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, U.S. Copyright Office

To all concerned:

I am a board-certified medical illustrator with a master's degree in medical illustration from the University of Texas Southwestern Graduate School of Biomedical Sciences. I have worked in the field of medical illustration for over 20 years, both as a salaried medical illustrator and as the sole proprietor of a medical illustration business. I also have a bachelor's degree in fine arts.

I have taken the time to write because any change in the copyright law that either directly or indirectly undermines the copyright protection guaranteed to creators (Article 1, Section 8 of the Constitution) is a serious threat, not only to the ability of creative people to earn a living, but also to the very existence of artists in this country.

My training, as with most medical illustrators, involved completing coursework in the medical sciences: advanced human gross anatomy (with dissection), neuroanatomy, pathology (with lab), animal surgery, histology, and embryology. I might be missing a few, but you get the idea. Some of the science courses were taken alongside medical students, and other classes were more advanced than those required by the medical school. Additionally, I was taught how to problem solve, how to imagine what something that could not be seen might look like, and how to technically create a visual image that conveys knowledge that is otherwise difficult to grasp. I spent time observing surgeries, learning illustration techniques, and developing ways to visually tell a story. These are not easy things to master. I have been at it for a long time, and I am still humbled by the abilities of my colleagues.

Over the years, I have had wonderful clients who appreciated my creative skills and input toward advancing scientific knowledge through illustrations. Sadly, I have also dealt with far too many individuals who seemed to feel entitled to my work with little interest in fairly compensating me for it. I was once asked for a quote to illustrate an entire book with about 100 illustrations. When I asked to see the manuscript and the list of figures, I saw that each figure had multiple separate parts, and the true scope of the project was over 500

illustrations with some of the illustrations being quite involved. (A common practice of publishers is to equate figures with illustrations, as if combining multiple illustrations into 1 figure somehow justifies paying illustrators less money than the same number of illustrations kept as separate figures.) I submitted my quote and time estimate and in reply received a hostile response, with a reprimand for daring to suggest my price, and an offer to pay $10,000 total (a fraction of my quote) with all illustrations to be completed within 6 weeks. If you do the math, $10,000 for 500 medical illustrations is $20 per drawing to research, sketch, scan, submit for approval, revise, produce final art, and deliver—and that doesn't cover the cost of overhead (electricity, computer, rent, phone, insurance, reference materials, etc.). The editor was irate that I turned down her "generous" offer.

Obtaining a reasonable fee for illustration services has become increasingly difficult. Prices for illustration use have been held artificially low, in part by stock art and royalty-free images on Internet sites. Many illustrators rely on the licensing of their past work to pay the bills. Clients new to purchasing illustration services have a difficult time understanding copyright and usage terms. Some people who request an illustration think they should own the copyright because they had the idea for the illustration. Others who want to use an existing illustration become angry when told they need to pay to use it, thinking that the artist was already paid for the illustration, so why should they have to pay for it, too. Ironically, those who complain the most live in ostentatious homes, drive to work in luxury cars, and vacation in Europe, but paying an illustrator more than minimum wage to create an illustration that requires skills that not everyone possesses is just too much. Other people understand copyright all too well and try to convince artists to transfer all rights to them in all media, even those not yet invented, in perpetuity.

The Internet has made images instantly available with the click of a button and has changed perceptions and expectations to the point where some think that if it's on the Internet, it must be free. All artists (illustrators, writers, photographers, musicians) have been dealing with this misconception for years. Still, the idea that artists will need to re-register their creations in some as yet undetermined registry or risk their work being labeled an orphan to be freely—and legally—available for the taking is devastating. The Copyright Office whose mission, I remind you, is to "***promote creativity*** by administering and sustaining an effective national copyright system" is failing miserably. The recommended changes to copyright law would nullify the basic right of copyright holders to the exclusive control of one's creative work. The reason that Congress was given the power to secure for creators the exclusive rights to their own work was to ensure that the rights of individuals were not overpowered by the already powerful corporations.

I have given much thought to the Copyright Office's recommendations concerning orphan works and mass digitalization of creative work. To let my work be orphaned, remixed,

repackaged, aggregated for the masses, or otherwise stolen for the financial benefit of other individuals or corporations runs counter to every fiber of my being. I have no interest in displaying any of my art on the Internet because I don't believe it will be protected. I do not have a web page. I do not post to Facebook. I do not upload my photographs. And I most definitely do not share copies of my illustrations or fine art online. I hope at some point that changes, but under the current climate, I see no reason to share my time, talent, and resources with entities who will exploit me. It's just not right.

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

> *Contracts that require an artist to transfer all rights to a work conflict with the ability of the artist to earn a living.* When all rights are transferred, the artist gives up all future earnings from work he or she has created. In addition, when copyright is transferred, this creates a situation in which the artist is now competing against his/herself. For example, Client A wants the artist to create an illustration of the coronary arteries and insists that the artist transfers all rights. The artist complies. Client B also wants an illustration of the coronary arteries and contacts the artist for a quote. In the meantime, Client A adds the artist's work to their online catalog of illustrations that they license to 3rd parties. Client B sees the illustration that fits their need on Client A's website for a fraction of the cost that the artist would charge. The artist loses the job.
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> *The Copyright Clearance Center and other companies that compile and/or license visual works without securing those rights from visual artists are profiting from fees that rightfully belong to the creators.* Licensing fees are being collected for copies of published content. Some of that content includes illustrations, but illustrators who hold the copyright for those figures are not being compensated for these additional copies of their work.

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

> *Most illustrators cannot afford the legal fees to pursue an infringement lawsuit.* If art is not registered, the chance of getting a lawyer to take on an infringement case is not good because the ability to recover statutory damages and attorney fees is lost. Even with the art being registered, most artists need to find an attorney who will work on a contingency basis. Even then, the artist gets only about half of the settlement money.

The orphan works policies proposed to Congress by the Copyright Office favors infringers. If my name is removed from my illustrations, subsequently uploaded to the Internet, and infringed, my recourse will be limited to Small Claims Court. However, after the time, trouble, and expense of making a claim, even if a ruling is made in my favor, there is no enforcement if the infringing party fails to pay the claim. This is not a viable remedy for a business owner.

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

Registration can be cost prohibitive. I have not, as a matter of routine, registered my work with the copyright office. The time it takes to fill out the paperwork for each illustration and the filing fees do not make registration practical for large numbers of created images. Over the years, I have registered only select illustrations that I think are particularly vulnerable to infringement. I simply cannot afford to register them all.

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 have seldom had the need to use other creators photographs or illustrations; however, the few times when I wanted to purchase limited rights to the works of others on the behalf of my employer, I have not had any issues. I treat other creators with the same respect that I demand for myself.

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

In the effort to appease the appetites of large corporations in their quest to aggregate and control large bodies of creative work, the Copyright Office, needs to keep in mind one question: What happens if creators stop creating?

Sincerely,

Elaine Bammerlin, MA
Certified Medical Illustrator