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Office of Management and Budget
Executive Office of the President
Office of the Intellectual Property Enforcement Coordinator (IPEC)
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This letter is submitted on behalf of the Art Copyright Coalition in response to the Office of the Intellectual Property Enforcement Coordinator's request for written submissions from the public concerning the development of an intellectual property enforcement strategy.

The Art Copyright Coalition ("ACC") is an international, Washington D.C. based, non-profit organization that comprises of artists, publishers, authorized artist agents, artist's estates, exclusive licensees, or others who have contractually obtained the right from the copyright owner to enforce their copyrights. The ACC was formed as a result of discussions between those who felt a strong need to unite in their fight against infringements of their visual artworks. Some of the largest art publishers in the country, representing some of the most well-known artists, founded the ACC. Shadowed by film, music and software corporate giants, the art publishing industry is often overlooked when it comes to discussions of intellectual property rights. As the chief organization that represents the interests of the visual arts industry, the ACC has given a voice to this very important community of creators and business owners.

Since its inception in 2002, the ACC has made great strides in the fight against copyright infringements in the visual arts. By working together and sharing information within the organization, our members have discovered countless copyright infringements and have jointly pursued those infringers to recover damages and prevent further infringements. Additionally, the activities of the ACC have benefited the art publishing industry as a whole. For example, our routine presence at annual industry trade shows has brought attention to the widespread problem of copyright infringement in the visual arts. We have confiscated and destroyed infringing artworks displayed at these shows that infringe on our members' copyrights – showing those infringers that the ACC will take action against them. ACC members, with the help of the organization's general counsel, have recovered hundreds and thousands of dollars in damages from infringers.

Due to the inherently illicit nature of copyright infringement in the visual arts, it is difficult to track or provide quantitative analysis of the economic losses suffered by the U.S. economy. Anecdotally, however, tens of millions of dollars have been lost over the years –

harming artists, the creative process, and American business interests. The ease at which infringers can access artwork images to perpetrate their crimes has only increased in the years since the internet has enabled instant and widespread proliferation of artwork images. The problem persists as copyright infringers grow bolder, have no fear of repercussions for their crimes, and continue to find profit in their illicit acts. As we know, the matter of copyright infringement certainly has international reach, which affects our national economy. China, for example, is a leading source of production and export of infringing artworks and commercial products bearing those artworks to the U.S. and U.S. distributors.

An additional enterprise of the ACC is its lobbying efforts on Capitol Hill concerning legislation that affects the visual arts community. In 2008, the ACC was the active voice for the visual arts community and art publishing industry with regards to the Orphan Works Bills that were pending in the House and Senate. Orphan Works legislation could have been a serious threat to the industry, potentially opening up the floodgates for unauthorized use of artworks, and subsequently, little remedies for the copyright owner. Through written correspondence and face-to-face meetings with legislative staff, the ACC highlighted loopholes in the bill and suggested provisions that would provide additional protection to visual artists and art publishers who are often victimized by the proliferation of cheap knock-off products.

If orphan works legislation were to be enacted, which is a possibility in the near future, there are a few important provisions that could address the concerns of the visual arts community. Although ultimately not passed into law, the House introduced in April 2008 the "Orphan Works Act of 2008" (H.R. 5889). Sec. 514(d) of the bill included a general exception for "useful articles," which would have prevented applicability of the act to uses of "orphan works" on commercial products. For members of the ACC, this provision is crucial to their concerns and resolves a number of issues that threaten the rights of owners of valuable, copyrighted artistic images. Copyright holders have filed countless infringement suits against companies who copy their images and include them on handbags, luggage, frames, decorative trinkets and numerous other commercial products. Exploitative infringers are not the intended beneficiaries of orphan works legislation. With an exception for "useful articles," manufactured, commercial goods and other objects and items that are offered to the public for sale or otherwise, are now excluded from the benefits of orphan works legislation. Inclusion of this provision is consistent with the goals of the bill, to enable non-profit, educational and culturally enriching uses of orphan works, but sufficiently protects copyright owners from potential exploitation by those users seeking to profit from appropriation of someone else's copyrighted image. Commercial companies that sell or distribute useful articles should continue to be required to either first obtain an appropriate license, choose another image if the copyright holder cannot be located, or be subject to damages under a copyright infringement suit. We believe an exclusion for "useful articles" is essential to creating fair and balanced orphan works legislation.

