July 20, 2015

Maria Pallente
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. Pallante and the Copyright Office Staff,

Thank you for the opportunity to express my opinions on the problems visual artists face in the marketplace. I am a Certified Medical Illustrator and rely on the licensing of my original illustrations to make a living. Since 1990 I have created and licensed thousands of illustrations for professional medical journals, patient education media, surgical atlases, pharmaceutical advertising and marketing, healthcare websites, college level textbooks, surgeons and physicians, etc. I am also an Associate Professor of Illustration at Northern Illinois University.

Re-licensing illustrations (that I retain copyright to) makes up a percentage of my annual sales. A huge challenge that has become a game changer in making a decent living wage as a professional illustrator is how many times my illustrations are stolen and proliferated on the internet without permission or compensation. Basically, once illustrations are posted on the internet, it becomes more than a full time job to police the internet for infringements. My illustrations are illegally used in promotions for hospitals, chiropractors, physicians, in eBooks, medical device companies, law firms, content on blogs to generate more viewership to increase blog creator's revenue from superfluous ads, etc. Many of these infringements are in different countries in different languages. It has watered down the value of my illustrations and caused far fewer commissions and legal licensing agreements that used to pay to use my artwork. This fact alone has cut my income dramatically in the past ten years. Like the saying goes, why buy the cow when you can get the milk for free? Additionally, I no longer feel I have control over my business inventory or my professional reputation. I am not able to limit my licensing of illustrations to companies with integrity or to those willing to pay a fair fee to publish my original content. With more and more publishing going digital, infringers no longer need a high-resolution file of the image for it to reproduce satisfactorily. Just grab and drag.

Another significant challenge that has gained momentum over the last 20 years has been less favorable "take-it-or-leave-it" contracts offered to artists that claim all rights to the artwork (a.k.a. Work For Hire contracts) without offering a higher fee for procuring such additional rights. Independent contractors have very limited negotiation power. If illustrators band together it is called price fixing. If publishers

band together and conspire to offer only WFH contracts, it is called...? Every WFH contract signed by an illustrator denies that illustrator any secondary income by denying him or her the ability to relicense the images. Since content is what is being sold, there is real money to be made by owning the copyright to illustrations. In addition, WFH agreements undermine illustrators' future ability to make a living as professional illustrators since they are now competing against huge banks of images that they themselves helped create.

As a small business owner, affording legal defense of copyright is next to impossible. Under current copyright laws, when someone uses my registered copyrighted illustrations without my permission, they are taking a chance and I have the right to sue them for statutory damages plus legal fees. It is my belief the fact that potential infringers can be sued for statutory damages is what keeps them from infringing copyrights in the first place. No one wants to sue and it is only a practical business decision if a small business owner (illustrator) who is being infringed against can afford to sue, which is rarely the case. [Indeed, a group of 18 individual medical illustrators pooled their resources and sued a large publishing company who egregiously violated their copyrights by reselling their artwork to many different subsidiaries in different countries without the artists' permission. The end result was ten years of expensive and malicious litigation in which the lawyers collecting large fees were the only ones who won. The case settled finally after the large company exhausted the artists' resources and resolve. I know this because I was one of the 18 artists.] Thus, getting a lawyer on contingency is often the only way to proceed. And one will only be able to get a lawyer on contingency if Orphan Works does not become the law. Any company can claim Orphan Works as a defense and, in essence, remove statutory damages and legal fees from the proceedings. *If anything, copyright laws should have more strict punishment to those who steal copyrighted material. If I walk into a store and steal a TV, does it seem reasonable that my punishment, **if caught**, should only be the original price of that TV? Where is the disincentive in that?* Lawyers will not financially benefit by taking cases on contingency and most small business owners and individual creators do not have the financial resources to defend their copyrights. Corporations and behemoth companies will take advantage of this and if Orphan Works becomes law rampant mass stealing of visual content is imminent.

Officially registering copyright for every illustration and piece of art is a burden and costly task. Going completely the other direction from Orphan Works, I would actually favor a law that did away with the requirement to register artwork while still offering full copyright protection including a severe deterrent such as statutory damages.

It is amazing to me that a group has, without artists' prior knowledge, declared themselves a collection agency for U.S. visual artists' royalties through reprographic rights markets yet have never forwarded any of the royalties to the artists who created the artwork. How can this be legal? How is it possible that a group can claim to represent U.S. visual artists without the artists' knowledge, over many years

collect millions of dollars "on artists' behalf", and not be required to give an accounting of where the money goes? It amounts to theft, plain and simple. This current system must be changed.

I would like to believe the advanced training I worked hard for, including a BA degree in scientific Illustration, a Master's Degree in Biomedical Visualization, and continuing education to maintain my Certification status will still have value and allow me to make a living as a medical illustrator. It is a career I love and have dedicated myself to. I see this income stream drying up due to mass theft on the internet and the onerous and almost impossible task of trying to defend the multitude of infringements.

I hope the Copyright Office will work with visual artists to craft policies to protect visual authors and their exclusive rights, and support an environment where true incentive remains to create original art.

Sincerely,

Todd Buck

President and Chief Medical Artist
Todd Buck Illustration, Inc.
3 Elizabeth Court
Lombard, IL 60148
www.toddbuck.com