

Comments on Orphan Works Inquiry

Getty Images

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BACKGROUND

Getty Images is a leading creator and distributor of still imagery, video and music content. Getty Images represents more than 150,000 individual contributors (photographers, videographers, and musicians), over 300 archives from well-known partners, and owns or represents more than 80,000,000 unique works. Our award-winning imagery can be seen at www.gettyimages.com, as well as our other websites, including www.istockphoto.com, www.wireimage.com and www.thinkstock.com.

Getty Images appreciates the opportunity to respond to the Copyright Office's inquiry into orphan works and mass digitization. Copyright is key to our business, and we support efforts to ensure that content creators' rights are respected.

SUBJECTS OF INQUIRY

Orphan Works on an Occasional or Case-by-Case Basis

The proposed 2008 legislation was based on the following key components: (a) a good faith, reasonably diligent search for the copyright owner; (b) attribution to the author and copyright owner, if possible and appropriate under the circumstances; and (c) a limitation on remedies that would be available if the user proves that he or she conducted a reasonably diligent search. Provided that there are clear guidelines as to what constitutes a reasonably diligent search, such that works are not too easily or inadvertently deemed "orphaned", and provided further that there is a reasonable compensation requirement in the event that a copyright owner comes forward, Getty Images believes this framework better balances the rights of content creators and those seeking to use orphan works than does a mandatory collective licensing scheme. Because we believe this framework achieves an appropriate balance, we do not support exceptions for noncommercial use.

Getty Images does not believe that there is reason to exclude photographs from the scope of proposed legislation. While photographs were previously identified in the Copyright Office's earlier reports as posing unique challenges, we believe there has been progress since that time in terms of potential technology solutions to help identify copyright owners.

One such solution is offered by PicScout, a Getty Images' subsidiary based in Israel. PicScout has developed image-recognition software that is based on creating a unique digital fingerprint for each photographic image. PicScout maintains a registry database (known as the ImageIRC) that indexes and stores these fingerprints. PicScout offers access to this registry to image licensors and content creators, who voluntarily contribute their content. Additionally, PicScout offers services that allow its customers to identify electronic (e.g., web-based) uses of those images. Most recently, PicScout created an interface to that registry that allows users to search by image, meaning that a user can upload an image

and obtain results on whether that image matches any of the fingerprints in the IRC, and if so, identify the owner or licensor.

Key highlights of PicScout's ImageIRC include:

- It is a tested photo registry and a visual recognition platform that can be easily queried by third parties to identify ownership and licensing availability for registered content through search-by-image widgets and application programming interface ("API") integrations.
- The registry includes image metadata, which is information associated with the creation and/or ownership of the image. Through the process of uploading images to various web platforms, metadata is often stripped or disassociated from digital image files. The registry allows visual recognition of the images and, in the process, re-associates available metadata with the image.
- The registry continues to grow and now includes all of Getty Images' digitized content in addition to a significant quantity of third party material.
- Registry inclusion is free to photo owners.
- Although the registry currently is primarily devoted to photographs, it is capable of being adapted to support a variety of visual works.
- Registry participants are provided with their own search-by-image widgets that can be enabled on their websites to allow people to upload an image and verify whether it is available in the registry participant's own library or in the broader registry (Getty Images is implementing this functionality on its own sites).
- Search by image is made available for free subject to reasonable volume caps (e.g., a documentary film maker looking to identify the owner of archival images).
- High volume query implementations would be subject to negotiated access rates depending upon the implementation (e.g., a social media service looking to authenticate each and every image uploaded to the service).
- We have also developed scalable license models to facilitate mass digitization or mass usage of copyrighted material (e.g., cost per view). These models are made available to registry participants on an opt-in basis.
- With over 150,000 contributors and representing 300 stand-alone archives (e.g., Disney, NBA, AFP, etc.) on a global basis, Getty Images already serves as a significant aggregator for those in need of content.

Orphan Works in the Context of Mass Digitization

We do not believe that orphan works should be treated differently in the context of mass digitization. The proposed framework carefully balances the rights of content creators and orphan works users. We do not support relaxing those standards simply because a user proposes to use or

digitize more works. The user should still be required to perform a reasonably diligent search on a work-by-work basis and should still be required to pay reasonable compensation. Recognizing the challenges of large-scale digitization projects, Getty Images has developed scalable license models to facilitate mass digitization and high-volume usage of copyrighted material, and we offer tools that integrate content (including third party content with the third party's consent) into platforms. In this respect, we believe industry-led solutions are a better solution than legislation on this issue.