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July 21, 2015

Maria Pallante
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)

To whom it may concern :

I'd like to thank you for creating this list of questions to acknowledge current and future problems with respect to Orphan Works ideology, and the professions surrounding image making. I trust your Office wants to get a clearer idea of the American artist/maker's specific issues and copyright ideologies, and it was a courtesy we weren't offered when we fought the Orphan Works Act of 2006 H.R. 5439.

I've made my meager living as a freelance gaming illustrator, author, conceptual designer and educator for the past 20 years. As with many in my genre', I've taken great personal and financial risks in order to do what I've been trained to do. I have a time consuming and painstaking process, which has never afforded me a scheduling position to deny work coming in, while working day jobs with equally inadequate, but steadier paychecks. I've paid attention to how the digital age has effected the way in which painters and sculptors make a living throughout every facet of the entertainment industry, and in 2002-2007, I did what I could to tell my Congressmen how Orphan Works ideology would worsen the situation we were already in a decade ago, if put into law. Here I am doing much of the same today, as much of the same still seems to permeate the efforts of the Congressional Creative Rights Caucus, and the ideology of Orphan Works is still very much alive in this new push for U.S. copyright reform.

When debating the merits of Orphan Works ideology in the past, the fists start to come out with the notion of; giving those who share and use things, equal rights to those that make or conserve things. There are many sides to the copyright fence, and most of us sit on the edge of more than one of them. Illustrators are inherently makers. Throughout our lives we spend countless months developing our skills; constant study and practice, finding the most successful ways to lead the viewer to recognize some elusive vein of believability, that magical glimpse into a world impossible until we bring it to Light. We work part-time day-jobs, convention after convention, promo after promo, in order to light a pathway strong enough for a few folks to take notice of our work. Some of us are still paying back college loans, some of us aren't. Some of us actually get a couple higher profile gigs that pay the rent. A smaller group of us land book and magazine cover work into our middle age, are recognized with Awards or Guests of Honor, and an even smaller group has the ability to do all that, raise a family, and have a few extra bags of "Freelancer Chow" left over in the cupboards. What unifies us all, is that this profession requires decades of hard work, a devotion to Craft that glows through the work we create. I wax collective hardship here, not to say my work is harder than the work of anyone else, I do so because; school trained or self trained, traditional or digital, big gigs or small, old generation or new, I consider our painting and sculpture a fair step more labor intensive than the snapping of family vacation photos, taking phone vids of Pets-Duz-Adorable, or sharing any image that's been stripped of it's metadata by one's favored social media network.

Making differs from sharing. We may equally share things, but we do not equally make things, and those of us who make a living at making, don't stand to gain anything under a new Orphan Works type reform, we don't already have under current copyright law.

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

In this context, media education that sharing and using of that outside the public domain has legal and monetary consequences, and having the ownership of my work remain constantly in my hands are the most significant challenges. There's not been a time where monetizing my imagery has been easier, digitally or otherwise. Both authors and potential copyright infringers can set up internet shops, buy and sell through a number of different formats, and many of these services are free. For those that seek out my work, asking permission or to license, there is little challenge. Rather, it is the countless folks who may unwittingly infringe my work, having no self interested reason to seek out my work, that worry me with Orphan Works ideology. They could do so without regard to future action, so long as they meet the limited requirements set forth in this reform, and the reforms we've seen in the European Union and the UK.

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

The inability to afford legal costs and time spent after infringement has been discovered, has always been a challenge, as stated in the Notice as "an uphill battle". When my unidentified work is seen worthy enough to be sold, collectively licensed, traded, re-authored, printed on collectible salad spoons, or used in some capacity, for indefinite periods of time, without my knowledge, then afterward finding the culprit, giving them immunity from legal action because they've looked "long enough", that's a significant problem which will only worsen with reform. Foreign piracy, digitally or otherwise will remain another enforcement challenge. Enforcement issues will be there with or without Orphan Works type reform or a behemoth image registry or bank, and the retroactive rights granted under the US Copyright Act of 1976 remains the best balance as it exists unchanged.

