22 July 2015

To the Register of Copyrights, United States Copyright Office:

I'm writing to express my concerns with your proposed changes to the Copyright Act regarding Orphan Works.

As a full-time freelance illustrator for the past 15 years, I've come to appreciate the value of owning intellectual property; licensing my work helps me pay the bills.

I began my career immediately after receiving an M.F.A. degree in Science Illustration from the University of Michigan, and since then my natural science illustrations have appeared in books, magazines, and journals; on interpretive signs in museums, zoos, and natural areas; on websites; and on product packaging.

I work hard to create unique, scientifically accurate imagery that my clients can use to effectively communicate to their audiences. Being able to license my existing body of work for secondary uses is critical to my financial security as a self-employed illustrator.

I have read through your "Orphan Works and Mass Digitization" (June 2015) report and a number of items alarmed me.

First and foremost is that your report gives me the impression that copyright law should exist primarily to facilitate people's ability to legally make use of existing intellectual properties. In my view, that is a fundamental shift in purpose with potentially terrible consequences. I believe the primary purpose of copyright law is and should be to protect the rights of creators of intellectual property, thereby enabling creators to make a living and create more works.

Your proposed changes to the Copyright Act, if enacted, may result in people or organizations making widespread use of orphaned works in order to avoid the expense of commissioning new works. In a situation where someone is unable to identify me as the creator of one of my illustrations, I do not believe they should be able to legally use it without my permission. It is important to my business that I am able to control how my work is used. If a person or organization cannot find the creator of a work, that entity should hire an illustrator to create what is needed! A vibrant economy and motivation for creators to continually create new works are keys to a healthy society, yet both may suffer if your proposed changes are enacted.

Secondly, I believe your proposed changes to the Copyright Act are trying to solve a problem that is not large or insidious. Indeed, in your own document (pp. 48-49) you state: "*We believe, however, that as search capabilities grow and more artists make themselves known via searchable image registries like PLUS (Picture Licensing Universal System), there will be a smaller and smaller likelihood that owners of orphan works will not be able to be connected with those who want to use their works.*" I agree with the sentiment that it's becoming easier

to discover the creators of images, although I'm doubtful it'll be through registries like PLUS. Like most artists, I make a concerted effort to be identified in conjunction with my works whenever they are published online or in print, although that information can be stripped away. In the event that an illustration exists online without an illustrator citation next to it, Google Images ("Search by Image" feature) and TinEye make it possible to find other occurrences of that image; therefore, someone should be able to find me easily if they are searching. Since it seems probable that fewer and fewer works will become orphans, why must we drastically change the existing Copyright Act in order to solve a problem that will lessen over time anyway? It seems to me that your proposed "solution" of removing the risks for users of orphan works may cause a much bigger problem than it hopes to solve.

Thirdly, I want to address your mention of visual art registries and your suggestion that artists could register their works with those databases. The idea that a small businessperson such as myself would have the time or money to invest in such a venture is utterly ridiculous. Though I manage to keep track of the 1,500+ images I've created over the past 15 years, it's a challenge to find the time to update my own website and register my works with the Copyright Office; adding yet another task would further erode the time I have to create new works.

Lastly, by contrast with my sentiments above, I would like to add that I think a couple other ideas mentioned in your report are well worth pursuing:

1) A copyright small claims court would definitely be useful. The fees I charge to license my illustrations range from $50 to a few thousand. It would be senseless for me to use a Federal Court to attempt to collect damages from an infringer, even if I demanded more than the amount for which I would have licensed the work. I think it would be necessary for this small claims court to be accessed by all parties remotely (online), since infringers and copyright owners would rarely reside in proximity to each other. I also think we should be able to navigate the system without the necessity of hiring a lawyer.
2) A revision of the way visual artists register their works would be most welcome. More on this below.

I'd like to comment on two subjects listed in Part II of the Notice of Inquiry (Federal Registry Vol. 8 No. 79 p. 23056):

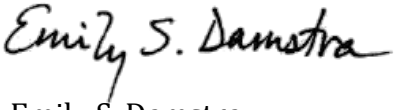
Most significant enforcement challenges

When I discover that one of my works is being infringed by a website that is hosted in North America, I have had good success in convincing the offending website's host to remove the site or offending pages, thanks to the Digital Millennium Copyright Act. However, I have had little success in collecting any damages or usage fees. Why would any offending party even bother to reply to my demands? My only recourse would be to hire a lawyer to take them to Federal court, a ridiculous idea since it's such a costly endeavor, and I probably could not find a lawyer willing to take the case anyway.

In most instances, if a party overseas infringes my copyright, it is not worth my time to try to collect any money; there is little incentive for the offender to reply to my requests.

Most significant registration challenges
The time and expense involved in registering numerous works per year is one major obstacle. Additionally, I bemoan the fact that such weight is attached to whether or not a work has been published. It seems arbitrary to me. An illustration may be used multiple times or not at all; what difference does it make where it is published for the first time, if at all? Furthermore, what does "published" really mean? One intellectual property lawyer informed me that a court might consider a work published as soon as I e-mail it to a client, or as soon as I post it on my own website. If that's true, then this makes it impossible for me to efficiently register a group of related unpublished works since I might be e-mailing them to my client or posting them at my website over the course of many months.

Thank you for your consideration of my comments.
Sincerely,



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