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October 18, 2012

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2011-10]

**Remedies for Small Copyright Claims: Additional Comments**

**Comments Submitted by the Graphic Artists Guild**

by electronic filing

Re: *Federal Register* / Vol. 77, No. 164 / Thursday, August 23, 2012 / Notices

**INTRODUCTION**

The Graphic Artists Guild supports the creation of an alternate dispute resolution, small-value, copyright infringement court within the federal district court system so that rights holders can take meaningful action against infringers. The Guild wishes to thank the Copyright Office for the time and effort undertaken to study this very intriguing and much-needed proposal. This is the second Comment Letter submitted by the Guild regarding this study. We will note reference to our comments included in our first Comment Letter rather than duplicating the information here.

Our National Advocacy Committee has conducted an online survey applicable to all authors and creators of copyrightable works, as suggested to us back in 2007 by Stephen Tepp, when he was working on this issue at the Copyright Office. The purpose of the survey was to collect information regarding how rights holders have experienced infringement of their works, and if, or how, they have taken action against the infringer, including whether they used the federal court system; if not, why they didn't, and if they would consider using an alternate court system for small-value copyright infringement. The survey asked if authors would like an alternate court system to operate by mail without requiring court appearances, and what the ceiling for monetary damages should be. The majority of respondents to our survey are visual creators; artists and photographers. We are including the entire survey report attached at the end of this Comment Letter.



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Visual arts organizations including the Graphic Artists Guild [GAG], American Society of Media Photographers [ASMP], Picture Archive Council of America [PACA], Professional Photographers of America [PPA], North American Nature Photography Association [NANPA] and the American Photographic Artists [APA] have formed a joint committee to work on this issue and other legislative issues of concern to visual creators. We look forward to working with the Copyright Office in finding a workable solution to this important issue. Although these organizations are filing individual Comment Letters, we share the common goal of establishing a new system to facilitate fair, expeditious, affordable and easily accessible legal enforcement of the economic rights of copyright owners.

### **CHALLENGES OF THE CURRENT LEGAL SYSTEM**

Responses to our online survey support the occurrences of infringement of visual works, and the difficulties of the current legal system that visual creators experience in the US that we described in our first Comment Letter. Sixty-one percent of respondents reported to have had their work infringed by another person or business.

The two most common sources from which infringed works were copied were from a printed piece (including a photographic print) and from the internet (the creator's own website, or the creator's work on another website). The majority of the infringing uses were for commercial, for-profit purposes, including display or promotional use that should be licensed. This indicates that visual creators are suffering a substantial incidence of unauthorized use of their works, resulting in significant loss of income and possible violations of licensing agreements between the creator and legitimately authorized licensees.

Most Americans don't understand copyright, and that includes clients who license graphic art - both individual clients and employees of large businesses. It is not unusual for a client to make additional unauthorized use of an illustration or graphic design beyond the original license for the project. Clients mistakenly presume that either they've purchased the



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copyright when they haven't, or that whatever fee they've paid grants them unlimited usage. Sometimes the illustrator or graphic artist is able to bill the client for the additional usage and successfully collect, but often the client refuses to pay.

We asked authors/creators what actions they've taken when they've discovered infringing use of their work. Sixty-three percent said that they tried to contact the infringer directly themselves, and almost 2 percent said that they had an attorney contact the infringer on their behalf. Nearly 62 percent reported that the infringer did nothing in response. Just over one third of visual creators reported that the infringer abided by a cease & desist letter, and just fewer than 17 percent said that the infringer paid the invoice for unauthorized usage already made. These responses support the Graphic Artists Guild's anecdotal experience as we have helped artists over the decades. The Guild encourages artists to contact the infringer to try to resolve the infringement in a business-like manner, including billing the infringer for use made. As noted above, all too often that fails.

Visual creators then must assess what options are available to them. The current federal district court system is complicated and costly, and requires representation by an attorney. This is far too costly, and often mathematically impractical if the work was not registered prior to infringement, unless the extent of the infringement and actual damages is very large. Even if the work was registered prior to infringement, few attorneys will represent an author/creator on a contingency basis, even in the simplest of infringements, if the damages would be less than \$30,000.

We asked authors/creators "If you did not hire an attorney and file a copyright infringement lawsuit, why not?" The most frequent reasons were:

- *too much of an ordeal / I didn't want to go through with it*
- *my work was not registered, and I would not recoup attorney's fees and court costs (could not afford an attorney)*
- *the amount I would have been awarded or would ask for was less than the legal costs*



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Most visual works are not registered, and most of the business sector is aware of this. Many businesses take a calculated risk when they deliberately make infringing use of an image, presuming that the image has not been registered, and that in the event the visual creator discovers the infringement, he/she will not be able to take legal action. Currently, if a work was not registered before the infringement occurs (or within the 3-month grace period), the copyright owner may recover only actual damages, and that typically would not even pay the visual creator's legal fees. [See 17 U.S.C. § 412]

### **ALTERNATIVES FOR SMALL COPYRIGHT CLAIMS- THE GUILD'S RECOMMENDATIONS**

The Graphic Artists Guild believes that the goal of an alternate, small-value, copyright infringement court system ("alternate copyright court" or "ACC") is to encourage proper business practices and the licensing of copyrighted works, as well as discourage unauthorized use. The procedure and system ought to be easy to use by both parties, with expeditious results and lower costs for the process, and with evidentiary requirements to deter false claims. More rights holders will be able to get monetary compensation from unauthorized users. Users will be aware that it is more cost-effective to contact the rights holder and pay a licensing fee upfront, rather than infringe, because rights holders will have easier access to legal recourse.

England and Wales have established a similar system called the Small Claims Track under the UK Patents County Court, with one location currently in London handling cases by mail and video or teleconferencing. We understand that the UK Small Claims Track would not be constitutional in the USA. We are aware that some of the ideas and procedures we are suggesting do not currently exist in the US court system and in some instances may be considered unconstitutional. The Guild's comments on such constitutional issues are made from a layperson's perspective.