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

The authorship of one of my paintings being treated the same as authorship of a holiday phone picture is a major problem with registration, (one that I'm afraid can't be rectified) but the most significant challenge is time and money. I haven't the money for priority medical expenses, let alone time and fees to register the multitude of; paintings, woodwork, music, assemblage, performance, screenplay ideas, photography, sculpture, ceramic tiles, molds, book bindings, endpapers, glass etchings, woodengravings, and all the sketches and preliminary material physical and non-physical that goes into making every work I take complete ownership of in my career so far. It's an impossible task for most professionals. The US Copyright Act of 1976 gives all creatives artists and makers, retroactive rights to our work, making the conversation of massive scale registration pleasantly moot for the vast majority. When the fiction of a collective image registration agency or national image copyright bank (the size and level of bureaucracy at which it would need to truly be functional) gets bandied about, I'm reminded of how dysfunctional the spell checkers are on the very best of search engines and photo sharing social networks. Good, but no where near how good they'd need to be to function for the whole of the growing proletariat. That kind of cataloging is a pipe dream, and could regularly place the original authors rights into the hands of the willfully ignorant who can't be sued, if not simply become a future licensing warehouse where by virtue of it's size, the original author would rarely see any fee from the legal sale of their work. What's worse, is that it's quite conceivable for me to see this behemoth agency one day becoming a privatized corporation, like portions of our Military and Educational systems have become?

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?

I can only assume what frustrations exist, but I would say they revolve around not having the monetary resources to hire someone in my profession for new work, or license them for use of older work within the last 70-95 years. The vast majority, maker and non-maker alike, don't have the time or resources to "re-document" their authorship for the sake of safeguarding it. If folks want to purchase, license and/or repurpose my work, they can contact me and negotiate our collective needs. We're allowed retroactive rights in cases of infringement under current US Copyright Act of 1976, and there's no functional way to do better than this for the benefit of all citizens. If it's a particular challenge of getting a hold of the original author, than one simply risks being sued by the artist/maker who rarely has the time and money to do so, or have another artist/maker, create an image that is perfectly legal. The risks of theft will exist with or without Orphan Works ideology in our copyright law, and those "frustrations" aren't worth the herculean task of reform.

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

or a more appropriate question to ask might be,
"What are the most significant challenges artists would face if these new copyright proposals become law?

The individual should be the sole party who makes the decision to put their work into the public domain. To my best understanding, this is one of the major reasons our current 1976 Copyright Act functions as well as it does; giving We the People retroactive rights before piracy or infringement occurs. A behemoth registry, as I see being attempted by the UK's Copyright Hub, isn't the answer, nor is simply making previously authored works part of the public domain without having information enough to do so. Every aspect of reform set forth with Orphan Works ideology will undermine the current protections artists, creatives, and makers enjoy today with the US Copyright Act of 1976. This child of the Berne Convention, along with the The Digital Millennium Copyright Act making changes in anti-piracy measures, is working well in the digital age so far. It works without any new cost to our professional lives as artist/makers, and it doesn't hinder Educators, Libraries and Universities to be granted rights to archive and share (which is another group that needs mentioning).

I applaud Open Source, Public Domain, or the Creative Commons. I applaud Creatives willing enough to share authorship, those makers who've based their careers on giving freely, and are able to jump the hurdle of making money because of that giving? Hats off to them! The majority of makers however, have a hard time making more by giving more away. The Orphan Works distinction lies in that some of us are willing to freely give some of our rights away, and some would rather not have them given away for us, diverted and made useless without our knowledge. Currently there is nothing hindering folks in placing their work in the Public Domain, but an Orphan Works environment would however hinder makers with added risks and responsibilities to keep their work outside the public domain and profitable. The danger hidden in the rhetoric of copyright reform, is its failure to recognize citizens separately as either sharers, users or makers. Or as Brad Holland put it, "[they] fail to distinguish between copyrights held by corporations and those held by individuals. This failure has consequences because corporations don't create; individuals do."

Sincerely,

Charles Lukacs
Portland, OR

Biography ::

Chuck Lukacs [loo-cuss] or [loo-cotch] has been illustrating for the Science Fiction and Fantasy Gaming markets for over two decades, teaches illustration at the Pacific Northwest College of Art in Portland, OR, and has also spent a number of years studying ceramics, book arts, wood engraving, alternative energy, and traditional archery. Since graduating from Detroit's College for Creative Studies, his paintings and prints have won awards and appeared in conventions, galleries and museums internationally. Chuck has been featured in Spectrum, ImagineFX, FantasyArt Magazine, has co-authored **Wreaking Havoc, 2007** and authored **Fantasy Genesis, 2010** Impact Books. Clients include :: NBC/Universal, Wizards of the Coast's **Magic the Gathering**, Impact Books, Pyr/Prometheus Books, Paizo, SuperGenius, Upper Deck, Games Workshop, Road Runner, and Atlantic Records. :: **Website** :: **Fantasy Genesis Blog** :: **Portland Stink-Eye Charity Blog** ::