With regards to registration and recordation of copyright works, the U.S. Customs and Border Protection should allow copyright and trademark holders to record their works as a group or collection, rather than requiring them to register each work one by one. The CBP Intellectual Property Rights e-Recordation (IPRR) application requires a separate application and a separate recordation fee of \$190 for each and every recordation sought. Currently, this model creates an impediment for effective enforcement. Artists, art publishers, exclusive

licensees and other copyright holders of visual artworks often have hundreds or even thousands of original artworks to protect. This time required to complete numerous applications and, in particular, the cost required for each recordation is prohibitive. Therefore, many copyright owners have no possibility of recording their works with the CBP. In 2007, only somewhat over 21,000 copyrights and trademarks were registered with the CBP. This represents a mere fraction of the millions of visual artworks, not to mention other types of copyrights and trademarks, that are at risk of international infringement. Although the CBP enforces the intellectual property rights of both recorded and non-recorded works, the recorded works take precedence and many infringing works pass through our borders undetected. We suggest that the CBP allow copyright and trademark holders to record their works in groups, sets or series, much like the U.S. Copyright Office allows. In this case, a visual artist who creates a series of images that feature the “New York Skyline” can register those works together, saving both time and money. Another suggestion might entail the sharing of information between government agencies. For example, the Copyright Office and the CBP could share information concerning registration. So copyright holders could register their works through one central agency – most logically the Copyright Office – and then such information would automatically become available to the CBP. Either one of these solutions would make the job of the CBP easier and more efficient, as the agency would have a current awareness and record of U.S. copyrighted works.

As technology advances and becomes more accessible generally, the U.S. government should use all new tools available in combating counterfeiting of intellectual property. For example, private technology companies are developing image search and recognition software which allows individuals to run searches by image, rather than text. Currently, the “Google Image” search functionality uses a text-based search query to find images. If one searches online for an image of Marilyn Monroe, for example, the image must be tagged with the words “Marilyn Monroe” in order to be found. If there is an image of Marilyn Monroe tagged with another name or title, or no name at all, it will likely not come up in the search results. Image-based search and recognition is much more effective to locate an image that an infringer might be hiding somewhere online. In this case, the individual would scan an image into the computer and the search would recognize all or part of that actual image, so no identifying textual tag would be necessary to locate the image. Private companies in the U.S. and in Canada, who are leaders in developing this type of technology, have already successfully used their software for clients such as celebrities, for example, to track their images plastered throughout the web. It will be just a matter of time until this technology is consistent, available, and reliable. The orphan works legislation in 2008 considered this exact type of search engine and, in fact, contemplated for a searchable visual database of copyrighted artworks. Taking advantage of cutting-edge technology in its intellectual property rights enforcement efforts, the U.S. government should allot financial support towards research and development of image-based search engines, and furthermore should fund and administer a searchable visual database where individuals could go to find and identify copyrighted visual artworks. As contemplated by the orphan works bills, the most logical home for this database would be the Copyright Office. This repository of copyrighted artworks should be available to the public and the burden of searching such database should be on the individual who intends to reproduce in some way an existing artwork. This type of central database would make it much more difficult for infringers to claim inadvertent counterfeiting. Viable visual search engines are right around the corner – drafters of the “Orphan Works Act of 2008” (H.R. 5889) estimated that at least two independent, searchable,

electronic databases would be available to effectively search for pictorial, graphic and sculptural works by January 2013 or sooner. We urge you to make funding and support for this important initiative a priority in your intellectual property rights enforcement strategy.

Generally speaking, enforcement of copyright laws here in the U.S. could be much better. The U.S. Attorney's Offices are not interested in pursuing the average copyright infringement suit, which makes up a striking majority of cases. Except for a few high-profile cases, infringers of the visual arts enjoy virtual impunity for their crimes. The run of the mill counterfeiter, which is responsible for most of the infringements in the visual arts, faces no real risk of criminal action. We are encouraged by the recent introduction of the DOJ's new Task Force on Intellectual Property; however we must stress the importance of pursuing copyright infringers, not only to recover the economic losses suffered by America's creators and to prevent further infringements by repeat offenders, but also to discourage potential infringers from committing these grave crimes.

Lacking a large advocacy organization such as the Recording Industry Association of America, the Motion Picture Association, or the Software & Information Industry Association, visual artists and the visual arts community have no powerful trade association. Although our numbers may be smaller than these giants of the creative industries, our concerns for protection of our intellectual property are duly important and should not be overlooked. While the ACC has made efforts to increase awareness and to participate in public and industry programs concerning intellectual property rights enforcement, many times the visual arts community is forgotten. There are countless "starving artists," sole proprietors, relatively small art publishing companies, and even successful artists that fall outside the scope of the ACC and cannot fund lobbying groups. We ask that government agencies concerned with these matters, such as the U.S. Chamber of Commerce, the Office of the Intellectual Property Enforcement Coordinator, the U.S. Patent and Trademark Office, and the U.S. Department of Justice, routinely include the ACC and others concerned with the protection of copyright in the visual arts in roundtable discussions, educational initiatives, or other speaking engagements and information-gathering projects directed towards better enforcement of intellectual property rights.

The economic success and viability of the visual arts industry is entirely dependent on the protection of intellectual property rights. As an industry, and as a nation that values innovation, novelty and creativity, we need to continue to pursue this cause, to guard our valuable copyrights, and to make a collective effort against those companies and individuals who seek to gain through counterfeiting our copyrighted images.

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