



COWAN
DEBAETS
ABRAHAMS &
SHEPPARD LLP

Electronic Filing

intellectualproperty@omb.eop.gov

To: Victoria Espinel, U.S. Intellectual Property Enforcement Coordinator and Colleagues
Office of Management and Budget, Executive Office of the President

Re: Coordination and Strategic Planning of the Federal Effort Against Intellectual Property
Infringement: Request of the Intellectual Property Enforcement Coordinator for Public
Comments Regarding the Joint Strategic Plan

Date: March 24, 2010

This filing is on behalf of my client, The Picture Archive Council of America (PACA). It is in response to the request for public comments concerning the coordination and strategic planning of the Federal effort against intellectual property infringement by the U.S. Intellectual Property Enforcement Coordinator, which appeared in the *Federal Register* on February 23, 2010 (pages 8137-8139). In addition, PACA is a member of the Copyright Alliance and supports its submission.

PACA is the trade organization in North America that represents the vital interests of companies and entities of every size, from individual photographers to large corporations, who license images for commercial reproduction. Founded in 1951, its membership includes over 100 companies in North America and over 50 international members. Collectively it represents the copyright interests of thousands of photographers whose visual works are licensed to its members.

Through advocacy, education and communication, PACA strives to foster and protect the interests of the picture licensing community. Accordingly, it works to develop useful business standards and promote ethical business practices; actively advocate copyright protection; collect and disseminate timely information; and take an active role in the image licensing community by building relationships with organizations from related industries.

Stock photography, includes both still and motion film, and comprises much of the visual imagery used by the media companies today. Stock images are licensed by publishers for use in books, magazines, textbooks and online publications, by the cable, broadcast and documentary film community for use in television and film, and by advertising companies and graphic designers who require visual images in billboards, advertisements, and numerous other promotional and advertising materials.



PART I: Analysis of the Role of Intellectual Property Enforcement in the Performance of the U.S. Economy

The stock photography industry depends on an effective and robust copyright regime, in order to protect the value of the copyrighted works that it licenses on behalf of its owners. With the Internet becoming as important, if not greater in importance to print, the ability to continue to license images to users in an online environment remains vital to the economic survival of this industry. While more images are needed in order to enhance the visual appearance of websites, the ease in which visual images can be appropriated has had an impact on the licensing revenue of PACA's members and the artists they represent.

Because website designers and others can simply create websites by “right clicking” on any image displayed on a website, or aggregated via an image search request, PACA members have sought the services of several third party technology companies to detect infringements. One such company is PicScout, which has the ability to fingerprint images, and return reports of image usage, so the image licensing company can review the reported use to determine whether the use is licensed or not. The licensing company can then attempt to seek compensation from those websites that have displayed images without authorization.

In 2005, an organization of stock photo artists, the Stock Artist Alliance requested that PicScout survey a sample of commercial websites to assess the level of infringements of images licensed on a rights-managed basis¹. The study, published in 2007, tracked a sample of 20,000 SAA member images represented in the Rights Managed collections of the largest stock distributors, Getty Images and Corbis, which had never been paid for web usage. The study reviewed usage in the US, Germany and the UK. At that time, the level of images infringed on commercial websites was approximately 9 out of every 10 images.

The 2007 study is located at

http://www.stockartistsalliance.org/files/SAA_Infringements_Report_2007a.pdf.

At the time it was estimated that the economic loss, to Getty images, Inc. alone, based on these figures, was approximately \$42,000,000.

On March 19, 2010, PicScout shared its unique data and reported to the stock licensing industry that in 2009, the total volume of infringements reported by its stock agency clients increased more than 3 times over 2006 levels. According to PicScout, based on its current global data,

¹ Right managed licensing is the licensing on an image for a particular use, often defined by time, industry, size of use, placement and geographic location.



COWAN
DEBAETS
ABRAHAMS &
SHEPPARD LLP

which is based on more than 5,000,000 images, about 8 out of 10 uses today of Rights Managed images on commercial websites are being used without licensing.

While it is impossible to determine the full economic harm of these unauthorized uses, the study shows that the use of images without proper licensing and payment is rampant. As a consequence, the revenue earned by PACA members and their contributing artists are necessarily impaired. The risk to the industry, is that free images will continue to erode the market for professionally created images licensed by PACA members, further decreasing revenues which will impact the number of employees and professional earners in this industry.

Part II: Policy Recommendations

PACA members, in order to effectively enforce the copyright of works that are unlawfully used, need a cost effective and efficient judicial mechanism to enforce their rights. As copyright infringement cases are the exclusive jurisdiction of the federal courts, the expense, both administrative and legal in filing a federal copyright claim, can exceed the amount of potential damages available to a copyright owner. As part of the proposed orphan works bill introduced by the Senate in 2008, the Senate bill recommended that the Copyright Office study whether there should be other options if a copyright owner elects to recover fees below a minimum threshold amount. Whether orphan works legislation is enacted or not, we believe that such a study should be conducted so that every copyright owner has an opportunity to obtain a remedy for works that are infringed.

In addition, PACA believes that programs to include copyright education in the school system should be established. PACA, as part of its mission, has a copyright education program designed to educate image users and visual artists of copyright basics in licensing images. In presenting this program to schools and at events for professional image users, we are aware of the lack of basic copyright knowledge. This lack of knowledge leads to inadvertent copyright infringement.

PACA encourages the use of technology solutions to encourage proper licensing and deter infringements. Technology companies are offering image recognition and image tracking solutions that can connect a potential user to the image owner or image licensor.

PACA encourages the enforcement of intellectual property rights on a worldwide basis and the continued necessity of working with other countries to reduce infringements on a global basis.

PACA and all of its members thank the Obama Administration and USIPEC for this opportunity to comment in this important proceeding, and looks forward to working with this Administration in pursuing stronger protection of intellectual property rights.



COWAN
DEBAETS
ABRAHAMS &
SHEPPARD LLP

Sincerely

Nancy E. Wolff

Nancy E. Wolff

Counsel to PACA