Thursday July 23, 2015

Catherine Rowland
Senior Advisor to the 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. Rowland and U.S. Copyright Office:

Thank you for issuing this notice of inquiry as a public process that is open to both domestic and foreign commentors. I am writing as a Hong Kong-born Canadian citizen and a visual artist, having earned a Bachelor of Fine Arts degree from the University of Michigan, Ann Arbor in 2007. I have worked as a graphic designer for a public relations & communications company in Beijing, for a mobile games and applications development company in Hong Kong, and am now contracted to a company that provides drama theatre & creative workshops for ages 3 to 18, where I create print & digital marketing media, as well as visual elements for small stage productions.

Depending on project or contract agreements, copyright for visual works that I have created for my employers is not always retained by me. Being able to retain copyright for my own works, license limited rights to each piece, and to protect myself from infringement is no abstract legal issue. Rather, it is how I can monetize products in order to make an honest living and help pay my family's bills.

Regarding your open inquiry, I truly appreciate the opportunity to participate:

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

When it comes to monetizing visual works, the most significant challenges would be finding buyers and setting prices. As with any product, one-of-a-kind or limited items cost more than mass produced and mass distributed items. The more a product is readily available the less buyers are willing to pay.

I expect no challenge in terms of licensing when I make something for myself simply because that means I spent the time and effort to work on a piece of artwork. <u>The work I put into it means I deserve to hold its copyright.</u> This is regardless of whether or how I monetize it.

With licensing something to others, the most significant challenge is bargaining power. If my work has been copy-and-pasted all over the internet, I may not be able to charge enough to meet material and labor costs, let alone make a profit - make a living.

When I need to obtain a license to use a visual work that I did not create, it is because the artist that created it is willing to let me use it. If I want to make money from that visual work, I must negotiate a fee because I am buying the use of someone else's work. <u>If I cannot find the artist or negotiate a fee, I</u>

have no right to use that work, so I look elsewhere. The search may become tedious but it's no challenge. It's a matter of integrity as well as pragmatism because I don't want to be sued.

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

In the case where I need to enforce copyright for a visual work I created, a significant challenge may be to find proof that someone stole it and/or used it without my permission. No doubt, if I register a visual work that I intend to monetize and/or license out, there'd be an official record. Theoretically, that ought to be proof enough, but in reality stolen visual works can easily be appropriated and even registered as someone else's which further complicates enforcement.

Another challenge is that if I seriously wanted to pursue a copyright infringement, I'd need to have enough money to sue the infringers in the first place.

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

There is the matter of money, time and whether someone else has already registered something so similar that it is unclear who created what work first.

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?

What is so challenging or frustrating about doing things the legal way? You search for suitable visual works you want to find. You find out who holds the copyright, and see if they're willing to share it. If they are, you negotiate a price if money is required for licensing, because sometimes artists like myself are willing to share their work without money, so long as they honestly remain credited. And so long as we have the opportunity to give our consent.

If the copyright holder is not able to give you that consent, look elsewhere. Unless they've been dead for over 70 years. Seriously. I hope I'm right in that it applies to all works published in the United States if not globally.

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

Your Orphan Works and Mass Digitization Report, filed June 2015, suggests that the U.S. legislation plans to remove the right of artists to hold onto their works if they do not register every design first, and essentially pay a protection fee. It also seems to lean towards allowing infringers to profit from derivative works if they pay a fee as well, which sounds a lot like bribery. When considering that most artists do not start off or become rich, it also comes off as enabling bullying and legalizing theft.

The term itself, 'orphan works,' is problematic. It suggest that the works involved are living children and that others with the means to register and pay, in the case of not being able to find their original parents, are adopting a child and giving them a new home. It sounds wonderful on paper, but as much

as many artists do appear to consider their artwork to be their babies, no amount of personification is going to turn an artist's work into a living being. People would not be giving minors a new family; they would be seeing someone's property that they covet, and paying someone else off to steal it, original owner be damned.

I understand it is becoming easier for an artist's work to be appropriated nowadays. This is especially evident through the Internet and steady advances in technology. It makes it seem like there are more 'orphan works' because it is increasingly difficult to trace sources. However, I don't believe that it is grounds for issuing this registration act - the act of requiring artists to register and pay for the right of ownership for their own creations. Rather, it only enables other interested parties to basically steal from certain individuals who are made more vulnerable than before.

As an artist, I create year round, and there are many artists that are more prolific. Firstly, it is impossible to register everything when I cannot count how many things I create in even a year. I don't know what a thief would see as valuable enough to steal, let alone what to register for the sake of making money myself, and that's just me.

The U.S. Census American Community Survey, which counts all self-identified artists and includes all the categories classified by the National Endowment for the Arts (NEA) as artistic occupations, counted 2.5 million artists in the United States in 2001. What about artists outside of the United States? What would be the amount of server space, manpower and money to setup, maintain and constantly update this database of registrations as it exponentially increases?

I am especially interested in how any changes to the U.S. Copyright Act affect non U.S. citizens and influence other countries. For example, I've seen that many Japanese artists who place their artwork online have also taken to adding a Japanese or English request that people do not use their works unless they ask for and receive permission. But all it takes to create an 'orphan work' is for someone to create a new post or a reblog while removing source information. Which is a matter of kindness, consideration, respect for another human being, and personal integrity.

However, in the off chance that a person or organization trying to monetise such works is confronted, they can simply say they tried to search for the artist - didn't get their email or a response - and ultimately decided to take it because they 'didn't know' theft is wrong.

Because it *is* theft. Whether or not those people are lazy, frustrated, thoughtless, or made a deliberate decision. I have, on more than one occasion, found my own artwork on someone else's website. Most memorable was someone who stole visual works from various starting artists and built a gallery website claiming that they drew everything themselves. When confronted, the 'I was this young and naive' argument was introduced, and they then said that they did it - the thievery and lying - to make friends.

This is particularly notable to me, because it is actually a commonly-used story that garners sympathy and is difficult to prove either way because it all happens online. Variations have included 'I'm sorry, I didn't make this website, but my young friend/relative did this, and I will stop them.' It becomes less believable when the website in question also has a shop. Then it amounts to lying, thieving and

monetizing another’s work without their permission. Still theft.

In Hong Kong, where I currently live, it's also common to come across pirated visual works printed on t-shirts and sold in various stores and even unauthorized street vendors, which cheapens the original works as well. Personally, I’ve seen one of my drawings printed onto a cheap mobile phone strap of all things. At the time, I was a high school student who shared my own artwork online.

It's a psychologically crippling feeling to see my work published in this way, without my knowledge and therefore without my consent.

And if for some reason consent isn't enough, there's the matter of being helpless. At the time, I was the one who was young and powerless as to how I could possibly pursue the matter. There’s also the matter of artists like me trying to earn money to pay for drawing materials and learning to use ever-updating graphics programmes on top of just paying bills. There's the matter of whether we can even take additional educational courses or degree programmes to improve our skills as artists. To improve the visual works that we can offer to others in the future. Please don't let some special interest parties who don't want to work or pay for it to step all over our efforts.

Of course, these challenges can and likely has happen to many U.S. citizens as well, and I have barely touched upon visual artists with significantly less access to digital media. However, I sincerely hope that how copyright is handled on a national and international level can be carefully and realistically considered in good conscience.

Thank you for your time and consideration.

Best regards,
Bertha Chiu