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July 23, 2015

Maria Pallente
Register of Copyrights
U S Copyright Office
101 Independence Ave. S. E.
Washington, DC 20559-6000

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

Dear Ms. Palente and the Copyright Office Staff,

Thank you for the opportunity to comment under your publication. "Orphan Works and Mass Digitization", a true masterpiece of long-winded "lawyerspeak" that would make Thomas Jefferson cringe. One can only sympathetize with our poor congress-people who must eventually vote on a bill, understandably, having never read it.

As a designer, licensing professional, and educator, I reserve the right to use the "venacular." I have been registering my copyrights since the first publication of my work in the late 1970s. And I provided your office with 2 deposits of each design which in the early 1970s was at great expense and effort as the technology of even B&W photo copiers was in it's infancy.

It is clear from your document that you pay great deference to dead, original copyright holders, the eldest of which are now 120 years (their children and grandchilden now ranging in age from about 80 -100 years old).
Here I quote from your document:

The problem is that fair use best practices often are arrived at absent consultation with authors and other copyright owners, and therefore they run the risk of being more of an aspirational document -- what a community believes fair use ought to be -- than a descriptive one.

Since you have grandfathered in all the myriad changes to the Copyright Law back to 1895, I would ask if you intend to grandfather in our rights to statutory damages and attorney's fees which we acquired under the law as part of the fee for registering our work?

Over the past 20 years, I have undertaken to educate myself on the computer, to learn to create artwork, to communicate over and to navigate the internet, to learn generations of software programs. In that time, I see little progress at the Copyright Office toward creating a easily searchable visual database that would make a "diligent search" possible for a potential licensee. The Copyright Office has continued to collect fees but your staff seems to have done little towards scanning the deposits or providing textual metadata. Now the Copyright Office is wishing to farm out the responsibility to private corporations and to presumably force artists to re-register again in order to receive any copyright protection.

I have visted one of the sites mentioned in your document (PLUS) to see if any of my images are in their database but the ability to upload an image to their website is not even functional at this point. And, preliminary to even opening an account in order to ascertain how difficult it would be to do a "diligent search" there, I am forced to accept the conditions of their contract which includes a blanket indemnification of a private corporation against goodness know what! Duh!

3. INDEMNIFICATION: You agree to indemnify and hold PLUS, its officers, directors, owners, agents and employees, harmless from any claim or demand, including reasonable attorneys fees, made by any third party due to or arising out of your listing in the Registry, the violation of these Terms of Use by you, or the infringement by you, or other user of the Registry using your computer, of any intellectual property or other right of any person or entity. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

If Jimmy Wales and people's experience on Ebay is to be believed, there is NO REASON why any contemporary piece of art should be labeled as "orphaned." There are millions - NO! -BILLIONS OF PEOPLE on the internet- all willing and eager to tell me when and where my grandmother's old teapot was made, who the manufacturer was, what it is worth. At least 20 people will respond at Yahoo Answers to tell me why my cat purrs contentedly while at the same time biting my hand. People devote huge amounts of their personal time to come together to create and edit a free online enclyclopdia. I can personally identify the artwork of at least 100 of my contemporaries- possibly as many as 200 different styles. Put up a website, Copyright Office- the indentification of the copyright holders will come!

I see no need for this complex, convoluted "fix" to the Copyright Law. There is a precedent for publishing notice thru the Trademark-Patent Office of intention to use certain visual markings or words as a trademark and an objection period during which companies who feel a trademark infringes their trademark can file objections. Ditto patents. There far fewest potential licensees looking for the copyright holders then there are artists with bodies of work that they would have to register thru these private image banks. Most of the infringements of my work over the past 35 years have been discovered by friends, family, clients, fans, and colleagues. If there were a site where potenial licensees could upload images they were interested in using, the public would provide the artist's name, with little search effort on the part of the potencial licensee. Artists would check these sites regularly to see if anyone was claiming their work was "orphaned"- as well as to cultivate potential licensees. Lots of people would go to waste time and prove how "art-smart" they are. People just like looking at art- on Ebay, on Etsy, on artists websites.

