HOUSE DOCKET, NO. 2850 FILED ON: 1/18/2013

HOUSE . . . . . No. 1738

The Commonwealth of Massachusetts

PRESENTED BY:

John D. Keenan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to the creative economy.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John D. Keenan	*7th Essex*
Michael O. Moore	*Second Worcester*
Cory Atkins	*14th Middlesex*
Jonathan Hecht	*29th Middlesex*
Paul McMurtry	*11th Norfolk*
Kate Hogan	*3rd Middlesex*

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HOUSE . . . . . No. 1738

By Mr. Keenan of Salem, a petition (accompanied by bill, House, No. 1738) of John D. Keenan and others relative to intellectual property . Labor and Workforce Development.

The Commonwealth of Massachusetts

An Act relative to the creative economy.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Subsection (a) of section 148B of chapter 149 of the Massachusetts General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting the following clause:-

(4) or if an individual who is engaged in a profession, trade, or occupation that creates intellectual property that is or is not protected under federal copyright law, federal patent law, federal licensing laws or any other applicable federal, state or international law or treaty governing intellectual property is exempt from section 148B of chapter 149 if they meet the following:

(i) The individual identifies, markets, or promotes themselves as a freelancer, as self-employed, as a sole proprietor or as an independent business.

(ii) The individual controls and regularly negotiates the use of their intellectual property.

(iii) The individual meets the federal standards on independent contractors such, as but not limited to, the Internal Revenue Service 20 Factor Test and any Internal Revenue Service or federal industry specific independent contractor test that may exist.

The exception shall not apply to an individual who has been coerced, threatened or intimidated into establishing an independent business.

SECTION 2. Notwithstanding any general or special law to the contrary, if an individual is a member or is affiliated with a union, guild, membership organization, or professional organization, the employer of the individual is required to abide by the work standards, contracts, pay rate and/or other work practices and agreements established by said union, membership organization, professional organization, or guild. Membership in a professional development organization, union, guild created by a specific employer for its employees and/or independent

23 contractors shall not meet the definition of a union, guild, membership organization or
24 professional organization.