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## SUBJECTS OF INQUIRY

Assuming a system for small copyright claims is created:

### **1. Nature Of Tribunal/Process.**

See our initial comment letter. No additional comments.

### **2. Voluntary Versus Mandatory Participation.**

We would like to see the rights holder/plaintiff have the option to choose ACC or federal district court; however the infringer/defendant must comply with the rights holder's choice of court system. The incentive for the rights holder to use ACC is obvious; it would be less costly, faster, and hopefully afford action against an infringer for damages too low for full-scale legal action in federal district court.

By agreeing to participate in ACC, both plaintiff and defendant would agree to waive their Seventh Amendment right to a jury trial.

### **3. Arbitration.**

As a non-jury streamlined adjudication process, arbitration would be superfluous and essentially duplicative of the ACC model supported by the Guild. If there is arbitration, the arbitrators should be experienced copyright attorneys.

### **4. Mediation.**

Mediation is a great idea, unless it imposes an additional cost to the parties. Mediation could be conducted by teleconference or video conferencing to keep time and travel costs down for both parties. Mediators would have to be well versed in copyright law. An example is the Volunteer Lawyers for the Arts organizations, which train arts mediators and have IP attorneys who do ADR/mediation as volunteers.



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#### **5. Settlement.**

We would encourage voluntary settlements, especially through mediation. However, going through mediation or an initial settlement offer/response should not be a threshold requirement to participate in the ACC. Plaintiffs should not be required to reduce the value of their claim by making a settlement offer before they can utilize the ACC.

#### **6. Location Of Tribunal(S).**

See our initial comment letter. No additional comments.

#### **7. Qualifications And Selection Of Adjudicators.**

See our initial comment letter. No additional comments.

#### **8. Eligible Works.**

See our initial comment letter. No additional comments.

#### **9. Permissible Claims.**

Claims that arise together out of the same factual situation that include copyright infringement must be brought together in the same court action. Accordingly, the ACC will not be an effective alternative unless such claims can be heard in the ACC. Accordingly, the Guild believes all of these claims should be permitted:

- a. Related claims of trademark infringement.
- b. An infringement claim tied to a contractual issue, especially violation of a license.
- c. Claims of copyright ownership.
- d. Material misrepresentation claims in violation of the DMCA. Sometimes creators are in the defensive position of a takedown notice.

#### **10. Permissible Claim Amount.**

Litigation in federal district courts is too costly, and completely financially impractical for damages under \$30,000. A limitation of the available damages to be awarded, such as



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\$30,000, will serve as a guide for rights holders to determine for themselves whether the ACC is appropriate and satisfactory for their particular infringement situation. Where a larger profit was made on the infringement, or more incidences of infringing use would result in higher damages, or complicated evidentiary issues exist, the rights holder may choose to file suit in the regular federal district court system.

At this time, the Guild recommends that the limit of monetary damages be \$30,000, separate from any legal fees and court costs; however, we would like to survey authors and creators on this point. This amount, \$30,000, references the ceiling of statutory damages currently awarded for single non-willful infringements, and in practice seems to be a threshold of complexity of the infringement and willingness of attorneys to represent a rights holder in federal district court. The monetary damages limit should be adjusted periodically in accordance with the cost of living index. The Guild recommends:

- a. No, there should not be an independent analysis of the damages claim by the tribunal
- b. Yes, it should be permissible for a copyright owner to pursue multiple claims in the same proceeding provided that, either individually or, alternatively, in the aggregate, they do not exceed the cap.
- c. Yes, if a defendant asserts a counterclaim that exceeds the cap, the case should remain in the small claims tribunal.

## **II. Permissible Defenses And Counterclaims.**

We do not believe defenses should be limited. Otherwise, defendants would be able to opt out of the ACC in a substantial number of cases, which would weaken the effectiveness of the ACC.



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## 12. Registration.

See our initial comment letter. Our additional comments are:

- a. Yes, the registration status of a work should affect the availability of statutory damages,
- b. No, attorneys' fees should not be recoverable, as attorneys should not be involved.

## 13. Filing Fee.

Yes, there should be a filing fee. Hopefully this would prevent some frivolous claims and ensure that the plaintiffs filing claims are serious about complying with the process and seeing it through. State Small Claims Courts have nominal flat filing fees that are not based on the amount of damages requested. We suggest a filing fee of \$150 per claim; one fee per complaint (not variable by incidents of infringement or size of the claim). The prevailing plaintiff should recover the filing fee and court costs from the defendant.

## 14. Initiation Of Proceeding.

- a. No *prima facie* showing of infringement as a threshold requirement.
- b. Defendants should be served by certified mail (typical procedure in state Small Claims Court).
- c. Yes, defendants should be permitted to transfer the dispute to the small claims tribunal if plaintiff's alleged damages are within the small claims cap.
- d. Yes, a defendant may be allowed to initiate action to seek declaratory judgment of no infringement before plaintiff files. Hopefully, this would discourage shakedowns by copyright trolls or extortion claims of infringement, and inappropriate DMCA takedown notices.

## 15. Representation.

We'd like the ACC to function as a "People's Court." We want plaintiffs to be able to start with attorneys behind the scenes if they wish, but not be represented by attorneys in court.



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Permitting attorneys to represent parties would add to the costs for both sides, which is precisely the hindrance for plaintiffs to use the existing federal district court system.

Corporations and other businesses should be permitted to have employees act on their behalf; ideally the employee or officer involved in the allegedly infringing act.

Of course, some large corporations have attorneys on staff who would prepare the case, and individuals and smaller businesses may consult with attorneys before and during the ACC process. However, attorneys should not be allowed to appear in the tribunal on behalf of parties (unless the party involved in the case happens to be an attorney). We hope that in setting up a new court system, we could establish a new, simplified procedure particular to the ACC.