I understand and sympathize with the plight of librarians with regard to old photographs with creation dates as far back as 1895 and copyrights possibly owned by their heirs. An opposition period such as as published for trademarks by the USPTO would probably not garner a lot of information re: rights holders of old photographs. I believe a better use of the Copyright Office's time would be in suggesting legislation to clarify the meaning of "fair use" to allow librarians, curators, etc to make copies for the purposes of restoration or historical documentation. Or to use old photographs in historical documentaries. books, magazines, publications, etc. If a legitimate copyright holder comes forth after fair PUBLIC notice of "intention to publish" with a fair waiting period (I would say 6 months), there is some reason to eliminate penalties to the "infringer". And possibly to prescribe some compensation guides in line with what the book publishing industry would normally pay to use an old photographic image (not by famous photographer or being actively licensed.) In most cases, it would be a courtesy payment, not be in excess of a few hundred dollars. If the publishers had to the guts to just publish these old photographs, I question how many copyright holders would have come forth with complaints of infringement. Most of these old photographs have made their way onto Ebay, into antique stores, garage & estate sales and I doubt that there would be many copyright holders popping up to identify their Uncle Charlie in that photograph with Herbert Hoover. For one thing, if the family has sold off or otherwse disposed of the originals of these unpublished photographs, they have very scant legal proof of being the copyright holder.

The Copyright Office goes to much too far on proposing schemes like a "safe harbor" for non-profits. I sometimes grant courtesy licenses to non-profits, but it's on a case by case basis. Some of these executives of non-profits are making seven figure salaries and their employees get paid. To bar a court from ordering even reasonable compensation to the copyright holder when licensing their art is the copyright holder's primary occupation and income is something in which the Copyright Office should not be meddling.

Labeling contemporary art as "orphans" and putting actively licensed commercial artwork by artists who have devoted their lives to developing their skills and reputation into the same category with centenarians who may or may not own copyrights of which they are probably not even aware, is aiding and abetting infringers. As is trying to force artists to register their art with private registries and make public their body of work on the internet as a condition of protecting their rights. You are really just creating an "infringer's catalog" where thieves are offered a better selection of art to infringe.

In my experience, many infringers are the foreign manfacturers of legimate licensors who manufacture a little extra product to sell themselves in a market where they don't think the infringement will be discovered. And usually the three parties sort it out amicably.

But the other category of infringers are thieves in China, Thailand, and the former USSR who download poor quality scans with which they produce equally poor quality cheap junk that they hawk on Amazon and which ends up in our landfills. It's impossible to take legal action to prevent or to be compensated for this type of infringement. Fortunately, Amazon, Etsy, and Ebay are very cooperative in removing this kind of junk from their sites. The FBI is more than willing to protect the rights of large multi-national, multi billion dollar, media corporations at tax-payer expense over infringements "with or without profit" with fines up to 2 million dollars and 10 years prison sentences but they do nothing for ordinary rights holders.

I license only to the best licensees with the highest quality product. Your vague language as to whether injunctive relief still exists for registered copyright holders may or may not limit my options for protecting my brand and protecting the interests of my legitimate exclusive licensees. Some licensors do not choose to license to companies whose quality does not met their standards. Nor do they wish to tolerant substandard product, not bearing a copyright notice, being disseminated in the marketplace. I would resent being told by the copyright office that the "innocent" infringer has the right to sell off their existing merchandise. When have you become the court system?

I don't see that there are any excuses for publishing artwork without permission of the rightholder. Infringers know that even if they cannot locate the rights holder, **someone owns those rights.** What companies did before they could revamp public domain art for free on a computer, was they hired an artist to create art similar to the art they were wanting to license. There are myriads of unemployed trained artists-- I personally know of two who committed suicide over their inability to make a living after these large corporations let their entire creative staff go, thinking that a few computer technicians could replace them. As artists, we constantly deal with Cheap Joes out looking for some public domain art that they can use for free, or poorly trained young artists who don't how to do anything but mash up someone else's art on the computer. People do not have a right to license any piece of art just because they can't find the copyholder. Images are often not available or the licensee does not wish to license on the licensor's terms. I turn down many more licenses than I accept. The Copyright Ofice would be **condoning, encouraging and rationalizing THEFT** by giving infringers a free pass on any penalties for infringement. Corporations would love it. I'd give them odds that if they did enough searches eventually they would get a bunch of art for free with the rights holders never discovering the infringements.

I believe it's been emphasized what an undue burden the Copyright Office will be placing on artists, if artists are forced to re-register previously registerd images with new metadata and various versions of the images. Many artists still work in traditional media and distrust putting their work online and to comply with registration, they will need to hire people to scan their work, to write appropriate metadata, to upload images. etc. There are many artists who understood and appreciated a simpler easy to understand Copyright Law, before lawyers and librarians who have never created a license-able piece of art or come within 10 feet of a licensing agreement, decided they know better about what is "reasonable compensation" for an artist should be and decided to exercise their typing talents on creating on whole new copyright system.

Further I would pose the question, why are taxpayers supporting a Copyright Office that is farming out their registry duties to private industry? What is your purpose- a lobbying group to Congress for private registries? And to what legal protection are registered copyright holders entitled for their 55 bucks now they you have decided to jettison statuary damages and the court system?

Thanks you.

Very truly yours,

Margaret (Peggy) Toole