July 20, 2015

Maria Pallante

Register of Copyrights

U.S. Copyright Office

101 Independence Ave. S.E.

Washington, DC 20559-6000

RE: Notice of Inquiry, Copyright Office, Library of Congress

Copyright Protection for Certain Visual Works (Docket No. 2015-01)

Dear Ms. Pallante and the Copyright Office Staff:

I am a creative artist and author with over four decades of experience working in publishing, advertising, television, motion pictures, live entertainment, internet projects and more. In addition to working as a creative, I ran an art and production studio for twenty five years and headed up a publishing company. I have experienced the business of art and copyright from many sides of the equation and I can easily report that this new proposed legislation, if passed, would make life and work harder for me and every other creative person I know. It would also discourage young people from going into freelance art for a career and either force them into staff positions where their creations would automatically become the property of their employers, or they would just not go into the arts. For the general public, I believe this would ultimately result in a diminishing quality of creative works, relegating the creation most of new material to the hands of amateurs.

Increasingly, clients, (publishers, media companies, advertising agencies, etc.) are seeking complete rights or control over my independent creations. Usually this is first proposed in negotiations as an all or nothing deal. With little compensation offered up front and little or no compensation offered on the "back end" of a deal in the form of fees or royalties. In the 1990s, there existed a much more equitable relationship, to the benefit of both the artist and client. Since 2008, all of our gains as creators have been wiped out. Younger artists have no leverage to change these offers. I've worked long enough and am popular enough to be able to occasionally get better arrangements. But even I have had to walk away from most deals over the past decade because of clients insisting on cutting me out of control and profit on my own work. The entire work for hire fiction is entirely for the benefit of the companies seeking to increase their assets without the burden of employee compensation. This new proposed legislation is designed to worsen the situation.

Most of my clients are not local to me. I have clients all over the US and the world. While I have rarely had any trouble being paid by international clients, I have had a number of US clients attempt to dodge their payment obligations to me. In those cases, I resorted to many techniques to leverage my payment. I even used small claims court, understanding that my compensation would be limited by the court, as a way to establish that I would not accept non-payment from one of my clients. In that particular case, the sheriff was somehow unable to deliver the judgement to an established business. It remains one of the few times I have not gotten payment. While it took a good deal of my attention and time, I have had the system mostly work well for me.

The most significant registration challenges for me is time and money. I produce thousands of drawing a year and hundreds of finished works. I have a past catalog of over 10,000 pages of my own comics and illustrations. The proposed work involved in cataloging, scanning and submitting all of this work would put me out of business. Add to that the expense of registration and submission and I think this proposed new system would appear to be a high level of targeted abuse. I enthusiastically support the current system of copyright ownership, where I am invested with the rights in my own work until I sell or negotiate them away. That's a sane and workable system. Please do not discard it.

Finding any source for the ingredients needed to run a business requires research and some detective work. Those who are best at it build better businesses. In addition to my work as an artist, I have also worked as an editor and publisher. Part of my work in those roles was to create and publish art collections. In each case, I identified the artists I wished to work with and tracked down the information needed to contact them. I then worked closely with the artist, with a contract and clear use rights negotiated. Where we generated a profit, my publishing company and the artist shared in the earnings. In the few cases where I wanted to publish work that belonged to an artist who would not agree to the deal I offered, I accepted that and moved on to another project. That is how it should be. As a publisher I should have no right to force the use of an artist's work if they do not desire it. On the other hand, where I have had artists object to use of their work after we were working together, the resolution was decided by our contract when we could not agree otherwise. And that is how it should work between anyone doing business.

I also have a deep interest in the early years of illustration in the US. And I have presented in my blogging, reproductions of many early works by significant artists. All of this falls under the current fair use provisions. In fact, most of it is covered by the expiration of early copyrights. In all cases I present the works with full credits for original use and the creator. This seems to be working as current law intends.

As a freelance artist, I find it hard enough to earn a reasonable living without dealing with more loss of earnings and potential earnings as imagined in these new proposals. We, as artists, are under attack by those who have consistently devalued creative and intellectual property, culture, art and those who create it.

The most basic premise of this proposed new law is thinly disguised theft. A "Potential User" would have the same rights as a creator. That not only refuses to acknowledge the value of creative work and ideas, but gives away my work and removes my control of my own ideas. The way it should work and does work today, is that any use of my work must be decided and

granted by me. If I don't want anyone messing with my creations, changing my art, including it in some "new" work, that is my choice. If anyone wants to use my art in their business, then they either work out a deal with me or they find another willing artist to do the work. I am my own brand. My work reflects the personality and integrity that I have built into it over a long career, after decades of study and development. My work is unique. As the law stands now, it protects my brand. This proposed new one is full of predators masquerading as benefactors. It should never have reached this stage of development. And the artists of the United States of America should not be fighting for the third time to protect their rights.

Sincerely,

Mark Wheatley

Mark Wheatley holds the EISNER, INKPOT, MUCKER, GEM and SPEAKEASY awards and nominations for the HARVEY award and the IGNATZ award. His work has been repeatedly included in the annual SPECTRUM selection of fantastic art and has appeared in private gallery shows, The Norman Rockwell Museum, Toledo Museum of Art, Huntington Art Museum, Fitchburg Art Museum, James A. Michener Art Museum and the LIBRARY OF CONGRESS where several of his originals are in the LoC permanent collection. He has designed for Lady Gaga, created set pieces for The Black Eyed Peas, contributed designs to ABC's Beauty and the Beast, the CBS Super Clyde and also for The Millers on CBS. Several of his original graphic novels have been optioned for motion pictures with Blood of the Innocent currently in pre production. His graphic novel creations include RETURN OF THE HUMAN, EZ STREET, LONE JUSTICE, MARS, BREATHTAKER, BLACK HOOD, PRINCE NIGHTMARE, HAMMER OF THE GODS, BLOOD OF THE INNOCENT, FRANKENSTEIN MOBSTER, MILES THE MONSTER, SKULTAR and TITANIC TALES. His interpretations of established characters such as TARZAN, THE ADVENTURES OF BARON MUNCHAUSEN, JONNY QUEST, DR. STRANGE, THE FLASH, CAPTAIN ACTION, ARGUS and THE SPIDER have brought them to life for a new generation of readers. He has written for TV, illustrated books, designed cutting-edge role-playing games, hosted a weekly radio program, and was an early innovator of the on-line daily comic strip form.