July 20, 2015
Maria Pallante
Register of Copyrights
U.S. Copyright Office
101 Independence 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:

First, I would like to thank you for the opportunity to address some of the problems as a visual artist in the market. My name is Lyn Rafil. I am currently a student at New York University specialising in media and visual arts, and I am concerned for my future as an artist in the industry. While I am perhaps not the most exposed to the business world of my field, I have had a fair share of experience with the industry to have some comments.

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

In my experiences, one of the largest challenges faced is the lack of negotiation power, especially that of independent contractors or freelance workers. In work-for-hire situations, the artist is often forced to surrender the rights to their work in order to maintain any form of contract with the employer. Essentially, we are to forfeit our property rights simply to work, without the compensation or benefits of employment. Due to these abusive and often restrictive business practices, there's no assurance that I will be fairly paid or fairly profit from my own work, from my own property. If I am to rely on a larger company for wages and the dissemination of my work, I am fearful of this standard of signing my rights away to even have the opportunity to make a living wage. The secondary stream of profit would go to a directing company rather than to me, the producer.

This theft of licensing revenue is practically impossible for myself and other independent artists to fight, especially against large companies (on which we often rely on for steady work). Our legal power, as well as our financial power, is limited.

I am left without assurance that the work I have spent my time, money, and energy studying and striving for will be left without any recognition or attribution to me, and in no way would I be able to be rightfully paid for whatever work I have the courage to provide in this market.

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

Legal fees and orphan works policies significantly interfere with the enforcement of our property rights and licensing.

As I have mentioned earlier, the independent artist's financial power against large companies is feeble. Infringement lawsuits take a large portion of our time, energy, and money—all of which end up being exhausted through the litigation process and potentially outweigh the costs of infringement itself.

Orphan works policies increase this stress factor; unregistered works can only be settled for damages. In this instance, the cost of trying to attain a lawyer who will even take the case, and the efforts to find hard evidence of resulting damages due to infringement, make it essentially unfeasible to even file a claim. Again, the various scenarios only benefit infringers, and I have no assurance in any way that I will receive proper dues for my work.

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

In all honesty, the entire process of registration is a challenge.

Even as a student and a budding artist, I produce a lot of work. I produce a lot of work which I would like to share (with protections), and I would like to produce a lot of work to create wages from (also with protections). Under the proposed act, in order to receive those protections (to avoid the costly situations orphan works legislation would create), I would have to go through an extremely lengthy process to document my work. That can include locating pieces, possibly removing them from any framing and mounting, scanning/photographing them, color correcting them to preserve their likeness in digital form, apply keywords and catalog them, replace them in their files/frames/mountings, apply metadata information to the digitised files of them, and fill out the registration forms for possibly multiple registries. It almost goes without saying, but this takes up so much time, time which is absolutely vital for a worker who dedicates so much to

every single piece created. This time could be better spent on producing work which will actually get me paid (no matter the dangers without protections).

Under the current laws, I have not had to register any of my work. However, with the propositions in the Shawn Bentley Act, compliance would require about a months' worth of time to register my work. Plus, the costs of submitting to registries (maintenance fees, processing fees) would cut deep into my profits, especially considering registries' ability to disseminate my work to clients and not be required to pay me equally; I would have waived my rights to them. I do not wish to be an unpaid employee to registries; and I also do not wish to have my art stolen by others, Photoshopped to some degree, and sold at a lower cost as a "derivative" without my consent.

These propositions of registration law would essentially ruin me and my future as an artist, as I would either be an unpaid worker to the registries or a mine for infringers to harvest. Copyright registration largely damages artists rather than supports them.

4. What are the most significant challenges or frustrations for those who wish to make legal use of photographs, graphic art works, and/or illustrations?

Especially as a younger artist in the field, I largely interact with the industry through digital means. For instance, I encounter plenty of artwork via public blogs. While there is a fair load of frustration regarding unsourced or unaccredited work in these spheres, the large majority of encounters actually do have correct sourcing or crediting of work.

In this sense, current copyright laws have worked well to create a sort of public integrity of maintaining respect for artwork and the artists they are sourced from. As far as it goes, recognition is maintained, and the public sharing of artwork is done so without profit through non-commercial postings.

However, it is not perfect. It is very easy for people to infringe upon rights, and recognition of the original can be lost and even profited from. There is a lack of policing both in communities and by our courts. While there is a fair degree of respect, there is not much enforcement.

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

Resale royalties must be addressed. It is common practice for artwork to be sold by publishers, curators, etc., and the original artist not being paid. It also is often the case the work

was not even sold by the artist, but rather acquired by producers and publishers throughout the process of publication/dissemination. It certainly is not unheard of for an artist to participate in the wealth of another without getting a piece of the wealth themselves. The increasing value of their artwork does not equate to the artist's enrichment as well, only others'. In that sense, as one hoping for a future in this industry, I hope I may be able to duly profit from the value of my work.

Secondly, I am both confused and concerned by the reported existence of a "credible" visual arts registry which serves as a connecting point between over eighty countries. In my time spent as a student, I have no word on such a thing existing, and after asking established artists in the industry, I can conclusively say that no such powerhouse of a registry exists. While there are existing registries, some of which even well-intending, they are all limited by either technological factors or the sheer lack of content uploaded onto them. As said earlier, registering work is extremely taxing, and such a behemoth cannot exist if there aren't artists uploading their massive volume of work onto there. If this is a loadbearing element in the proposed act, especially in regards to registration and open works legislation, then I highly recommend reinspection of the propositions.

For both of these points, I am mostly concerned with being locked out of recognition and profits from artwork. The matter of a secondary stream of revenue which I, the artist whose art the revenue is based upon, do not have access to simply perturbs me. Royalties and revenue has been diverted from artists in the due to these sorts of structures, and the proposition of increasing these structures only further fails artists now, and lessens the abilities of artists in the future.

Thank you for taking the time to listen to my concerns, and I ask for you to recommend against the inclusion of visual art of any orphan works provisions, as well as registry legislation included in the newly proposed copyright act.

I hope the Copyright Office will act to do no harm to visual artists, and work with us to protect our rights and foster a better environment for visual artists.

Respectfully,

Lyn Rafil