

9-25-2018

Testimony of
Jenna Close, Commercial Photographer
On Behalf of Herself and the American Society of Media Photographers
Before
The Committee on the Judiciary
United States House of Representatives on
H.R. 3945
the Copyright Alternative in Small-Claims Enforcement Act of 2017
September 27, 2018

Mr. Chairman, my name is Jenna Close, I am a commercial photographer based in San Diego, California. I appear before the Committee today on behalf of myself and the American Society of Media Photographers,¹ of which I am a past National Chair Person. I am here to express the support of our organization for H.R. 3945, the Copyright Alternative in Small-Claims Enforcement Act of 2017 (the CASE Act).

At the outset, I want to thank you and other Members for your interest in helping provide individual creators and small businesses with the legal tools they need to protect their creative works from those who use them without permission or compensation.

I am not an attorney. I am not a copyright lawyer. I am not here today to discuss the legal specifics that are spelled out in H.R. 3945. I will leave that to others. Instead, I will spend my time this afternoon explaining why individual creators like myself are so frustrated when it comes to the operation of our current copyright system. Quite simply, we may have rights to protect our creative

¹ The American Society of Media Photographers (“ASMP”) is a 501(c)(6) not-for-profit trade association, established in 1944 to protect and promote the interests of professional photographers who earn their living by making photographs intended for publication. There are more than 5000 members of ASMP, organized into 38 local chapters across the United States, with members representing literally every genre of professional publication photography. ASMP photographers work in still and motion formats, providing visual imagery to clients in print, broadcasting, and digital media across the world.

9-25-2018

efforts under the copyright law, but we are routinely unable to *enforce* those rights because of the costs and complexities of bringing a lawsuit in federal court—the only place to bring a copyright infringement suit today.

As an independent creator, I appreciate the protections afforded to me under the copyright law. I am vigilant to ensure that my contracts make clear that my partner, Jon Held, and I, and not our clients, retain the copyright to our images.

I also understand the role that the copyright registration process plays in helping creators access the protections available under our copyright laws. I realize that registration is tied directly to the ability to initiate copyright suits in the first place and to access certain remedies available to creators who file suit in federal court. At the same time, I do not register our works routinely. I consider myself to be an “intermittent registerer”. In all honesty, I would register our images more regularly if given a reliable and affordable path for pursuing infringement . Copyright registration is an investment in time and money and yet, with the present situation it is rare that there is a positive return on that investment.

For more than a decade, I have been making my living as a commercial photographer. I work primarily in the industrial, commercial, and advertising sectors providing still images and video to both domestic and international clients. Like so many professional photographers, graphic artists, illustrators, videographers and other creators, Jon and I run a small business. We don't have

9-25-2018

the luxury of lots of staff to help make our company run smoothly. That means we wear many hats. Our 60-70 hour-work weeks are made up of marketing our photography, negotiating and booking jobs, creating imagery, billing our clients and paying the bills.

Regrettably, like so many other visual artists, Jon and I often find our works infringed—an exceedingly easy thing to do in our digital world. We regularly discover our photos lifted from our website by unscrupulous infringers who have no interest in paying the going license fees. We have witnessed our photos enlarged as the backdrop to a competitor's tradeshow booth while our paying client was rightfully using the same artwork at the same tradeshow in their own booth. You can guess how our client felt about that!

To help the Committee better understand the scope of infringements Jon, I and so many others face, I did a little experiment. A couple of days ago, I did a so-called "reverse image search" of one of my most frequently infringed images. A reverse image search involves uploading a photo to <http://images.google.com>. Google then returns a list of every website on which that exact image is found.

During this most recent search, I found a single image of mine was being used without permission on 41 different websites. Of those 41 websites, 18 were large companies. And that does not include any print infringements that may be out there. That's 41 potential licensing fees that I will likely never be able to collect.

9-25-2018

Copyright infringements cost visual artists revenues needed to keep their business in the black and to provide for their families. Our profit margins are often slim, and every dollar earned is needed. To give you some perspective, my business needs to bring in \$4000 a month simply to be in the black. That is our baseline. We typically bring in more, which on average ranges from \$5,000 to \$8,500 per month or \$60,000-\$100,000 a year. Each year our income varies and as you can see, the profit lost from just one infringement makes a big difference in our bottom line.

Copyright infringement also threatens to cause current or prospective creators to choose another vocation because they fear they cannot make a modest living from their work. I am convinced that these violations have bred frustration and, ultimately, disregard for intellectual property rights. Large entities are well aware that small creators are unlikely to sue and, if they do, that they are easily bled dry of resources. I am sure you can accurately guess where most of the cease and desist letters photographers send wind up.

The truth is that visual artists all too often forgo legal action—irrespective of how egregious and widespread the infringement. Why do I and other visual artists frequently refrain from pursuing claims against infringers? The answer is so simple. Federal court litigation is too burdensome and expensive.

9-25-2018

Visual artists tend to work in a high volume, low value industry. Losses they sustain from a single copyright infringement often amount to a few thousand dollars. Mr. Chairman, that may not sound particularly problematic given the large-scale, big dollar cases that I suspect you and your colleagues hear about. But, for a visual artist it is a significant part of our overall income.

Imagine our frustration when we learn our only legal recourse is to hire an attorney and go to federal court—options that are well beyond the means of the typical visual artist, where any potential favorable verdict would likely be dwarfed by the cost of bringing the suit in the first place. Regrettably, this reality makes these losses a cost of doing business, and one that not many creative small businesses can afford. It is no wonder that so many visual artists settle at most for sending a cease and desist letter that typically winds up in the trash bin.

The time to end this historic inequity is now. As I see it, the CASE Act is our best shot at ensuring that visual artists for the first time will be full participants in the copyright marketplace. How exciting for visual artists to finally have hope that they will emerge from the legal darkness and have a seat at the table! I believe that if Congress enacts a small claims bill, individual creators and small business people will participate in great numbers.

The sponsors of HR 3945 and the Copyright Office deserve much credit for their hard work developing this legislation and bringing it to this critical juncture. For

9-25-2018

those of us with limited exposure to how government really works, it is refreshing and inspiring to see that, just maybe, after identifying a real world problem, Congress will enact a piece of legislation that provides a much-needed solution.

And, for those well-heeled organizations who oppose or criticize this legislation, I ask that they try to put themselves in the place of the individual creators and small business people around the country who lack their deep financial and political resources. I ask them to imagine how frustrated they would be if they were in that position, and I urge them to do the right thing and work together with us to make the promise of HR 3945 a reality.