

February 12, 2019

House Committee on Commerce and Economic Development
Room 35
115 State Street
Montpelier, VT 05633-5301

Re: H.1 - An act relating to agreements not to compete

Dear Chairman Marcotte and Members of the Committee,

I hope that you will receive my input with the same urgency that I feel after reading H.1. I am the President and Chief Technical Officer of Vermont PhotoInkjet, LLC, a software and digital photographic development company located in East Topsham, Vermont. I am President of Cone Editions Press, the world's first digital printmaking studio located in East Topsham, Vermont.

By background, I am considered to be the first pioneer of digital printing (c 1984) and am regarded as the one individual who moved the then obscure practice of printing photographs and art with inkjet into the forefront where today it is the chief method of producing fine art and photography. I have been a development partner to IRIS Graphics and a developer for EPSON USA. Today, the Piezography® systems that I develop for professionals and amateurs are considered to be the highest standard of printmaking technology worldwide for fine black & white printing. My small company holds this distinction over Canon, Epson and HP – all three global conglomerates with annual sales in the billions of dollars. All are actively, and have been actively pursuing the fine black & white printing market – yet remain generations behind the work of Vermont PhotoInkjet.

We do not generate billions of dollars of sales, but always generate in excess of a million dollars annually, and we provide good salaries, full health benefits, and a creative work environment for our staff. In order to generate the type of development that is characteristic of this company it is vital that necessary individuals become aware of proprietary (non-patented) technology and i.p.. One can argue that this proprietary technology should be patented. I believe it is because it remains proprietary and undocumented that Vermont PhotoInkjet has been able to produce systems at a higher standard than Canon, Epson and HP – all which have a vested interest in understanding what it is that we offer and cannot reproduce or re-engineer their own products to match ours.

Because this i.p. is at the heart of our success and survival, my staff have signed non-competing agreements which limit their ability to be employed in a competing capacity. Were H.1. to become law, and should one of my vital staff decide to compete against Vermont PhotoInkjet, LLC it could be extremely difficult for us to continue in business. Our i.p. is open book in this company because of non-compete agreements, and these non-compete agreements are what make this company vital, creative, and continually on the cutting-edge.

An example of this is the employ of our current Technology Development Manager. He came into this company well experienced and quite innovative on his own. But, he was lacking in

certain expertise. He could write algorithms that were essential to producing digital image processing software, but lacked the knowledge in the vital area of smoothing in relation to pixel output using independent channel printer drivers. The algorithms for this are exclusive to and proprietary i.p. of my company. This individual was presented with a non-compete agreement and advised to seek counsel as it would restrict his ability to seek employment with another company or undertake business of his own that was competitive to my company. He agreed and signed the non-compete agreement at which time I opened his eyes and mind to the smoothing algorithms and techniques I have employed for more than a decade. The end result is new innovative software releasing annually at Vermont PhotoInkjet. We do have competing products, but they are sub-standard to ours.

Should H1 become law, I may have effectively set up key employees to become businesses of their own with intimate knowledge of a wealth of Vermont PhotoInkjet proprietary information, technology, methodology, software code, mathematic algorithms, as well as key vendor partners, and customers.

To change hats, I would like to address this committee as President of Cone Editions Press, Ltd also located in East Topsham, Vermont. We are the first digital printmaking studio on Earth. Much of the technology being employed at Cone Editions Press is proprietary. Much of the methodology at Cone Editions Press, Ltd. Is proprietary. This small printing company is able to compete against much larger studios worldwide because of the nature of this proprietary i.p. We have produced work for some of the world's most famous artists and museums because we are the only studio capable of realizing certain projects due to our development of proprietary inks, materials, software and methodology.

Cone Editions Press was selected by Richard Avedon to produce his last living portfolio: <https://mymodernmet.com/richard-avedons-fantastic/>. Cone Editions Press was competing against the best print studios in NYC. We also produced Gordon Parks *Half Past Autumn* retrospective at the Hirshhorn Museum, and Gregory Colbert's monumental *Ashes and Snow* exhibitions that were seen by more people on Earth than any other exhibition in history (13 million). We printed David Bowie's first exhibition in London. We printed James Nachtwey's retrospective for at the Currier Museum of Art. All of these were exhibitions took years to complete and all were accomplished by developing proprietary formulas, software, and methodology.

Should H1 become law, I may have effectively set up key employees to become businesses of their own with intimate knowledge of a wealth of Cone Editions Press proprietary information, technology, methodology, and software code developed for key customers.

I would hope that the committee will take an interest in how non-compete agreements benefit business and foster creativity and allow small businesses in Vermont to compete globally. The non-compete agreement if signed by both parties is the mechanism that allows a company to grow.

I will close by illustrating what happens when non-compete agreements are rendered unenforceable. Because of the expertise I have I was invited to China in the capacity of

consultant to UTEC, a billion dollar Chinese Ink Company. Their interest was to improve their color pigment inkjet ink formulation and they were impressed by the product that my company had been producing. I toured three of their factories which employ more than 25,000 individuals. I met with the heads of several key areas to gain an understanding of their methods, technologies and formulation capabilities. When I made my report (in person) to the head of UTEC, Chairman Arnald Ho, I gave specific examples of what could be improved. I was told it would be impossible. The reason being that they must keep key staff knowledge of certain portions of the ink making separate from the knowledge of other key staff knowledge. Chairman Ho told me that if anyone had all the knowledge they could easily set up a competing company. He was not able to enforce a non-compete agreement at that time in China. As a result, UTEC ink quality continued to be poor for more than a decade. They are just now producing a quality that they could have assumed as the result of my consultancy. Of course, UTEC is now even larger and holds many innovative leads in many other fields of expertise. But, the time has past for them to have become global leaders in inkjet technology when the time was right, because of the inability to enforce non-compete agreements.

Sincerely,

Jon Cone
President and Chief Technical Officer of Vermont PhotoInkjet, LLC
President of Cone Editions Press
Topsham, VT