This ACC system won't work for every situation. Complicated legal cases necessitating the legal expertise of IP attorneys should be filed in federal district court.

#### **16. Conduct Of Proceedings.**

We recommend that infringement claims of visual works be handled by submitting documents to a central ACC location without personal jurisdictional requirements. As in the Trademark Trial and Appeal Board (TTAB), hearings conducted by phone or video conferencing, mail, and email would work for visual works. Hearings could allow both the appearance in person of parties that can attend and participation by phone or video conferencing.

Non-party witnesses should be permitted to participate to support damage claims. For example, an "expert witness" such as a professional peer to establish a customary license fee or value of the work. Any witnesses to the creation of the work should be allowed if originality or date of creation is at issue. Any witnesses to the infringing act should be allowed.



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### **17. Discovery, Motion Practice And Evidence.**

See our initial comment letter. Our additional comments are:

The Trademark Trial and Appeal Board (TTAB) is the best model. Some discovery must happen to get relevant records. Can this be streamlined by established procedures to keep costs and time down?

### **18. Damages.**

Considering that the current amounts for statutory damages are \$750 - \$30,000 (with a \$250 minimum for an innocent infringer), we recommend the ACC damages stay within this scheme.

### **19. Equitable Relief.**

See our initial comment letter. Our additional comments are:

There should be no option to impose mandatory licenses for derivative works. Unlike the orphan works situation, claims brought in the ACC will not be limited to situations where the defendant was unable to locate the rights holder and thus had a good faith basis to go forward with an unauthorized derivative work. Rather, these claims will primarily involve willful infringements of visual works owned by currently working visual creators. Visual creators make their livelihood by granting usage rights to their works. Exclusive usage rights generate the highest fees. The ACC must not interfere with plaintiffs rights to determine how and for what price their visual works may be used. In many situations, plaintiffs may have licenses or potential license with authorized users to create derivative works which could be violated by a mandatory license granted to the unauthorized infringer. Equitable relief should be available to plaintiffs and defendants to the same extent as provided under current copyright law.

### **20. Attorneys' Fees And Costs.**

We don't want attorneys to be involved in the court proceedings; that's the whole point of keeping the ACC affordable. If either party wants to pay an attorney to counsel them



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behind the scenes, they may do so, but attorneys should not be allowed in court, and attorneys' fees should not be awardable.

#### **21. Record Of Proceedings.**

Decisions should be rendered in writing and include a brief recitation of the facts and legal basis for the decision.. Any phone or video conference should be recorded. The public may have access to "unpublished decisions" that are non-precedential and not citable.

#### **22. Effect Of Adjudication.**

- a. The decision should constitute a final and enforceable judgment.
- b. A decision of the small claims tribunal should not be published and/or carry any precedential weight.
- c. Decisions should have *res judicata* and collateral estoppels effect, but should be limited to the specific activities at issue and parties in question.

#### **23. Enforceability Of Judgment.**

See our initial comment letter. Our additional comments are:

In the event of non-compliance, the plaintiff should be entitled to a contempt of court ruling and appropriate remedies as are available in state and federal courts.

#### **24. Review/Appeals.**

Appeal should be allowed under the standard of abuse of discretion only. The party appealing the decision should have to post a bond. We propose that a tribunal within the ACC review appeals of ACC decisions and keep these cases within the ACC system. An example of this is the *en banc* procedure in the US district courts. This would prevent a losing defendant from appealing the decision "upstairs" to federal district court, hoping that the enormous increase in legal costs would cause the plaintiff to give up.



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## **25. Group Claims.**

Multiple copyright owners should be allowed to act together to pursue multiple infringement claims if their work was infringed by the same user for the same use. (For example, recently someone copied logos by various designers from design books and designers' websites, minimally altered them, and offered them for sale on his stock logo website. All of the designers whose logos were infringed should be able to pursue a joint claim against the stock site owner)

The damages cap of \$30,000 should apply to the entire group of copyright owners, not per work or per plaintiff.

## **26. Frivolous Claims.**

Repetitive frivolous claims should be handled similarly to the ways state courts identify and prevent such abuses. Collateral estoppels might prevent copyright trolls. The filing fee should also help deter frivolous or harassing claims.

## **27. Constitutional Issues.**

The Guild cannot comment.

## **28. State Court Alternative.**

Please see the Guild's previous comments. We do not support utilizing existing state small claims courts. State small claims judges are not trained in the complexities of copyright law.

## **29. Empirical Data.**

**a. Whether copyright owners are or are not pursuing small infringement claims through the existing federal court process, and the factors that influence copyright owners' decisions in that regard, including the value of claims pursued or forgone;**



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We have provided a report of results from our online survey of authors/creators attached at the end of this document.

### **30. Funding Considerations.**

There should be no requirement that the ACC be self-supporting. No existing court system in the USA is self-supporting; they are included in the Judicial Branch of the Federal and State governments. The purpose of this ACC for copyright infringement claims should be to unburden the federal district court system and provide legal remedy for individuals and businesses who cannot participate in the existing federal district court system because of cost.

Enlisting volunteer mediators to handle ACC claims would help keep court costs down. For example; the Northern District of California and other district courts have robust ADR programs which train and utilize volunteer mediators.

### **31. Evaluation Of Small Claims System.**

See our initial comment letter. No additional comments.

### **32. Other Issues.**

No additional comments.

## **ABOUT THE GRAPHIC ARTISTS GUILD**

In the course of its 45-year history, the Graphic Artists Guild has established itself as the leading advocate for the rights of graphic artists on a wide range of economic and legislative issues, from copyright to tax law. Through its publication of the *Handbook: Pricing & Ethical Guidelines* (now in its 13th edition), the Guild has raised ethical standards in the industry, and provides an invaluable resource on pricing information that is relied on by both artists and clients. The Guild's newsletter, the *Guild News*, provides lively, provocative, and useful coverage of developments in the visual communications industry for its readers.



