



MCDERMOTT MEDICAL ILLUSTRATION

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Maria Pallante
Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

RE: Notice of Inquiry, Copyright Office, Library of Congress
Remedies for Small Copyright Claims (76 FR 66758)

I have been a professional medical illustrator since 1975, and self-employed since 1981. During the course of my career, I have created thousands of illustrations, retaining copyright to nearly all of my creative works. With only a few exceptions, I have registered all of my work with the Copyright Office, Library of Congress. Although during the first two decades of my professional life I concentrated on the creation of visual works of art, I have spent the most recent decade and a half largely pursuing infringements of them.

To date, I have filed five lawsuits for copyright infringement in Federal Court. After diligent searching, I was able to find attorneys to represent me in contingency fee and/or partial contingency fee arrangements because I had timely registered copyrights. I had to pay out of pocket expenses, which in some cases were in the thousands of dollars. In addition, the time expenditure and personal stress on my part was enormous, sometimes leaving me no time or energy left to engage in creating new work. However, all five cases eventually resulted in settlements without a trial. The shortest duration from filing to final result was just a month and a half; the longest dragged on for nearly a decade.

In addition to the lawsuits I found necessary to file, I have also pursued numerous settlements with both existing clients and unrelated parties who infringed my work. I alerted the parties in question about the unauthorized uses they had made, and because I had very specific license agreements with the clients who exceeded their license of rights, and had registered copyrights for all of the images involved, I sometimes was able to obtain reasonable compensation for the unauthorized uses without involving a lawyer. I calculated compensation based on industry standards, either as a multiple to the initial fee paid in the license, or as a multiple of what the fee would have been for taking my rights without authorization. Because of the threat of statutory damages and legal expenses if I should file a lawsuit against the infringing party, with timely registered copyrights under the existing law, I had, in effect, a *hammer for justice*.

The current system for pursuing copyright infringements is certainly flawed. It is arduous, stressful, and expensive, particularly for the individual copyright holder such as myself. However, I firmly believe that a copyright "small claims court" is NOT the answer for many reasons, including the following:

1. Copyright is a Federal law, and a small claims court would be administered on a local level. It is unlikely that local judges would have the knowledge, background and expertise to properly administer the complexities of copyright law. This would undoubtedly lead to hundreds or thousands of contradictory rulings, all constituting different interpretations of the same federal law.
2. There has been *no definition* of what constitutes a "small copyright claim". One of the cases I filed for copyright infringement was for one image, used without authorization on a single website. The end result was a five-figure settlement, which I do not think would have occurred in a "small" claims court.
3. In most of my infringement cases, the unauthorized use *appeared at first* to be a small claim. However, discovery revealed far more extensive infringements, and each claim was settled for much more than a "small claim" would have settled for. If I had gone to small claims court (or had been forced to small claims because that was all the evidence I had at the time) I would not have uncovered or stopped the extent of infringement, nor received just compensation for the unauthorized use of my work. Without the discovery process, it would be impossible to determine the extent of infringement, and obtain injunctive relief against ongoing infringement.
4. There are undoubtedly hundreds of thousands of American citizens who have filed copyright registrations with the promise of various remedies if infringed. I personally have spent thousands of dollars, and immeasurable

time, registering my copyrights over the past 35+ years of my professional career. If the remedies available under current law-- negotiated monetary relief and/or statutory damages, attorney's fees & costs, and injunctive relief, to name a few--are no longer available to authors who have been infringed, will those of us who registered our work be grandfathered in, and will the small copyright claims court process be voluntary, not mandatory? If these and other remedies now available with timely registration are no longer offered, creators will probably no longer register their work.

Finally, I offer the following suggestions of how the current system of pursuing copyright infringement claims may be improved to benefit creators who have been infringed:

1. Extend the timeliness of registration, with its availability of remedies, to extend to registration within a *year* of first publication date, instead of the current 90 days in the law.
2. Shorten the time that Federal judges are given to rule on a claim. In the copyright case I was involved in that lasted nearly a decade, the Federal judge made no ruling for the first two years after the case was filed.
3. Reduce the filing fees and related court costs for individual creators and small business owners.

Thank you for your invitation to comment on this most important matter.

Respectfully submitted,

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