Libby Unwin

Illustration
Surface Design
Hand Lettering

12346 Wolff Drive
Broomfield, CO 80020

PH: 720-509-9819
FAX: 866-847-8333

heylibby@libbyunwin.com
www.LibbyUnwin.com

July 21, 2015

U.S. Copyright Office
Orphan Works

Dear U.S. Copyright Office,

I am an illustrator and graphic artist based in Colorado. I have worked as a professional illustrator for over 10 years now. I create illustrations for surface design as well as information design for both the legal and medical fields. In addition to illustrating, I also own a small manufacturing company that seeks out licensed work for our products. I would like to offer some perspective from both sides of the coin.

My copyrighted work is money. When I license my work, I receive compensation in the form of royalties from anyone requesting to use my art. If my work is not protected, it is not valuable to anyone, and I will lose my entire career. I have no leg to stand on if that copyright isn't in my own name.

As an owner of a company that manufactures products with licensed designs, I am deeply concerned that my products will lose value. By having unique designs, I am able to offer something of higher value to retailers, and, in turn, pay royalties to our artists. If those designs aren't unique, I will lose business and my artists will lose their jobs.

You asked some questions. Here are my best answers.

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

   As an artist, the most significant challenge to monetizing my artwork is in creating something interesting/new/unique to licensors. I have to stay "ahead of the curve" in the industry. If someone else is able to use my artwork without my permission, my work is no longer interesting or new, and a manufacturer has no motivation to use my work.

   The same idea applies to my company. If I can't provide retailers something they haven't seen before, they won't give me a second thought. By working with my artists on copyrights, I can assure my retailers that they are receiving the only iteration of a product.

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

   Right now, the challenge for me, as an artist, is staying on top of rampant illegal infringement. I have to spend time and money finding the copy, proving it's a copy, and convincing the copier, sometimes through legal force, to cease & desist. I do this to protect my brand and make sure I am truly offering artwork that has not been used elsewhere. If my art is being copied, a company no longer has reason to buy it from me.

   As a company, if our product is copied, we go from a boutique item to a cheaper product or no product. If someone is able to sell a cheaper version of our product, we either lower our pricing, or we pull our product off the market altogether. We have to stay on top of the industry, know what's out there, what people are buying and from whom. If our product is copied, we have to spend hours and money finding the culprit (this is by far the hardest part in the age of the Internet), and then we have to convince them to stop selling their copy, possibly through legal force. This is a very long and expensive process, and with the Internet, it is impossible to know every time we are copied.

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

   As a prolific artist, it is cumbersome to register all of my artwork. I create new work just about every day of my life, so 10 years of artwork is massive. I have taken to submitting volumes of artwork for copyright, but know that there is a chance the volumes will be misinterpreted in a legal battle. I have chosen this route to save myself time/money. No other industry has to worry about whether or not they will be paid for their work in this way. No other industry requires workers to defend the fact that they did the work. It's an unnecessary stress that could be handled much better than this.

   As a company, we are learning that many of our artists do NOT have faith in the copyright system and don't register their artwork at all. The time and expense simply are not worth it to those artists, and they do not see the value as their artwork is likely to be copied whether they copyright it or not. As they do not have the resources to pursue an infringer, they do not see the value in using resources to copyright their work. Our company requires copyright to protect not only the artwork, but our product design. We have taken to helping our aritsts with the copyright process, hoping this extra measure of protection will pay off someday, should the need arise. Many of our artists simply do not have the resources or motivation to do this themselves.

4. What are the most significant challenges or frustrations for those who wish to make legal use of photographs, graphic artworks, and/or illustrations?

   It is very hard to find the original artist. As an artist, if my work is out there, but my name has been cut off, how will they find me? I do a lot of patterns and surface design (think fabric and wallpaper). How would someone find me, based on a small thumbnail of some shapes and colors?

   As a company, we do not source our artists from arbitrary searches, rather, we rely on the art community to submit their copyrighted images directly to us. The disrespect in accidentally using someone's artwork without knowing or compensating the original artist is firmly against company policy, and not worth the eventual heartache and expense of ending up in the wrong. We require proof of copyright for this very reason. This is a disadvantage to lesser-known or up-and-coming artists, as they may not have any connection to us or know we work this way. Unfortunately, some excellent artwork is probably falling between the cracks, but in the interest protecting our artists, our product, and our company, we have chosen this procurement method.

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

   It is too easy to steal artwork, and there are not nearly enough repercussions for those doing so. I do not feel like I will recoup the damages if an infringer steals my work and does not comply with a Cease & Desist. And this is if I can find them in the first place. The Internet is absolutely packed with stolen images. Sometimes folks do this innocently enough, but there is a large percentage of shoddy companies looking to make a quick buck, even illegally. If you really want to help us, if you really want illustration and copyright to be a lucrative and stable part of this industry, find a way to prosecute the infringers with more than a slap on the wrist. Please don't allow anyone to steal our images, as far as it is in your power to do so. They are our paycheck, how we support our families, how we make a living. Copyright is money for us.

I am grateful that you are allowing us to answer your questions and respond to this in a personal manner. Thank you for taking the time to read this, and I hope you will keep the art community in mind. Please do not enact the Orphan Works legislation.

Most Respectfully,

Libby Unwin

Libby Unwin, Illustrator & Graphic Artist
Broomfield, CO