

From: [REDACTED]
To: [FN-OMB-IntellectualProperty;
info@copyrightalliance.org;](mailto:FN-OMB-IntellectualProperty;info@copyrightalliance.org)
cc:
Subject: IPEC; PRO-IP Act of 2008; Joint Strategic Plan
Date: Wednesday, March 24, 2010 4:08:25 PM

24 March 2010

Victoria Espinel
U.S. Intellectual Property Enforcement Coordinator

Re: request for written submissions (Fed. Register Vol. 75, No. 35, p. 8137)

Dear Ms. Espinel:

I am a creative professional—an artist/illustrator, writer, and photographer—with a long catalog of work beginning in the 1970s. My work has been "lifted" often, perhaps because I am considered to be the best in the world in one of my focused subjects. These infringements have occurred in many foreign countries including China, Taiwan, Canada, Madagascar, Australia, Germany, the Netherlands, the UK, and elsewhere in addition to the United States. I have pursued redress under copyright laws and the Berne Convention in Australia, Canada, Taiwan, and the U.S.. These experiences have given me a good working understanding of copyright laws and plagiarism issues, and I have lectured on the topic in academic, legal, and professional venues.

Education

When infringements of my copyright occur, the infringer is typically ignorant of the law. Since this is the most common condition, education of copyright principles and law should be an important element of the Strategic Plan. To be effective, such educational efforts must include academic institutions, corporations, and similar areas of the economy where copyrights are an important issue, as well as direct outreach from the Library of Congress/ Copyright Office. Efforts have been made in this regard, but the effectiveness is incomplete. We would all would benefit from increased and improved efforts in this regard.

Part I, Economic Costs

Regarding **Part I** of the JSP, I offer an example of indirect costs to the U.S. economy from violations of intellectual property rights. Unlike the infringements based on ignorance of the law, deliberate plagiarism and infringement is a form of outright fraud, not just a violation of the moral right. Like other forms of fraud, from a Ponzi scheme to the famous art fakers, the costs extend well beyond the victim to the society at large.

A few years ago, I was the plaintiff in an infringement law suit against an individual and the convoluted corporate structure that protected his nefarious behavior. There was a trial and the defendant paid money, but the defendant's corporate structure effectively hid and sheltered from the plaintiff over \$450,000 in additional sales of the infringing work. During

the investigation, we found that his sales agents assured innocent, but ignorant buyers that the works would certainly appreciate greatly over time. The defendant had placed a price of \$390,000 on the original work central to the lawsuit. His agent told an art collector the work would definitely appreciate, perhaps as much as 20% to 25% each year once the limited edition prints were sold out.

I was subsequently contacted by a forensic art appraiser who was questioning the propriety of a tax deduction based a work by the defendant of my law suit. The collector had donated the piece to an art museum expecting a large tax deduction. We subsequently learned that the value of these works has fallen to mere pennies on the dollar.

Here is what happens: an infringer plagiarizes the work of another while promoting himself as an accomplished and desired artist. The price on the work is inflated to levels as if they were an important living artist in demand. For this example I'll use \$400,000 as the price of the work. The innocent art collector sees the purchase as an investment "expected" appreciate 20% a year. It is held for five years. The collector assumes the piece has appreciated to over \$1 million, so the collector plans to donate it to a museum for the tax deduction. The collector claims a million dollar donation, ostensibly returning to them the original cost of the work in the form of the tax savings. The US treasury could have been slighted for over \$300,000 on this one transaction.

This problem is exemplified in a case from Canada a few years ago. A nefarious art dealer sold individual art prints to investors for \$50 each. The dealer produced an appraisal of each print showing a value of \$1,000. Within days, the print was donated to a museum garnering the investor a \$350 tax break on the \$1,000 deduction—a 600% profit on the "investment" in a few days.

Statistical data on the extent of this problem is not available. The IRS has been aggressively cracking down on this sorts of tax fraud for decades—especially the big ones—but transactions of smaller dollar amounts get through. The infamous Leon Amiel Family/ Salvador Dali art fraud poses a good example. It is estimated that 77,000 fraudulent prints still exist in private collections, believed by their owners to be extremely valuable fine art prints. The actual value of these prints become issues in estates for tax purposes as these collectors from the 1970s and 80s die. I know this issue is real as it presently exists in my own extended family of in-laws.

Part II, Information Sharing

The involvement of the IPEC in such art/tax fraud cases may not be immediately apparent. However, many of these frauds begin with infringing works. A stated objective of the JSP is "Improving information sharing between law enforcement agencies." Also, under Supplemental Comment Topics of the IPEC request, item #1 raises ". . . effectiveness and/or coordination of the various Federal departments, agencies, and programs that are charged with enforcement of intellectual property." And item #5 requests, "Suggest methods for strengthening information sharing between stakeholders and U.S. Government agencies to improve intellectual property rights enforcement efforts."

Although the Library of Congress (LOC) is not an enforcement agency, it is the repository of copyrights. At present, the Federal Court notifies the Copyright Office of the LOC when an infringement case is filed. These notifications sit in the Copyright Office, but are not tracked, shared with other enforcement agencies, nor can they be researched by stakeholders. I'm envisioning a program at the LOC that maintains a database of images and text of infringement cases. This program could include Patent and Trademark infringements as well, furthering the notion of inter-agency cooperation. The data base might also include tags noting pieces or artists that were involved in other issues beyond copyright, such as investment fraud or fakery. A process would be established by which the various Federal departments and agencies charged with enforcement of IP rights, as well as stakeholders, are able to research infringement filings. Such searches could be conducted by title of the piece, the artist involved, and other elements. At present, copyright infringement cases can be searched through West Law and Pacer, but these subscription-based sources cover the gambit of legal cases. The notion proposed here focuses on IP infringements and would easily reveal if particular copyright owners are frequent targets of infringement or fraud, or if particular individuals are often implicated in these crimes. I believe this would enhance the enforcement agencies' efficiency in prosecuting violations and provide a venue through which stakeholders can more easily investigate the reputation of works and their creators.

Thank you for the opportunity to comment and for your consideration of my thoughts expressed above.

Respectfully submitted,

Pieter Folkens
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