July 21, 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:

My name is Isabella Kung. I am a San Francisco based freelance illustrator and an adjunct instructor. I have illustrated 6 picture books, a set of emojis and a few album covers to name a few. I am currently writing and illustrating my own stories. Copyright law is not an abstract legal issue. Our copyrights are our assets, licensing them is how we make our livings. Copyright is also of the utmost importance to me for creative control of my work to protect its accuracy, integrity and authenticity. Copyright is the basis of my income and ability to support my business. I fear that many of the changes now being proposed by orphan works lobbyists would end that kind of rights for me and foreclose it to younger emerging artists.

I am writing to address the problems visual artists face in the new digital environment.

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

The biggest challenge to monetizing/licensing my work is to keep control of where it appears and who uses it, and to keep my copyright notice and contact information associated with the work. I routinely attach metadata to my electronic image files - that metadata is routinely erased by every website the image appears on. I require that my name and copyright information be included with the image by my client - they will do so, but often the image is appropriated by someone else and that information is cropped off. I always sign my work within the image area, essentially a watermark - but there are multiple companies with software and tutorials instructing users how to erase watermarks.There is nothing I can do to prevent my work from being ‘orphaned’.

2. What are the most significant enforcement challenges for photographers, graphic artists, and/or illustrators?

The very proposals the Copyright Office has made to Congress concern me. It is essentially a revised Orphan Works (OW) bill, but would be even worse. Orphan Works bills have been resoundingly opposed by artists since they first appeared a decade ago. A copyright law built on

the foundation of orphan works law would allow internet companies to syphon off revenue from artists with the hopes of creating an even better revenue stream for themselves. There can be no bigger challenge for those of us who make our living creating new works than to have to compete with giant corporations that can get artwork free from artists and compete with us for our own markets.

3. What are the most significant registration challenges for photographers, graphic artists, and/or illustrators?

The proposal to reintroduce registration would become another financial burden for artists. If the government succeeds in passing this legislation, the end result will be that artists like myself will find ourselves paying through the nose to maintain our images in somebody else's for profit registries. As for the images we can't afford to register, or those we can't find the time to register, or those we can't find decades old metadata to register will all fall into noncompliance and a lifetime of images created at great expense and effort will be free to be exploited by others. A requirement to resubmit all of my work to a different registry would be devastating to my ability to claim ownership and therefore license any work in the future. Even the PLUS registry under development appears to be utilizing metadata and watermarks - both identifiers that are useless currently to protect ownership information.

4. What other issues or challenges should the Office be aware of regarding photographs, graphic artworks, and/or illustrations under the Copyright Act?

The kind of system the Copyright Office has proposed to Congress seems all too familiar to me. Artists have already seen their foreign reprographics royalties diverted away from them for at least 20 years. I fear this is exactly what is going to happen with the proposals the Copyright Office has made to Congress. To prevent this unjust conflict of interest, it is imperative that no artists group that supports this legislation be allowed to receive any financial benefit from the creation of copyright registries or notice of use registries. These artists organizations have failed artists and should not be allowed to use this legislation to profit even further off the artists they were created to help.

"The Next Great Copyright Act" would void our Constitutional right to the exclusive control of our work. The overall tone of the proposed language that ‘potential users’ rights are equivalent to those of creators. They are not. This act would paralyze any creative visual artists to create original work, and it would deprive our ability to make a living solely as an artist.

I thank you for reading my letter and I ask you to recommend that visual art be excluded from any orphan works provisions Congress writes into the new copyright act.

Sincerely,
Isabella Kung
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