Maria Pallante
Register of Copyrights
U.S. Copyright Office
101Independence 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:

In reference to the Notice of Inquiry, I am submitting a response to the questions posed by the U.S. Copyright Office. I am a professional visual artist and author.

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

As artists, it is important that we maintain all control over the usage of our work output. Having copyright established as soon as a creative work is fixed in a tangible form of expression is vital. This allows any creator, regardless of financial status, an initial level of protection for their work. While the current filing system's per-registration fee is not necessarily extortionate, if one produces a large quantity of work, filing individual copyright status for each work can be cost prohibitive. While the ability to file collections is helpful in offsetting that cost, it currently diminishes recovery protections for an individual artwork within the collection.

Monetizing work is the only way an artist can survive. Our skills are our livelihood, just as a doctor's skills, a plumber's skills, a lawyer's skills &c. are their livelihood. Licensing allows us to ensure a consistent stream of revenue for our works, and for that, our ability to retain control over our work is paramount.

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

When someone removes a copyright notice, or otherwise obscures or removes our name from the work and reproduces it without our consent, not only does it endanger our ability to maintain control of our copyrights, it can potentially negate our licensing agreements and cause loss of revenue. The proposals the Copyright Office have made to Congress are very concerning, as they would allow us no recourse once someone has separated our identity from our work and released it in what would be deemed “orphaned work” status. It is difficult enough to enforce our copyrights when a significant part of the population already wrongly believes that “if it's on the internet, it's free to use”. Should the proposals be adopted, this would only reinforce that misguided thinking.

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

Forced registration would put an unfair financial burden on content creators. Copyright registration should be a tool available to us to help us protect our work should we wish to use it – not a requirement in order to establish ownership of that work, and certainly not by for-profit registries seeking to maximize their profits at the expense of freelance artists.

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?

With the image searching tools available (Tin-eye, Google, other search engines) it isn't inordinately difficult to trace the owner of an image, for the most part. Contemporary illustrators generally have some sort of online presence and can therefore usually be traced without much trouble. If a copyright law based on an orphan works law were to be implemented, it would make it difficult for content creators to be found if a corporation or individual causes an image to be "orphaned" by, for example, removing a copyright or artist's signature designation and releasing or re-releasing the image online without appropriate accreditation. While a creator may still be able to be found, having a copyright law based on an orphan works law would likely reduce the probability that a corporation or individual would exercise a reasonable effort to locate the creator(s) if the first result found seems to be an "orphaned work".

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 difficult enough currently for artists to protect their rights. Even with the protections currently offered by registering works with the Copyright Office, many artists can not afford the costs of litigation when their works are illegally used by others. In the case of individual infringers, while an artist may win their case, the likelihood of collecting damages, or even recovering the expenses of litigation, is low. If it is a corporation who has used the work illegally, the artist is at an even bigger disadvantage because the corporation could afford to drag out the case until the artist is bankrupt. Proposals suggested currently would make it even more difficult for artists, and would grant too much leeway to corporations and unscrupulous individuals to exploit the work of freelance content creators.

Thank you for allowing me the opportunity to share my thoughts on these points with you. I ask that you please recommend that visual art be excluded from any orphan works provisions Congress writes into a new copyright act.

Sincere Regards,

Mary Layton
ItsMaryHerself@gmail.com
www.marylayton.net