July 15, 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 write you on this issue. I am a recent graduate of Savannah College of Art and Design and am only just beginning my career in my field. A career in the arts is my American Dream, and I cannot imagine a life for myself where I'm not creating art. That being said, this bill threatens my livelihood, my future, and my life. Copyright law is not an abstract legal issue as some lawyers seem to believe. To the millions of artists in this country, copyrights are our assets. Licensing them is how I make a living.

I'm going to address all your questions to the best of my ability.

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

The greatest challenges are publishers who demand artists sign away their digital and secondary rights to their work, and ruthlessly competitive image banks. Because of the "work for hire" standard for freelance artists, artists are considered "employees" of their clients, but retain none of the benefits of being an employee. We don't even get to keep authorship of our work. The person who commissioned us becomes the "creator." This is the result of the current copyright law. Even when working with legitimate publishers, they won't hire unless the artist agrees to sign away their rights. The US is one of the only countries with such work for hire practices. Work for hire undermines Article 1 section 8 of the US Constitution. It is against what this country stands for. I believe it would make the US a greater country if you repealed the amendment to the current copyright law that imposes work-for-hire on independent contractors. But the change in the direction you are going will make this country a darker, weaker place.

As for image banks, they're a parasitic blight on the creative industry. They promised artists new horizons, but charged exorbitant fees and gave nothing in return. The artists who registered with them only a see a small fraction of the fee they paid. If the practice of registering our work returns, there is no reason to think that for-profit registries won't behave the same way, and destroy the creative market, just as image banks have done.

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

I have no had enough time in the industry to really answer this question, so I am going to quote fellow artist Brad Holland:

> The two major challenges to copyright enforcement are a.) the high cost of legal fees in an infringement lawsuit; and b.) the orphan works policies now being proposed again to Congress.
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> a.) Currently, the only way most illustrators can afford to sue an infringer is to find a contingency fee lawyer. I asked a full-time copyright litigator to explain the changes that would result from orphan works legislation. Here's how she explained the situation:
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> "Scenario One: Under current law, a copyright owner who has registered his copyright can get statutory damages and attorneys fees. As a result, it is possible to find a contingency fee lawyer to take these cases (i.e., copyright owner doesn't have to pay lawyer). In addition, the copyright owner usually finds that he gets more in settlement than he pays in legal fees.
>
> "Scenario Two: If a copyright owner has NOT registered his copyright, he can only get actual damages. It is usually impossible to find a contingency fee lawyer for these cases. Moreover, it is often not wise for the copyright owner to litigate these cases anyway, because the settlement value is so small.
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> "Under the orphan works legislation, ALL infringement scenarios would be, as a practical matter, Scenario Two."
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> That's because under an orphan works scenario, ANY infringement might turn out to be an orphan works infringement. So unless all copyright attorneys were forced by law
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> to handle such cases pro bono, they would have no incentive whatsoever to take ANY infringement case. In effect, orphan works law would be delivering a decisive legal advantage to all infringers, including bad actors.
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> b.) I asked another attorney to explain how a copyright small claims court would work:
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> "By limiting remedies, the orphan works proposals would create a nofault license to infringe. So let's look at a hypothetical small claims action that I might be obliged to bring in the future. In the 1990's, I licensed a series of pictures for one-time use for a corporate annual report. Copyright notice and credit are almost always omitted by art directors for annual reports and almost always for advertisements, in spite of the wishes of the artist to preserve his credit. Now, let's say I registered my copyright in the work as part of a group registration, the title of which was based on the annual report. I subsequently licensed some of these pictures for exclusive use in various ads in the United States and I make it a practice never to license my work for inexpensive or distasteful products.
>
> "But let's say an infringer finds the annual report. He likes the pictures, sees no credit, and does a good faith search that fails to identify me as the owner of the copyright. He begins selling cheap products bearing my art. Under current copyright law, my remedies would include statutory

damages, attorneys' fees, impoundment, and injunction for this flagrant infringement because it's damaged my exclusive right to license my work in high-end markets.

"But in small claims court, my remedy would be what? Reasonable compensation for use of my work on cheap items, and even this would be limited by whatever maximum the small claims court might set, and it would be constructed not to deprive the infringer of the profits he made in reliance on a so-called failure to locate me.

