Dear Copyright Office:

I am writing to you as a professional illustrator about the new copyright law currently considered by the U.S. Congress which, if enacted, would have a negative impact on the business of illustrators, photographers, fine artists and visual artists from all fields. The proposed copyright reform would result not only in artists losing their livelihood, but also in much fewer visual art being shared publicly by its creators for fear of infringement, which in the long run would mean less images being published; and thus diminishing variety and quality of our visual culture.

As a professional fulltime-freelance illustrator since 2001, I have always relied on acquiring new customers by presenting my work on the internet. I work mainly for book publishers and self-publishers, illustrating stories and situations on covers and inside books. I have illustrated game cards, concepts for games characters, portraits, and licensed rights of use for my work to editorial publications, books, and art shows. You can view samples of my work on my website http://www.johnmoriartyart.com.

It is not always easy for me and other artists to negotiate fees that allow us to make a living from our work, or to enforce copyright protection of our work. However, current legislation enables us to prove ownership of our work through the simple act of publishing it under our name. Generally, a client will not only commission an illustration from me, but also license exclusive rights of use for a specific time, area and purpose. If my work can be assumed „orphaned“ from the moment of creation, I can no longer give my client a guarantee that they have the exclusive rights of use to it. As a direct result of that, I lose money. This in an already competitive field where rates have not kept up with living costs and inflations in the past decades.

Even so, while the the internet has afforded artists the ability to reach new audiences across the planet, it has also served as one of the greatest impediments for an artist’s livelihood. Digitization has allowed for an artist’s work to be exponentially shared and therefore almost impossible to exert complete control over how it is used. Most of the time our images are utilized simply as decoration on social media sites. But just as often our names and copyright information are unlawfully removed, rendering our images particularly vulnerable to orphaning and thus appropriation. It is almost daily that I read about a fellow artist’s work being monetized by an unscrupulous third party with zero profit or credit being afforded the creator.

Right now, the burden of proof is on the infringer who must prove that they have rights of use to an image if accused of copyright infringement. But this new proposed legislation, if enacted, would transfer the burden of proof onto the creator, who is now required to document proper registration of their work if infringed upon; something that almost every creator has never done, and might not learn to do until it is too late – a tremendous pressure to prove something that is already a matter of course.

This is as if the victim of a crime – for example, a burglary – would first have to prove that they have installed cameras and special security devices in their home before they are allowed to press charges against the burglar!

For an illustrator, copyright law is not an abstract legal issue, but the basis on which our business rests. Everything that we create, whether for a client or for our own personal indulgence, becomes part of our business inventory. And in the digital era, inventory is more valuable to artists than ever before.

Please reconsider how the 2015 Orphan Works and Mass Digitization Report could have potentially disastrous effects on not only the field of illustration, but on the future creation of quality art in the public realm.

Best,
John Moriarty