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 Register of Copyrights, Congress, and President Obama,

I am a published writer and artist in the early stages of what I hope will develop into a profitable career. Copyright law is essential to protecting my chance of making money at the profession that I love.

I understand that changes to the copyright laws are being proposed, and I have to say I strongly support continuing the current status where my work is recognized as mine and protected by law from the moment I create it. With the technology available today, image searches should become as simple as looking up restaurants on the net, rendering the claim that it is hard to learn the original artist obsolete. As things are, most art—like a photograph shared on Facebook—is clearly associated with the artist in its original setting and with decent search software there would be no excuse but laziness for someone to claim they couldn't tell where the photo came from.

Right now, an artist doesn't need to pay to register their work to have ownership of their work. That's a good thing, and it's only fair. After all, a grocery store owner doesn't need to pay to register every candy bar and pineapple in their store to have the right of ownership, so they can sell the item and prosecute thieves.

If some of the proposed changes I have heard go into effect, then no artist will have legal ownership of their own work until and unless they are able to afford the time and money to register it. That is a terrible proposal. It is unfair and unduly burdensome and impractical in the circumstances that give rise to competent (much less great) art.

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

The biggest challenges for a new artist like myself are time, money, and establishing a reputation.

Time: Art is a time-intensive labor. Gaining skill takes time, and making art takes time. Gaining skill requires creating thousands of works of art, all of which are currently protected from the moment they are created. Any proposal that would require an artist to fill out forms to register each and every work (every photo, every sketch, and so on) would be a terrible and insupportable drain on an artist's time.

Money: Artists, especially emerging artists, do not get paid well for their art. Sometimes a new artist settles for getting paid enough to at least cover materials. And people keep pressuring artists to lower their prices or give it away for free. A law that proposes a fee to register each work is a terrible and insupportable drain on an artist's budget under these circumstances.

Establishing a Reputation: Of course, an artist could keep their rights by never showing their wok to anyone at all. But what good would that do? None at all.

If one would argue that perhaps an artist should only register their best work or their completed works, that would require the artist to predict with some certainty which works will prove to be popular in an uncertain future. Van Gogh dies penniless because his work wasn't popular when he first made it. If one of our acknowledged all time masters couldn't predict when his work would make money or which pieces would become nearly priceless, how can we demand every single artist, from the inception of their careers, should be able to guess which pieces will eventually prove profitable at the moment they think the work might be complete?

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

In today's world, there is a big difference between the art itself and the product sold. For instance, a single painting could be sold as an image on t-shirts, as posters, as art prints, as a book cover, and of course, as an original canvass. In other words, most of the money an artist gets from a work are often from what could be called derivative works. If someone is allowed to recrop and alter a work and then copyright it as their own to put on a t-shirt or book cover, that would be legalizing the theft of the artist's work and removing the artist's ability to collect what is due them for their work. After all, why would a business buy art if they can legally copy it digitally, manipulate it a bit, and then use it for free?

I cannot stress this enough. **The value of a work of art does not end at the sale of, for instance, an original painting.** Often the value of a work of art goes up after its initial sale—for instance, look at all of the merchandise that only sells after a an animated movie is made and viewed. If the original art/movie/whatever wins an award or gets a lot of word-of-mouth praise, the sales of prints, t-shirts, action figures, and so on increase. Additionally, buying a print or even the original art does not include buying all rights to that piece. The rights to publication of the work and to prints and other copies of the work have to be sold in addition to the bit of canvass or paint, or they remain with the artist.

Yet people want to pretend it is OK to steal an image off the net and do whatever they want with it without the artist's permission and without paying the artist.

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

Registration, even today, requires knowledge, time, and money. Knowledge is more than just how to do the registration itself, it is knowledge of which of the thousands of sketches, paintings, photographs, and so on will prove to be wanted by one or more buyers. For an artist in the

beginning of her career, that is really hard to predict. Under today's law, an artist can register a piece at any time, which at least means if there is a theft large enough to justify a lawyer's intervention, the lawyer can then use her expertise to register the work in question.

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?

As I mentioned above, there's no reason Google and other search engines couldn't let you input an image as the "search term" to allow you to find similar images and to see where the image has been seen online and find the artist. If the people using the art had demanded it, I believe such a search engine would already exist. Instead, many people prefer to steal the art they love and use it without permission. **The laws need to demand that people and especially businesses that want to use art use due diligence to locate the creator or suffer penalties. If you can't prove that art is in the public domain, you should need to prove you paid for it or otherwise have permission to use it from the artist.**

In addition, Canada and other countries have practices that allow already-published art to be paid for by sending royalty money to artists. We have working examples in the USA of how to handle this for stories, poetry, and songs. There is no need to gut the protections visual artists need to do business in order to allow people to pay for the visual works they want to use.

I imagine a world where the only "registration" an artist would normally use is to post a photo to any website, whether the work is posted publicly or privately, since that creates a digital time stamp and associated metadata. (A photo taken by a digital camera has metadata from the camera used to take the photo, for instance). There is no need for new private corporation(s) who have the legal authority to charge artists to collect and manage the data. Just as a law firm or grocery store controls its own inventory, customer lists, contracts, and other records, artists deserve to have control of their work and of how it is stored and documented, so the artist can choose a method that is affordable and convenient to how they do business.

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

One big challenge for independent artists is how expensive it is to try to enforce your copyright and get paid for your work if it is stolen. Art theft is **theft**, but there is no governmental agency to investigate the theft of images or punish the perpetrators. If your storefront business is robbed, even of an inexpensive item like a single candy bar, you can call the police. If someone steals your art, you can only hope you have money on hand to hire a lawyer or that the thief is making enough money for a lawyer to work on contingency.

In addition, in a world where images are increasingly used for political purposes, the creator (and in the instance of photos of people, the subject) of a work should be required to provide consent for their image (words, song, etc.) to be used. For instance, it's not appropriate (and should not be legal) for a candidate to steal and use the work of someone who strongly opposes that candidate's policies. We recently had a famous music artist stand up and give interviews, stating

that his music should not be used by one of the Republican candidates, for instance. These things matter!

6. What are the most significant challenges artists would face if these new copyright proposals become law?

- Fear of showing their work in public or sharing it online, which would have a predictable dampening (or, more likely, drowning) effect on the careers of artists who are not already established.

- Since registering each and every photograph and sketch would be prohibitively expensive and time consuming, artists would either create less and develop less skill or they would have no protection at all for their work.

- Established artists, if required to retroactively register all past work, would have to choose between losing all of their rights to past work and spending a huge and insupportable amount of time registering them and possibly spending more money registering them than they were paid in the first place. In addition, they would lose all rights to protect their right to protest if someone who bought an original decides to use rights that they didn't buy, if the artist does not have sufficient records to register the work.

Conclusion

The creative arts are already difficult from a business standpoint for creators. It is really hard to establish a profitable career as an artist. We work long hours to practice our craft, and don't have the protections of a salary and benefits, much less the protections of having a big employer with a legal department to protect our work. All we have is the copyright law, and adding burdensome registration requirements would hurt the industry and individual artists. **The proposed regulation requirements, and any other burdensome and expensive registration regulations would be disastrous to an independent artist's ability to do business.**

Besides, it's just wrong. People deserve to own the fruits of their labors unless they have agreed to sell or gift those rights. Many people already treat artists as if their work has no value, even as they steal copies off the net because they value them. Changing the copyright law in any way that reduces the already limited protections of the law would be adding injury to insult.

Thank you for your consideration,

Deirdre M. Murphy
Artist