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Ms. Catherine Rowland
Senior Advisor to the Register of Copyrights
United States Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559

RE: Comments – Copyright Protection for Certain Visual Works

Dear Ms. Rowland,

Thank you for this opportunity to submit comments in response to the Notice of Inquiry issued in the Federal Register, Volume 80, No. 79, on April 24, 2015. The request sought comment on how certain visual works, particularly photographs, graphic artworks, and illustrations, are monetized, enforced, and registered under the Copyright Act and the obstacles that authors face in the current digital landscape.

In response, I would like to submit the following comments submitted on my own behalf. I am a certified medical illustrator and graphic artist in Washington, D.C. I have created, sold, and licensed artwork in the United States and abroad and am very familiar with the challenges of being a creator in the digital world.

In particular, I would like to address: (1) What are the most significant challenges related to monetizing and/or licensing photographs, graphic artworks, and/or illustrations? (2) What are the most significant enforcement challenges for photographers, graphic artists, and/or illustrators? (3) What are the most significant registration challenges for photographers, graphic artists, and/or illustrators?

In my experience, the most significant challenge related to monetizing and licensing my artwork has been one of perception. Many believe that any artwork I show on my website, even those protected with watermarks or metadata, is free to use. This has forced me to spend significant time and/or money in policing the use of my work.

Professional organizations I belong to have led me to resources, such as ImageRaider.com, to help protect my work, but it is not a cure-all. When I do discover an improper use of my work, my recourse is limited. I do not have the

financial resources to pursue lost earnings, so my main option is to request the stolen image be taken down. And, assuming the website acquiesces, the entire experience is still a net loss for me. Moreover, it is so scary how many websites offer to strip metadata or watermarks making it more difficult to find improper uses.

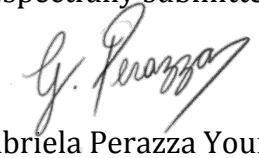
The second issue of perception has been from academics that seek to use my work. Many academics in the United States and abroad have contacted me about using my artwork in research papers and presentations. It has been difficult to negotiate a licensing fee because many presume that any education-related use is fair use and believe obtaining permission is an unnecessary courtesy.

One of the most significant licensing streams for medical illustrators is academic universities, healthcare professionals, and publishers. I am concerned that more and more academic uses are being treated as *de facto* fair use. Even recent court decisions, namely, *Cambridge Press v. Patton*, seem to reinforce that notion. But one of the primary goals of copyright law is to promote creation and the public good. If there is no way to monetize my works intended for academics, there is no incentive to create those works. Especially when the cost to myself, such as the expensive medical guides I must use to guarantee accuracy, outweighs any tangible benefit.

With respect to registration, the decision to register a work with the Copyright Office requires a cost-benefit analysis. I often create a variety of derivative works from a single base image, but I do not have the disposable income to register each of those works. In fact, I have only sought registration of my most requested piece of work; however, I have not received confirmation that the work has registered although I filed in November of 2014. I would be more inclined to register my works if a group of related works could be filed at a lower fee and/or the Office provided third parties with my contact information if an individual was interested in lawfully using my work.

In short, it has been very difficult to enforce my copyrights in the digital marketplace. There are numerous (and free) ways that make it easy to steal one's work, but there are much fewer ways to protect one's work. To that end, I am concerned about the Office's recent orphan works proposal, in particular, the safe harbor proposals that would exculpate academic use and instances where a work is orphaned despite efforts to ensure attribution, such as watermarks and metadata. The deck is already stacked against the individual artist, lacking the time, resources, and know-how of the big guy, and it would be severe blow to my livelihood if these proposals were implemented.

Respectfully submitted,



Gabriela Perazza Young, CMI