July 23, 2015

Maria Pallante

Register of Copyrights

U.S. Copyright Office

101Independence Ave. S.E.

Washington, DC 20559-6000

RE: Notice of Inquiry, Copyright Office, Library of Congress

Copyright Protection for Certain Visual Works (Docket No. 2015-01)

Dear Ms. Pallante and the Copyright Office Staff:

Thank you for the opportunity to comment on the problems visual arts face in the marketplace. I'm a professional artist and have been one for several decades. As a result, I believe I have a valuable real-life perspective on how copyright law actually works in the business world, as opposed to how some legal scholars seem to think it works or how corporate lawyers and lobbyists would like it to work for the benefit of their clients.

I'm writing to stress that for me, and for artists like me, copyright law is not an abstract legal issue. Our copyrights are our assets. Licensing them is how we make our livings. I fear of these changes now being proposed by orphan works.

Below is a response to a question you've posed:

1. What are the most significant challenges related to monetizing and/or licensing photographs, graphic artworks, and/or illustrations?

Two major challenges: a.) Publishers who demand that artists sign away their digital and other secondary rights as a condition of accepting assignments; and b.) Predatory competition from giant image banks.

a.) Over the last three decades, many publishers have increasingly forced artists to surrender valuable digital rights to their work by refusing to give assignments to illustrators who insist on maintaining and managing those rights themselves. As a rule, these demands do not originate from art directors who may want to use a particular illustrator, but from policies enforced by company attorneys who are indifferent to a publication's design integrity and dictate to art directors that they may only use artists who agree to sign their rights away.

Existing copyright law has opened the door to these abusive business practices by permitting work-for-hire contracts. When these agreements are imposed on freelance artists, they deprive the artist of authorship and designate the commissioning party as the art's creator. The artist becomes a de facto “employee" for the sole purpose of forfeiting copyright, but receives none of the benefits of "legal" employment. The artist is treated as an independent contractor in every other way: covering overhead, supplying his or her own tools of the trade, workspace, training, and covering his or her own liabilities, retirement, insurances and other costs of business. Work-for-hire undermines the very principles of authorship embodied in Article 1, Section 8 of the Constitution.

An expert on copyright law tells me that many foreign countries do not recognize work-for-hire agreements. I believe it would be a step forward for American artists if the US Copyright law was amended to repeal work-for-hire imposed on independent contractors.

b.) During the same three decades, giant image banks have persuaded many artists to register their work with them on the promise them. The registration fees for artists were not cheap. As a rule, they had to pay theimage bank more than $150 per image to accept the work, but even where registration

was free, the house ate into royalties with processing fees, maintenance fees and other costs. Yet instead of opening new markets for artists, as promised, the image banks invaded artists' existing markets, lowballing prices and selling in volume to exploit their competitive advantage. Having gotten the work free, they can sell it for anything and still profit. Even the artists who had entrusted them with work have not been spared from having to compete with them. In addition to making artists compete with lowball prices for their own clients, I'm told that image banks retain commissions that range from 50% to 90%. This means stockhouse artists are often left with nothing more than a small fraction of a low fee to replace the full commissions that had once given all of us so much opportunity to do original work.

In less than a decade these commercial registries have radically undermined the markets for creative artists and there is every reason to believe that if registration is reintroduced as a condition of protecting our work that the new for-profit registries would act in the same ruthless way.

Sincerely,

Erica Orgen

(Artist in Washington, DC)