's copyright processes will continue to fall behind the industries and the public they support, making them less effective or relevant. As a side note, the current system seems to give authority to the U.S. Copyright Office, but in reality, it denies its ability to react because its systems and processes are linked to the Library of Congress. As a result, Congress loses the ability to expect excellence because, in effect, the buck stops nowhere.