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The Guild also provides a wealth of services and benefits for its members, including educational programs, discounts on a multitude of products and services, a legal referral network, and grievance handling. The Guild's website offers up-to-date information on Guild activities, updates on advocacy issues, members' portfolios, individual chapters, and links to related organizations.

Thank you for your consideration.

Respectfully submitted,

Haydn Adams, National President  
Todd Lemieux, National Advocacy Committee Chair  
Lisa Shaftel, National Advocacy Committee  
Tricia McKiernan, Executive Director

# Graphic Artists Guild Small Value Copyright Court Survey

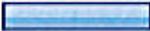
## 1. What is your creative profession? (check as many as apply)

	Response Percent	Response Count
artist/designer	56.5%	628
photographer	56.1%	624
writer	18.3%	203
musician/composer/songwriter	4.9%	54
filmmaker	6.0%	67
computer programmer/software designer	5.0%	56
architect	0.4%	4
choreographer	0.1%	1
publisher	5.4%	60
educator	8.9%	99
student	4.5%	50
retired	1.5%	17
<b>answered question</b>		<b>1,112</b>
<b>skipped question</b>		<b>3</b>



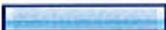
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**2. In which of these copyright registration categories do you create? (check all that apply)**

		Response Percent	Response Count
<b>Visual Arts (photographic, graphic, or sculptural work, including 2-dimensional and 3-dimensional work of fine, graphic, and applied art, or architectural design)</b>		96.8%	1,076
Serials/Periodicals (newspapers, magazines, newsletters)		21.8%	242
Literary Works (books, manuscripts, articles, poetry, or other written works)		23.0%	256
Sound Recording (music, drama, lectures, audio books)		6.6%	73
Performing Arts (musical work, dramatic work, scripts, pantomimes, choreography, motion pictures, or other audiovisual work)		6.9%	77
Software		5.6%	62
		<b>answered question</b>	<b>1,112</b>
		<b>skipped question</b>	<b>3</b>



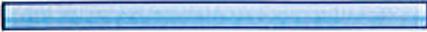
### 3. Do you currently earn income from your work?

		Response Percent	Response Count
YES, it's my full-time profession		66.5%	737
YES, it's my part-time profession		25.5%	283
NO, it's a hobby / I volunteer or work pro bono		4.2%	47
NO, I'm a student		2.4%	27
NO, I'm retired		1.4%	15
		<b>answered question</b>	<b>1,109</b>
		<b>skipped question</b>	<b>6</b>



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**4. What business or field do you work in? (check as many as apply)**

		<b>Response Percent</b>	<b>Response Count</b>
<b>publishing/print</b>		<b>66.9%</b>	<b>744</b>
advertising		51.8%	576
entertainment or broadcast (motion pictures, theater, TV)		15.3%	170
museum displays or exhibits		16.6%	185
retail & marketing, including point of purchase and packaging		31.6%	351
portraiture		31.5%	350
retail/consumer products		26.5%	295
architecture & construction, interior design, environmental design		12.8%	142
scientific /engineering		3.6%	40
scientific /medical		6.2%	69
textile design & manufacture		4.5%	50
the internet		42.4%	471
gaming (video games, casinos/gambling)		3.9%	43
hospitality (restaurants & hotels)		8.0%	89
toys		3.6%	40
fashion		9.6%	107
recreation (theme or amusement parks, sports, parks)		6.7%	74

**answered question 1,112**

**skipped question 3**



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**5. Do you belong to any related professional organizations, trade associations, or clubs [specifically related to the work described above]?**

	Response Percent	Response Count
Yes 	70.9%	783
No 	29.1%	322
<b>answered question</b>		<b>1,105</b>
<b>skipped question</b>		<b>10</b>

**6. Have you registered any of your works with the U.S. Copyright Office?**

	Response Percent	Response Count
YES (if YES, skip #7) 	39.1%	428
NO (if NO, skip #8 and #9) 	60.9%	668
<b>answered question</b>		<b>1,096</b>
<b>skipped question</b>		<b>19</b>



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**7. If you have NOT registered any of your works, why not? (check as many as apply)**

		Response Percent	Response Count
I don't understand how/ don't I need to pay a lawyer to do it?		41.5%	261
I know I should, but I don't get around to doing it		49.9%	314
The form/registration is too difficult		18.4%	116
It costs too much		36.4%	229
It's not applicable to the type of work I do		10.0%	63
I work for a company/studio in a work-for-hire situation		13.8%	87
I do not want to get involved with the government in any way		3.2%	20
It doesn't effectively protect my rights, so why bother?		27.7%	174
		<b>answered question</b>	<b>629</b>
		<b>skipped question</b>	<b>486</b>

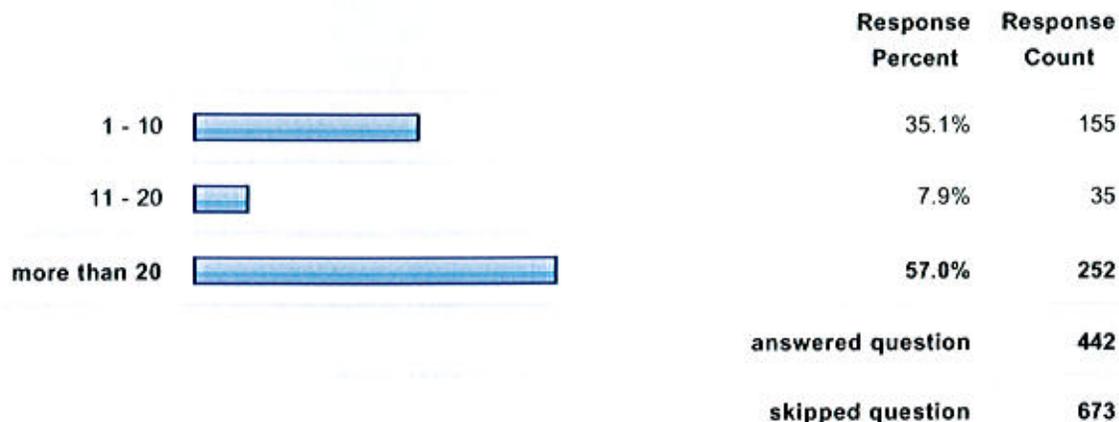
**8. Have you used online registration at the U.S. Copyright Office web site (eCO)?**

