To: Jule L. Sigall
Associate Register for Policy & International Affairs

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From: ward schumaker

Comment:
FROM THE ILLUSTRATORS' PARTNERSHIP

DEMANDING FREE CULTURE

Two weeks ago we notified you that the U.S. Copyright Office is conducting a study of "orphaned works" to determine if copyright protection should be removed from creative work because others wishing to exploit it find the authors "difficult" to locate.

In Kahle v. Ashcroft, two commercial archives have asked the U.S. District Court for the Northern District of California to declare unconstitutional statutes that guarantee the term of copyright protection. The plaintiffs argue that four copyright laws, including the 1976 Copyright Act, are collectively keeping people from gaining access to these orphaned works. The case was dismissed on November 19, 2004, but attorney Lawrence Lessig says the decision will be appealed. He says they had always planned to fight the decisive battle in the appellate courts.

Lawrence Lessig is the Founder of Creative Commons and a leading spokesman for the "Free Culture" movement. The stated mission of Creative Commons is to roll back copyright law to allow "open access to the information commons." It's allied to another group called PK (for Public Knowledge), which appears to be the financial support behind Kahle v Ashcroft. PK receives funding from the MacArthur Foundation, Ford Foundation, Rockefeller Foundation, and Andy Warhol Foundation, among others. http://www.publicknowledge.org

Kahle v Ashcroft is one of a series of lawsuits designed to force protected creative work into the public domain. The suits are being planned and executed as "phases" by the Stanford Law School Center for Internet and Society. Lawrence Lessig is Founder and Director of that organization as well.

An example of the direction the Free Culture movement is taking can be found in an Associated Press story, excerpted from the DOW JONES NEWSWIRES January 29, 2005:

PORTO ALEGRE, Brazil (AP) "In a packed warehouse on the sprawling grounds where tens of thousands were attending the World Social Forum in Brazil, [Free Culture advocates from the United States] urged developing nations to vault themselves into the information age [by undermining copyright]. [They] said proprietary software and copyright laws used by corporations to protect intellectual property prevent people in poor countries from access to the power of information and the creation of wealth and creativity. "

"'Free software! Free culture! Demand it now!' [Lawrence] Lessig said to cheers from the crowd of mostly young activists from around the world."

Lessig and others of this "social movement" have targeted Big Media for attack because media giants are easy targets for populist rhetoric. Who's going to defend the right of corporate giants to keep copyrights from "the people"? But when it comes to the specific issue of protecting artists' rights, these activists dismiss individual authorship as a "romantic myth."

Lessig, like other "copy leftists" believes that "most commercial culture depends on the unpaid appropriation of older material." Therefore they argue that any individual's work is, in effect, a creation of the culture itself. And since the individual is only a conduit through which the culture creates the work, no individual should have the right to withhold from the culture the work it created.

Whether or not one wants to subscribe to this Deconstructionist theory of creativity is a personal matter. But it's another thing to make it a case for enacting laws regarding the ownership of private property, which is what your art is.

The computer, internet, Photoshop, and access to stock and royalty-free archives have all opened up careers as content providers for people who see the appropriation of others' work as an unstoppable trend. "The mission of the Free Culture movement is to build a bottom-up, participatory structure to society and culture," says the Free Culture Manifesto. "We will make, share, adapt, and promote open content. We will listen to free music, look at free art, watch free film and read free books." http://www.freeculture.org/manifesto.php

But if potential users can have legal free access to creative work simply because they want to use it, and if the law is changed to permit it because certain authors are "hard to find," then the principle that you own your own work will have been subverted. And the beneficiaries of all this will not be limited to teenagers wanting to make interactive art using "free" material from the internet.

There are fortunes to be made by entrepreneurs who want to sell access to creative work. But as we've seen with the case of Napster, current copyright laws interfere with their plans. If the Free Culture movement is successful in eroding copyright protections, it's unlikely the business interests who profit from it will be any different from the media giants the copy left is demonizing today. But that success would cost us copyright protections that have been built up over centuries.

This wouldn't be the first time in history that some people have demanded the right to give away the property of others. And for those who see power for themselves in orchestrating the giveaway, "entitlements" for "the people" will always serve as a righteous mask.

But the era of immediate access to corporate libraries of images, sounds and words is still new. Most individual creators have not yet found the means to create alternative ways to distribute their work directly to the public. If legal scholars really wanted to insure future creativity, they'd work with artists to help build a system for tracking and clearing protected rights as they already exist. That would insure that you retained control of your work, while giving others the means to license those rights from you. This, not the progressive emasculation of copyright law, would be a worthwhile agenda for activists to pursue.

--Brad Holland and Cynthia Turner for the Illustrators' Partnership

This is the fourth of five e-mails. The fifth will be a letter to the U.S. Copyright Office, petitioning them to preserve copyright protection for "orphaned works." It will come with instructions on how you can add your name.

For more about this issue, visit
http://www.illustratorspartnership.org/04_forums/index.php
(see "Free Culture/The Copy Left is Not Right" and "Add Your Name -Orphan Works Study." You do not need to be a member to read or post.

This letter may be forwarded in its entirety to any interested party.