"Without the deterrent of statutory damages and attorneys' fees, and without a permanent injunction against repeat offenses by the same infringer, this experience would now act as an incentive for the infringer to exploit other uncredited, and therefore effectively orphaned, images by other artists. In effect, he has discovered that infringing artists is a rational business decision, and this would be the same for other infringers."

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

Basically, volume, time, expense, paperwork, and the exploitation from registries should the dark days of registering works return there won't be a creative market worth mentioning. Artists produce immense amounts of work and it would take years upon years and millions of dollars to follow the Shawn Bentley provisions to copyright law. It would effectively end the creative careers of every visual artist in America, whether they chose to or not. They would become the unpaid employees of the registries and anyone could take their "orphans" and photoshop them into "derivatives." I was raised to believe that taking something that wasn't yours without permission was stealing, and last I checked, that was illegal and immoral. These Shawn Bentley provisions are criminal.

The current copyright law, though imperfect, is worlds ahead of what you are considering. I would gladly go back to 1976 if it meant avoiding these provisions. It's easier than ever for infringers and thieves to take and destroy with the technology of today. These provisions would just make it legitimate. The best way to improve on the current copyright law is to do away with registration entirely! Like how every other country in the world has done! America should be a paragon of progress, not sliding backwards into creative and economic dark ages.

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?**

I use the works of others as reference or as inspiration. I never take, trace, or incorporate their work into mine without their permission or without credit. In my experience on the internet, most people who repost the works of others do so while giving credit and for similar purposes. So, as it stands, the current copyright law is working as it is intended. But, if these provisions go through, massive commercial infringement will become the norm and there is no way to combat that, and no way for any artist to make a career out of it. There really is very little reason for these orphaned works crusades. Lawmakers should be focused on making copyright stronger for the artist, not easier for the consumer. It was not created to protect consumers, it was made to protect the intellectual work of creative Americans.

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

No such registry exists. I have studied and worked with hundreds of artists, attended almost two-hundred classes as a highly accredited and prestigious art institution, and not once have I ever heard of any sort of registry. It does not exist. Brad Holland, a storied artist with massive accolades to match the volume of work he has produced has never heard of it, either. It's not real, and it's not even possible. Even if there was a cost effective, fast way to scan and catalogue images like registries would require, it would still take years for artists to register and catalogue their work, even if they could afford to.

Even an employee of one of the most respected artist directories has said that such a feat would be completely impossible.

> " [T]he concept of creating an inclusive, cost effective database for imagery is impossible. I represented 400,000 images, had 500 portfolios of artists online, verified listings of 50,000 graphic artists, and I know the time and cost for creating databases. Not possible.Not feasible. Not cost effective. And if there were multiple, smaller databases, not workable."

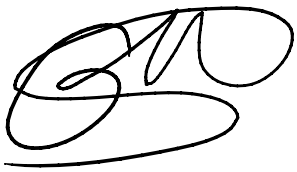
I am too new to the industry to miss the revenue that artists like Brad Holland have apparently missed due to a lack of education on the secondary licensing in the reprographic market. I was utterly appalled to find out that only in the US have artists missed out on a percentage of the $300,000,000 in revenue that secondary licensing has brought in. In other countries, artists receive up to 15% from it. On top of that, not only is it up to the artist to learn about this aspect of the law, it is none of our business. It is none of our business who or what takes money from our pockets and spends it how they wish.

And because this has been going on so long, those who have been collecting our royalties might try and claim that these expectations are settled and should be worked into the copyright law. That is absolutely reprehensible, and if lawmakers actually listened to them and made their continued exploitation, financial dishonesty, and theft legal it would help cripple the creative industry, and by extension the economy. It would reward these institutions for withholding financial information, claiming our hard earned revenue as "orphaned funds," and would make it completely legal for them to take food from the mouths of artists ad infinitum.

If nothing is done to correct the current system, it would prevent artists from accessing their hard earned secondary rights income forever.

I support and urge you to support Jerrold Nadler's American Royalties Too (ART) Act of 2015. It is far from perfect, but it is a start. It isn't the best solution to the reprographic black hole that is the US, but it would at least put into motion an organization working to make sure artists get the money they deserve, and that their Constitutional rights are not infringed upon. It would return lost royalties to the artists who worked so hard to earn them. At least then, transparency, accountability, and justice would be brought to the secondary licensing rights of artists in this country. I thank the Copyright Office for bringing this bill to congress.

Sincerely,



Gabriella M. Serralles