		Response Percent	Response Count
Yes		42.6%	281
No		57.4%	379
		<b>answered question</b>	<b>660</b>
		<b>skipped question</b>	<b>455</b>

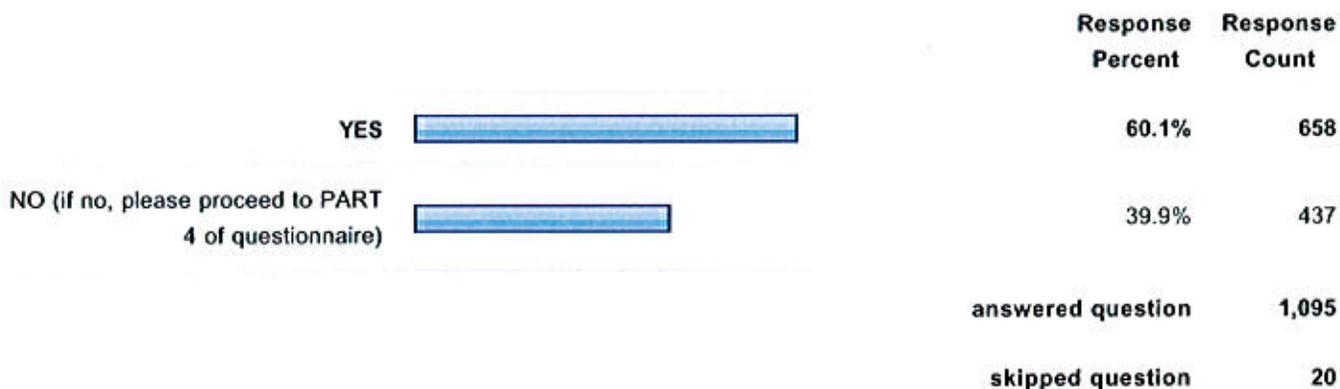


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**9. If you have registered your works with the U.S. Copyright Office, approximately how many total works/images have you registered to date?**



**10. To your knowledge, has your work ever been infringed by another person or business?**



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**11. If your work has been infringed, what was the source/medium of your work that the infringer used? (check as many as apply)**

	Response Percent	Response Count
From a printed piece (including a photographic print)	49.4%	307
From the internet (your website, or your work on another website)	70.7%	440
From a CD, DVD, film or videotape	12.1%	75
From a digital file emailed to someone else	27.0%	168
the original (including from 2D or 3D artwork) was copied	19.8%	123
licensed merchandise/product	8.2%	51
	<b>answered question</b>	<b>622</b>
	<b>skipped question</b>	<b>493</b>

**12. If your work has been infringed, was the infringed work registered with the U.S. Copyright Office?**

	Response Percent	Response Count
YES	20.5%	127
NO	62.0%	384
Some were, some weren't	17.4%	108
	<b>answered question</b>	<b>619</b>
	<b>skipped question</b>	<b>496</b>

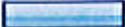


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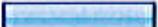
**13. If your work has been infringed, did the infringer use it (check as many as apply)**

		Response Percent	Response Count
<b>a. For profit or commercial use:</b>		64.3%	399
commercial sale of merchandise (including product packaging)		24.8%	154
commercial production of a motion picture (film or video, TV, broadcast, animation)		5.2%	32
advertising or marketing campaign (including a retail display)		39.9%	248
Signage		8.7%	54
business identity/logo		15.8%	98
in a publication (including an online publication)		42.5%	264
on a website of a retail/mail-order business		37.8%	235
<b>b. Not for profit or commercial use:</b>		20.1%	125
for educational use (such as a teacher or school)		11.1%	69
by a religious organization		2.1%	13
by a charity		3.7%	23
by a club		4.0%	25
in an exhibit or display by a museum or library		2.1%	13
on someone's personal website or blog (their own URL)		39.1%	243
included in an online archive or database		16.6%	103
in a news report or satire/parody		6.0%	37
on YouTube, Facebook, Pinterest,			



MySpace or similar web site where users/subscribers upload content		18.7%	116
personal use (including in someone's portfolio)		21.4%	133
other type of use (describe use briefly)		8.9%	55
		<b>answered question</b>	<b>621</b>
		<b>skipped question</b>	<b>494</b>

**14. What did you do when you discovered the infringement? (check as many as apply)**

		<b>Response Percent</b>	<b>Response Count</b>
nothing		23.4%	144
nothing, I could not track down the infringer		11.7%	72
contacted an attorney for advice		24.6%	151
<b>wrote to/contacted the infringer yourself</b>		<b>68.3%</b>	<b>420</b>
had an attorney write to the infringer		19.8%	122
hired an attorney and filed an infringement lawsuit		8.1%	50
		<b>answered question</b>	<b>615</b>
		<b>skipped question</b>	<b>500</b>



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### 15. What action did the infringer take in response?

