COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

VICE PROVOST AND UNIVERSITY LIBRARIAN

July 23, 2015

Ms. Maria A. Pallante
Register of Copyrights
U.S. Copyright Office
Library of Congress
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

Re: Copyright Protection for Certain Visual Works - Notice of Inquiry
Docket No. 2015-01

Dear Ms. Pallante,

I am writing on behalf of Columbia University Libraries. As you may know, Columbia University Libraries is one of the top five academic research library systems in North America. Columbia's collections encompass many visual works, including photographs, graphic artworks, and illustrations. In particular, The **Avery Architectural & Fine Arts Library** is one of the most comprehensive architecture and fine arts library collections in the world. Avery collects a full range of primary and secondary sources for the advanced study of architecture, historic preservation, art history, decorative arts, city planning, real estate, and archaeology. Avery's Drawings and Archives Collection includes over 2 million architectural drawings and records. The Avery Library is home to the *Avery Index to Architectural Periodicals*, the only comprehensive American guide to the current literature of architecture and design.

It is within this context that I am writing to advocate for systematic rights identification protocols. Rights metadata, if well structured, providing for key fields of information that include author attribution and source information, should facilitate educational and scholarly access to materials. I support standardized rights protocols with the understanding that the objective of any system should be to provide information about the copyright status and the origins of the visual work, without limiting educational and scholarly access.

My comments below are limited to points four and five, that is: (a) the significant challenges libraries face when we make legal use of these works in our collections, as per point four, and (b) the challenges, notably in the online

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environment, when managing collections that include commercial visual works whose value is not just commercial, but particularly with the passage of time, is historic and scholarly as well, as per point number five in this Notice of Inquiry.

Comments on point four: What are the most significant challenges and frustrations for those who wish to make legal use of photographs, graphic art works, or illustrations?

As described above, the collections of Columbia University Libraries, and in particular, the Avery Architectural & Fine Arts Library, holds over 2 million architectural drawings and records, including photographs, graphic artworks, and illustrations. Many of these works were created first for specific commercial purposes; however, with the passage of time, the works have taken on distinct historic and scholarly value. As stewards of these collections, we make these works available for educational and scholarly purposes, lawfully and responsibly, as an essential part of our mission. Within the context of scholarly communications, there is an integral expectation that visual works will carry source information, provenance, and author attribution.

As the U.S. Copyright Office has observed in this Notice of Inquiry on page four, there is a growing practice of reproducing and distributing visual works in the online environment without including rights information. In the context of scholarly communications, this issue is, in fact, far more complex. As an active repository of visual works that have commercial as well as historic and scholarly value, we frequently observe that source attribution, provenance including author attribution, and rights metadata are being overlooked or removed when visual works are reproduced and/or distributed in the online environment.

The impact of reproducing and distributing images of visual works online, without complete rights metadata, including provenance and attribution of source, can be damaging and frustrating. First, the practice contributes to the growing collection of images that are orphaned in the online environment. Second, the scholarly and historic value of visual works may be diminished if they cannot be attributed to source, cannot be cited with certainty, and cannot be identified as being the work of a particular artist, architect, or photographer. Finally, as stewards of important collections, we have a responsibility to researchers, scholars, and the general public to communicate our collections lawfully and in a manner consistent with academic standards. The practice of stripping out rights metadata, including author attribution and source information, requires us to re-assess the [legal] risks when we consider releasing copies of visual works into the online environment. Such a re-assessment of risk can inhibit our capacity to fulfill our mandate to facilitate access to scholarly material in the online environment.

Rights metadata that includes author attribution and source information would, instead, facilitate subsequent re-uses of visual works while at the same time support the interests of legitimate copyright owners. In addition, rights metadata

that includes author attribution and source information would also encourage lawful and responsible third party use of copyright protected visual works for the purposes of information and education.

Comments on point five: What other issues or challenges should the Office be aware of regarding photographs, graphic artworks or illustrations under the Copyright Act?

As noted above, visual works -- such as illustrations, photographs, and graphic works -- may be created for commercial purposes at the outset, but with the passage of time become part of institutional scholarly collections. We are of the opinion that a distinction should be made in copyright law between the treatment of contemporary visual works created for current commercial consumption and visual works found in scholarly collections. The seminal issue is one of understanding the market and the long-tail effect of copyright on historic and scholarly visual work. It is one where a balancing of interests is, in our view, necessary between immediate commercial value of a newly created visual work, on the one hand, and scholarly and historic value of a visual work, on the other.

As an example, certain illustrations, graphic works and photographs may hold inherent historic or archival value as part of a collection because they tell a story about the progression of a particular style or urban development. As individual works, however, they hold little commercial value from a copyright perspective. Nevertheless, if they are copyright protected they pose significant administrative challenges to both the copyright owner and to the institutional owner of the physical work because the rights still have to be documented, maintained, and managed. Over the passage of time, these works may become partially orphaned where rights provenance has not been adequately documented either by the copyright owner or the institutional owner of the physical work, so that, for example, it is unclear whether or not a visual work was commissioned or created during the course of employment. In addition, copyright registrations and renewals are exceedingly difficult to research as they relate to individual visual works of this nature. The end result is one of paralysis, where institutions, mindful of their responsibilities in managing collections lawfully, err on the side of caution and limit the reproduction and distribution of such visual works because the status of the rights associated with them is unclear.

In summary, it is our view that standardized rights metadata attached to digital files of visual works would help provide clarity and information about copyright status, attribution for the author of the work, and information about the source of the work, all of which are considered of primary importance in scholarly communications. At the same time, any system implemented should avoid increasing limitations to educational and scholarly access to materials. The objective in providing for a rights metadata system should be to enhance access to materials for scholarly purposes for the advancement of knowledge legally and responsibly.

We are grateful for the opportunity to provide these comments.

Yours truly,

Ann D. Thornton
Vice Provost and University Librarian
Columbia University Libraries