

From: [REDACTED]
To: [FN-OMB-IntellectualProperty](#)
Subject: Comments on intellectual property rights
Date: Tuesday, March 23, 2010 6:53:17 PM

The North American Nature Photography Association has informed me of this welcome invitation from the Obama Administration to share my thoughts on my rights as a creator. My name is Vernon Lix and I live in Gatlinburg, Tennessee. I am a self employed photographer and earn income from my photographs published in books, periodicals and on the internet.

In my business I am concerned with copyright infringement. I am really concerned about the current treatment of "orphan works". Many publications do not include photographer names with photographs and the photographer's name almost never appears with photographs on the internet. This leads to easy possibilities for the occurrence of orphan works and makes it overly easy for an infringer to claim a "reasonably diligent" search placing the burden of discovery and proof of infringement on the photographer with no prospect of compensation beyond what he would receive for a legitimate sale. Copyright metadata embedded in photographs is easily stripped. There is now little reason for an infringer not to pick and choose at will on the internet, because there is no penalty and, if caught, he is in exactly the same position as if he had searched and found the photographer in the first place.

I do not have the resources to cite exact monetary amounts as you request in your call for comments, but it seems obvious to me that with hardly any deterrent to using photos at will on the internet, it must be having a substantial negative impact on photographer's earnings, and hteir contribution to the gross national product.

From reading the call for comments I get the impression that the primary concern is to find ways to strenghten enforcement of intellectual property rights. I think two steps in particular would be of great benefit. First there should be a firm definition of what constitutes a "reasonably diligent search" for a photographer's name. Second, if photo copyright infringement is proven in the courts, the guilty party should be automatically required to pay damages and all legal and court costs whether or not the photos are copyright registered. Without substantial consequences, there is no reason for anyone to comply with this law.

I support education and sometimes donate photos for causes I believe in. I understand that one reason for the current approach to orphan works comes from school and library needs to reproduce works for educational purposes. Certainly an exception could be included for these legitimate needs without pursuing a one size fits all approach, making it impossible for freelance photographers to enforce their copyrights.

Again, I thank you for the opportunity to send my comments.

Vernon M. Lix