		Response Percent	Response Count
Nothing		51.7%	294
Claimed ownership/authorship		13.9%	79
Consulted with an attorney		9.7%	55
Hired an attorney to take actions on his/her behalf		10.4%	59
Abided by the cease & desist letter		37.3%	212
Paid the invoice for usage you sent		16.9%	96
Arrived at partial settlement		15.8%	90
Arrived at full settlement		10.2%	58
<b>answered question</b>			<b>569</b>
<b>skipped question</b>			<b>546</b>



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**16. If you or your attorney contacted the infringer, and**

		Response Percent	Response Count
a. Succeeded in resolving the situation without going to court, was that work registered?		37.8%	154
	YES	28.7%	117
	NO	49.6%	202
b. Did not succeed in resolving the situation without going to court, was the work registered?		18.4%	75
	YES	19.7%	80
	NO	32.2%	131
	<b>answered question</b>		<b>407</b>
	<b>skipped question</b>		<b>708</b>

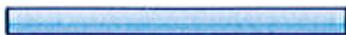
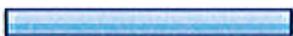
**17. If you hired an attorney and filed an infringement lawsuit, what was the outcome?**

		Response Percent	Response Count
I won		21.7%	20
I lost		2.2%	2
the suit was settled out of court		50.0%	46
the suit was dismissed/dropped		12.0%	11
I won, but the infringer has not paid me		14.1%	13
	<b>answered question</b>		<b>92</b>
	<b>skipped question</b>		<b>1,023</b>



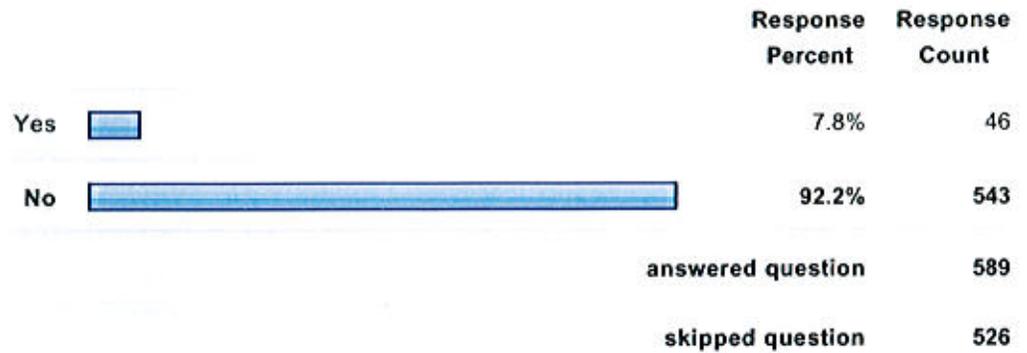
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**18. If you did not hire an attorney and file a copyright infringement lawsuit, why not? (check as many as apply)**

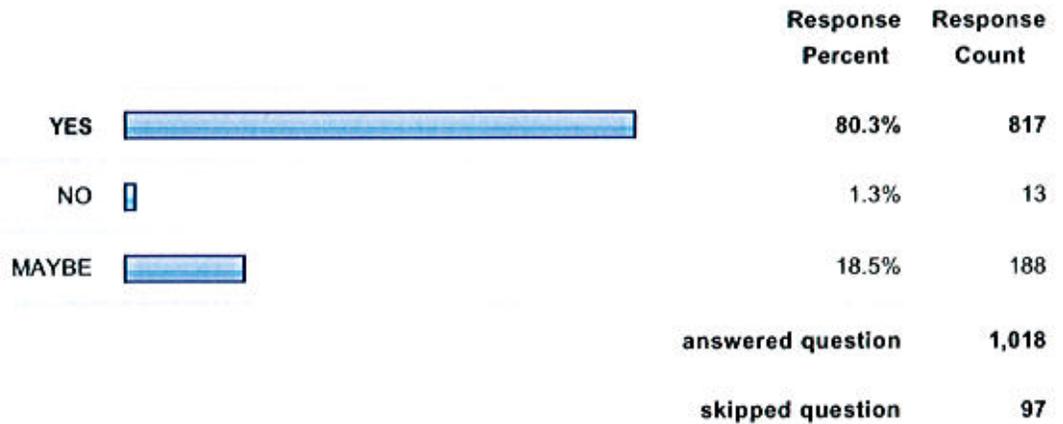
		Response Percent	Response Count
too much of an ordeal/I didn't want to go through with it		55.5%	276
my work was not registered, and I would not recoup attorney's fees and court costs (could not afford an attorney)		53.3%	265
my work was registered, but I could not find an attorney to take the case on a contingency basis, and I could not afford to pay attorney's fees out of pocket up front (could not afford an attorney)		13.9%	69
my work was registered, but an attorney told me that I did not have enough documentation to win the case in court		2.8%	14
the infringer would have been unable to pay damages and legal costs even if I had won		23.7%	118
the infringer was a large corporation or business with deeper pockets than mine to fight the case		28.0%	139
the infringer was in another state or country, and the lawsuit would have been too costly or complicated		33.4%	166
the amount I would have been awarded or would ask for was less than the legal costs:		44.9%	223
i. less than \$10,000		37.4%	186
ii. less than \$20,000		3.4%	17
iii. less than \$30,000		2.8%	14
<b>answered question</b>			<b>497</b>



**19. Have you sued an infringer on more than one occasion?**



**20. If the Copyright Office established an alternate dispute resolution for small-value copyright infringement cases, where you would NOT have to hire an attorney to represent you, would you be inclined to use it if your work was infringed?**



**21. If the Copyright Office established an alternate dispute resolution for small-value copyright infringement cases, what should be the ceiling (maximum amount) of damages awarded to the rights holder?**

		Response Percent	Response Count
up to \$10,000		26.5%	270
up to \$20,000		24.7%	251
up to \$30,000		48.8%	497
		<b>answered question</b>	<b>1,018</b>
		<b>skipped question</b>	<b>97</b>

