To: Catherine Rowland

Senior Advisor to the Register of Copyrights

From: Jake Beckman, Artist

Re: Comments on Copyright Protection for Certain Visual Work

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

For the record, I have registered a significant amount of my original work with the US Copyright office at no small expense and time commitment on my part. Still it is an expense and time commitment and so there are some works that are not registered because it is just one more thing that I have to deal with. I am glad that the current copyright law allows me to "own" my copyright without having to register it immediately.

As a painter I can only create a certain number of original designs. A significant portion of my income from my artwork has come from my ability to spin my images into other products such as reproductions of the original designs, or for items such as coffee mugs, T-shirts and greeting cards.

Nevertheless, as a working artist I have experienced difficulties in properly monetizing my work. I have had people not honor licensing agreements by either failing to forward even modest royalties to me, failing to forward the aforementioned royalties after a while, or do runs of my work beyond the stated license without compensating me, not to mention outright theft of my image without any compensation at all.

I have had people who expect me to literally give my work away. Some people just do not see that it is something that I do for a living, just like any other occupation.

I have been approached by the work-for-hire folks who want to reduce me to an employee, without any of the benefits of being an employee. FYI, In order to augment my income I also have done a significant amount of accounting work, and I am completely cognizant of the difference between an independent contractor and an employee. I find the whole work-for-hire scenario to be extremely predatory on artists who are already facing challenges in getting paid for their creative output.

Beyond these issues, it is far too easy for someone to create an orphan work out of one of my images. Some internet sites routinely scrape off all metadata, and some websites only let you use their watermarks, meaning you have to trust these sites to keep your un-watermarked images from making it out in the wild without your identifying information on it. I already know there are websites out there swiping every image they can find on the internet and illegally turning them into things like mouse pads. I have seen my images on the internet scavenged with my watermark, metadata and other identifying information removed, essentially creating an "orphan work" despite my best efforts to make sure my

work can be identified as belonging to me. Similarly, I have licensed my images for single use on occasion, requiring the publisher to retain my copyright information with the image, but once again, found that information buried on a different page not associated with the image or omitted altogether for aesthetic reasons.

It is already a tough world out there. Needless to say I am opposed to anything that makes it easier for a corporation to claim my work and my livelihood without compensation.

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

As I previously stated, I have experienced infringement of my copyrights. And I have never sued anyone, because the cost of litigation is too high. Sometimes a request to cease using my work is honored; however, there have been just as many infringers who thumbed their noses at me as well. Given that the amount of money they made from infringing on my registered copyrights were not significant enough to get a lawyer to take the case on contingency, I have pretty much had to put up with it when it happens.

As you know for unregistered copyrights, I could only sue for actual damages, which really makes it hard to find a lawyer to take up my cause.

Any scenario that makes it any easier for big money to steal my work, including my registered copyrights, is beyond my comprehension. It is already difficult for me to defend my copyrights, even when I have registered them. What I understand of this new legislation would make it pretty much impossible for me to defend them even if someone did make a pile of money of my original work; all they would have to do is label my work an “orphan work” and I could only sue for actual damages, and, therefore, would not be able to sue because no lawyer would take this case.

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

Like I have said, I have registered a number of my images with the copyright office. It is expensive, especially if you do it per image. And it takes time, a lot of it, to not only photograph the work, but also prepare the registration documents. My understanding is to properly protect my copyright, I should also be uploading every variation of my design as well, e.g. the original design, the design modified for the coffee mug and the greeting card images since they are not the same dimensions, and that would add a significant amount of processing to my application.

Did I mention I am a working artist? I have marketing, shows, accounting, oh, yes, and creating

the original designs to do as well. Oh, and what about my reference photographs, do I need to register them too? Quite frankly I do not have the time or money to undertake registering the entire inventory of every image I have taken or created. It would be far too burdensome.

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?

Some artists derive works from other people's work; whenever I am asked by emerging artists about using someone else's photograph as a reference I explain to them that they will be violating that persons copyright if they have not received permission and produce commercial work from that image. I don't use other people's images; instead I rely on my own sketches, and photographs, so as an artist who is not producing derivative work based on someone else's designs, I don't see this as an issue for me.

However, fair use can get murky. As a person who uses social media a good deal, I forward other peoples work that I admire on places like Facebook, but I don't remove any original attributions. However, as I have already stated, that does not mean someone else has not already done so.

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

I have created limited editions. What would orphan legislation do to the value of those limited edition prints for my collectors? What happens when someone declares that image orphaned and mass produces prints of it?

6. What are the most significant challenges artists would face if these new copyright proposals become law?

There is a registry? Really? I can't see how that is possible. What about all those images that predate the internet? Who is going to scan and upload all of those? I can't imagine the time and expense.

I do know there are a fair number of image banks out there who would love to lay claim to the title and have artists kowtowing to them to earn their favor. Image banks are already a predatory industry. I cannot see registry doing anything except piling on more fees and time consuming applications. I already know I can't compete in the legal arena with big money. All I am envisioning here is a wholesale corporate takeover in which the individual artist creator cannot compete.

I have figured out how to use the secondary market for my images to make additional money from them. All I see here is a legislation that would take that ability away from me; all an infringer would have to do is declare my work orphaned and take it for themselves.

Art is a tough way to make a living. I am self-employed and quite frankly I see the secondary market for my original designs as not only now income, but also retirement income. It does not make sense to me for the government to put in place legislation which basically ends my ability to exploit my creative output by making secondary income from it.

Jake Beckman