July 19, 2015

RE: Notice of Inquiry, Copyright Office, Copyright Protection for Certain Visual Works

Dear Ms. Pallante and the Copyright Office Staff:

Thank you for the chance to comment on copyright law and how it impacts content creators.

I am a current university student and I would like to develop my artistic abilities into a potential income stream, to either supplement income from my intended career in Mechanical Engineering, or even replace that income down the road. Also, I have many friends and acquaintances who are studying to enter the art industry or are already in industry.

For content creators, the copyrights they hold are important to their income, and act as their only protection from those who would steal or infringe upon their works, directly stealing income from them. I fear that orphan work provisions would be abused by would be thieves, cutting myself and many others out from the opportunity to make a successful career in art, and making it un-viable for many already in the art industry to continue working in industry.

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

Content Creators in the current day and age are being told more and more that their work has low value. Art, photography and the like are viewed as mere 'hobbies' by many who are not content creators themselves, a view which discounts not only the time and effort put into a particular piece, but also the years of training and costs in money and time associated with that training the artist has gone through. Some clients offer abysmally low payment, claiming the work makes for good 'exposure' or it will make for a good portfolio piece. Others refuse to give contracts to artists who do not sign over all rights to their works, yet offer payment which would only cover first print run rights or the like.

This mentality is mirrored in the internet commissions market, where younger artists, upcoming artists and occasionally professionals who are between projects offer their talents to individuals, rather than publishers or corporations. In this arena there is a culture which tells content creators that their work is not worth a livable wage, or even minimum wage.

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

Enforcement of copyright for content creators are restricted by high legal costs, and unscrupulous users/sites who would strip credit for content while reposting that content claiming it as their own.

Barring highly successful content creators, and cases where lawyers can be found to work pro bono, or where the copyright holder can use a contingency fee lawyer, most individuals cannot afford taking their case to court. Thankfully, under current law the value of potential settlements for copyright holders are high enough that, assuming they can afford to go to court, it is worth while to do so. If copyright infringement claims are shoved into small claims court, this would likely no longer be the case.

Unscrupulous users and Sites take content, usually images, and remove artist credits from the works, putting them on their sites and sometimes even taking credit as their own. Such users and sites even sometimes go so far as to digitally manipulate images to remove in image signatures, watermarks, URLs and credits the artist placed on the image. Such users and sites would create many 'orphan' creations, and diligent searches may not prove enough to find the original artist. Many times such users can be stopped with a DMCA take down request, but some sites do not act on such requests in a timely fashion, or are active perpetrators of copyright infringement, and do not have methods for submitting such requests.

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

My response to this question is simple: Each moment a content creator must spend to protect their works, is time that they could be working on new content. Efforts spent on registering works is an opportunity cost against time that could be spent creating new content and building an audience. This results in an indirect loss of income, which is further compacted by any fees that are required for registration. In the case of artists with large bodies of work, who may have to retroactively register their work, the cost in time and money becomes insurmountable.

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?

Many content creators will use the work of others as reference or inspiration at times. When content is found and can be sourced, this is not usually a challenge at all, as current copyright law provides for fair use, such as educational studies. This only becomes an issue when original creator credits have been stripped, or false credits have been used.

Derivative works based on 'orphaned' works, perhaps dubiously orphaned works created by users stripping credits, would make the situation worse, as now content creators would not be able to know which version of a work is the original, credits would be muddled and eventually content creators would stop fair use practices, or simple ignore crediting procedures.

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

As copyright law stands now, content creators are protected even if they do not fully understand copyright law. If they have their work infringed upon, they can potentially hire a lawyer and take the case to court, or look up procedures for removing infringing works such as DMCA takedown requests. If content creators are required to register their works or concede their protections, then they need to learn how to protect themselves before they begin producing content, and ensure that products not yet protected do not get accidentally leaked. As for myself, I've been actively producing artworks for over 7 months now (before I had only produced works off and on from time to time), and if it were not for automatic protections, none of my work would be protected and all of it could be exploited.

All in all, I feel Orphaned Works provisions and required registration would decrease the protections offered by copyright law, in a time where it would be better to strengthen protections further.

Thank you for your time and consideration,

Dylan Baker

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