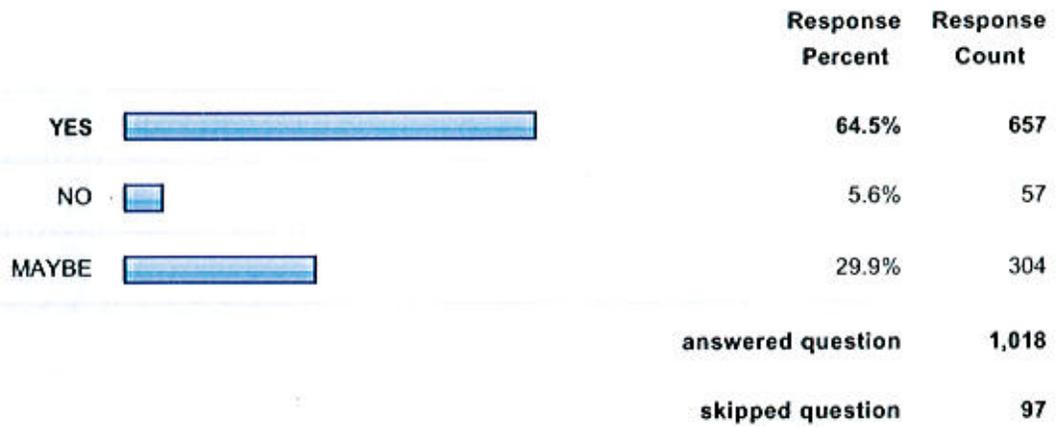
**22. If the Copyright Office established an alternate dispute resolution for small-value copyright infringement cases, it would likely operate by mail at one central location (such as the Copyright Office), and not localized district courts requiring in-person appearances. The rights holder would have to collect documentation of copyright ownership and infringement according to an established procedure, and send it in.**

		Response Percent	Response Count
YES, I like this idea		84.6%	861
NO, I do not like this idea		4.9%	50
NO, I do not like the mail-in idea and would rather appear in person in court		10.5%	107
		<b>answered question</b>	<b>1,018</b>
		<b>skipped question</b>	<b>97</b>



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23. If the Copyright Office established an alternate dispute resolution for small-amount copyright infringement cases, as described above in Part 4 #22, would you be more likely to register your work with the U.S. Copyright Office?



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Page 5, Q13. If your work has been infringed, did the infringer use it (check as many as apply)

- 1 Infringer took one of 100 prototypes which held copyright notice, but copyright was not filed until after my client field-tested the prototypes and made a few final changes. It was an "artist's work in progress" at the time a prototype was "stolen" but subsequently registered AFTER the client's tests were complete, and before the infringement was discovered. I was able to convince their general-  
[practiceattorney we had a solid case and that my modestly deep-pocketed client was ready to fight, so he advised his client to cease and desist. They did and we let it go at that. If there were a "small claims copyright court" not requiring hiring an attorney who practices in federal court, we likely would have put this case in that venue. [commercial sale] Oct 8, 2012 7:19 PM
- 2 note: infringement has happened 4 times, all for commercial uses but all with different outcomes: 1. identity/logo copied from original and produced materials without payment. contacted infringer and they paid. 2. website creation and client refused to pay final invoice. filed in small claims court, client moved it to the superior? court, i fought it myself b/c the cost of an attorney would have been too high; ended up settling out of court for \$1 b/c it wasn't worth the hassle 3. client decides to file bankruptcy and refuses to pay final invoice for work complete. i contacted directly but he never reconciled his account. 4. logo used without final payment. i contacted infringer directly but they refused to cease and desist. wasn't worth fighting in court. [identity/logo] Oct 8, 2012 3:20 PM
- 3 NGO's which are very clearly working on behalf of a specific for-profit industry, while populating their site with photographic images taken and used without the owners permission and then claiming fair use under the educational clause of the recent internet copyright laws (I am not sure of the exact name of this legislation) For a specific example, see: www.windwatch.org. [business website] Oct 8, 2012 3:05 PM
- 4 MAXIM magazine has used several of my images, removed my credit/ownership watermark and placed MAXIM.com on the photo. Without knowledge nor permission. [in a publication] Oct 8, 2012 2:41 PM
- 5 A fan site [personal website, blog] Oct 8, 2012 2:31 PM
- 6 Corporate Medical Website [in a publication] Oct 8, 2012 9:09 AM
- 7 My work has been used without my authorization or payment dozens of times Oct 8, 2012 7:14 AM
- 8 In indirect support of their business. By getting it from the Internet, they avoided having to purchase a copy. [advertising, marketing] Oct 8, 2012 5:49 AM
- 9 art installation [commercial sale] Oct 7, 2012 8:58 PM
- 10 selling postcards of my artwork on ebay, they photoshopped out my signatures. Out of China. Happened several times. [commercial sale] Oct 7, 2012 7:33 PM
- 11 Fan page for an internationally known band [personal website, blog] Oct 7, 2012 5:24 PM
- 12 fan website of band. [personal website, blog] Oct 7, 2012 9:18 AM
- 13 Corporate art ollection [commercial sale] Oct 6, 2012 6:26 PM
- 14 All of my books have been pirated in ebook/pdf format and are floating around Oct 6, 2012 11:01 AM



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**Page 5, Q13. If your work has been infringed, did the infringer use it (check as many as apply)**

the internet. I've also had some of my photographs used without my permission on the internet all over the world. [commercial sale]

- |    |   |                      |
|----|---|----------------------|
| 15 | My artwork was used for a background prop on a TV show. [motion picture]  | Oct 6, 2012 6:13 AM  |
| 16 | Ripped off my design poorly - it was a yearbook company. I had designed a logo for the school. [identity/logo]  | Oct 5, 2012 11:23 PM |
| 17 | Used my work but didnt have a written contract for i was an intern for a week working 10hrs a day. But found out my school didnt ask of an internship in order to finish the program. (Unpaid internship)! [commercial sale]  | Oct 5, 2012 8:40 PM  |
| 18 | uploaded as a "tube", "signature file" and my books and calendars are on free download sites/ files [commercial sale]   | Oct 5, 2012 4:12 PM  |
| 19 | They sold my painting images as "e-cards". [commercial sale]  | Oct 5, 2012 4:11 PM  |
| 20 | sale of my copied work on a stock illustration site. [commercial sale]  | Oct 5, 2012 1:19 PM  |
| 21 | www.nabj.org [in a publication]   | Oct 5, 2012 9:27 AM  |
| 22 | People take my images, remove the backgrounds, put their own backgrounds and names on the new creation, write have a nice day or some saying or name on them and post them all over the comment sections of social media sites.. They call it signature tags. [online, user social media]   | Oct 5, 2012 8:52 AM  |
| 23 | All over Pinterest and and many "scrapper" sites. [online, user social media]   | Oct 4, 2012 7:17 PM  |
| 24 | This is not a single incident. It happens frequently to almost all artists so answering this as a single incident doesn't work. The outcome for each event is different. Sometimes the infringer complies with an email alerting copyright infringement sometime they don't. It's a widespread problem and most infringers know that artists will not pursue them any further because its such an expensive undertaking both time wise and monetarily. [Not applicable] | Oct 4, 2012 6:52 AM  |
| 25 | on a celebrity fan blog/news site [personal website, blog]  | Oct 4, 2012 6:44 AM  |
| 26 | Have found my work with my signature removed and replaced by the infringer's, in that case was used to illustrate a writer's article. I send DMCA takedowns to site hosts, (re questions 14, 15, I skip contacting the infringer because they rarely comply. But the site host will. [in a publication]   | Oct 3, 2012 9:45 PM  |
| 27 | copied art and tried to re-sell as their own on istockphoto [commercial sale]   | Oct 3, 2012 6:49 PM  |
| 28 | as personal avatars for different websites [online, user social media]  | Oct 3, 2012 5:55 PM  |
| 29 | fyi - you survey is flawed here because there are different answers below for different instances of infringements. [Not applicable]  | Oct 3, 2012 3:59 PM  |
| 30 | image was under license with getty, an infringement suit was brought by them, on my behalf, against a party in Iceland [commercial sale]  | Oct 3, 2012 2:27 PM  |
| 31 | sale of prints [commercial sale]  | Oct 3, 2012 1:34 PM  |



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**Page 5, Q13. If your work has been infringed, did the infringer use it (check as many as apply)**

- |    |  |                      |
|----|--|----------------------|
| 32 | Another photographer's portfolio [personal use, portfolio]   | Oct 3, 2012 1:19 PM  |
| 33 | Was a photographer that stole from another photographer. [commercial sale]   | Oct 3, 2012 1:10 PM  |
| 34 | used in several blogs; [personal website, blog]  | Oct 3, 2012 12:22 PM |
| 35 | Press release [advertising, marketing]   | Oct 3, 2012 6:28 AM  |
| 36 | I was a student and I found my stuff popping up all over the place after I left the school [personal use, portfolio]   | Oct 3, 2012 3:26 AM  |
| 37 | To promote their business services [advertising, marketing]  | Oct 2, 2012 9:39 PM  |
| 38 | Government use....a City catalog cover [in a publication]  | Oct 2, 2012 8:23 PM  |
| 39 | Saw a copy of my original work in a magazine article, had no idea whether this was a one-off or used for profit. Magazine was not helpful. [in a publication]  | Oct 2, 2012 5:35 PM  |
| 40 | used it on her web site and later offered to take it down or pay, we came up with a # [business website]   | Oct 2, 2012 4:25 PM  |
| 41 | Student used my work in her portfolio. [personal use, portfolio]   | Oct 2, 2012 4:12 PM  |
| 42 | They used an image of mine for their 'business' Facebook page profile photo. [advertising, marketing]  | Oct 2, 2012 2:57 PM  |
| 43 | publishing, books, retail and textbooks [in a publication]   | Oct 2, 2012 2:33 PM  |
| 44 | television [motion picture]  | Oct 2, 2012 2:08 PM  |
| 45 | Industry blog [personal website, blog]   | Oct 2, 2012 2:07 PM  |
| 46 | By a ship modeling society in their 6 x per yr publication. [in a publication]   | Oct 2, 2012 1:46 PM  |
| 47 | Part of their own portfolio [personal use, portfolio]  | Oct 2, 2012 1:27 PM  |
| 48 | On a website of a service-based business [advertising, marketing]  | Oct 2, 2012 1:23 PM  |
| 49 | magazine logo, magazine cover design, derivative works of magazine design and layout. unlicensed display of magazine on web site as downloadable pdf file. [identity/logo]   | Oct 2, 2012 12:34 PM |
| 50 | a logo for a realtor on their website [identity/logo]  | Oct 2, 2012 11:37 AM |
| 51 | I don't know what they did with it, they just said they lost my painting and that they "might have donated it" [Not applicable]  | Oct 2, 2012 11:33 AM |
| 52 | Store front signage of a business. [Signage]   | Oct 2, 2012 11:16 AM |
| 53 | In college, for senior portfolio show my corporate identity logo(semester project) was stolen by another student and they incorporated it in their portfolio and represented it as their own - the professor discouraged me from taking any action [personal use, portfolio] | Oct 2, 2012 11:14 AM |



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**Page 5, Q13. If your work has been infringed, did the infringer use it (check as many as apply)**

- |    |   |                      |
|----|---|----------------------|
| 54 | As font menu selection which violates license agreement. [advertising, marketing] | Oct 2, 2012 11:12 AM |
| 55 | On signage for a restaurant/bar [Signage]   | Oct 1, 2012 3:16 PM  |



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