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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)

To Whom it May Concern

Hello, my name is Onyx Azor. I am a freelance digital comic book artist and have been drawing digital art since 2011. I have also been taking on art commissions since late 2011 for digital works and have been selling comics online since March 2014. I have also just launched my own personal website, The OxRockBlock (www.oxrockblock.com) as my central HUB for all of my future works.

I am writing now as it has come to my attention the changes being proposed to Congress in relation to the current Copyright Act. I have a high school education and have a very loose understanding of the current copyright law. My general understanding is as thus:

A. An individual has ownership to the copyright of any graphical, musical, and video work the moment it is created (regardless of whether it's been made public or not) for the entirety of the individual's life + 70 years.

B. While an individual owns the copyright of any work he/she creates, it's very hard to acquire a substantial settlement in an infringement case if the work has not been registered.

While the first point is a more concrete definition of the current copyright law, the second point is a loose conclusion (not an an actual section) that I've come to after reading several articles on how to handle an copyright infringement case. The reason I've included the second point is because these are the two that, to me, are the most important.

Nevertheless, I will attempt to answer each section as best as I can.

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

In my own experience, the most significant challenge in earning money from a career as an artist is setting a price for commissions and/or digital comics and image packs to be sold that a large number people would be willing to buy. While it is a blessing in this day and age to be able to reach a wide audience using the internet, the fact of the matter is that a majority of people don't view visual art as something that a substantial amount of money should be spent on, no matter the skill level of the artist or how much time and effort is put into creating a piece of artwork. When it comes to selling commissions, it takes years to build a fanbase that will allow for a sustainable income, which is tough on an single artist trying to make a living off of their work. The most obvious rebuttal to this is to find an hourly job of some sorts while pursuing art as a career, but this is not always a viable option (especially in today's economy), nor would it make moving ahead in an art career any easier, as one would have to split time between the two (and considering that it takes hours for most professional artists to finish a piece, not a lot is getting done).

In terms of selling comics, while it's more viable as a long time source of income since, despite having the same difficulties of requiring a large fanbase to make a decent amount of money at launch, it still makes sales over time with the eventual audience increase (even with viewers simply passing over an artists website). It helps that self-publishing online is simple and relatively cheap to do for example by using an e-commerce site like E.Junkie.com to sell comics, rather than relying on big-name publishing companies, many of which need thorough persuasion before offering a contract.

On the topic of publishing companies, with current royalty rates paid to an artist/author as they are now, unless a series becomes a big hit and has a high number of sales, it'd be foolhardy to rush headlong into a contract with a content creator's copyright at stake. It doesn't help that there are publishing companies that will arrange a contract that works takes advantage of an author. One of the worse examples of contracts such as this is the TokyoPop "Manga Pilot" program of 2008. While written in a seemly simple manner that would be easy to understand, beneath the light hearted wording were details that many described as "appalling". It has long since been taken down from the TokyoPop website, but articles surrounding the contract describe it as thus: It would violate author's rights to have their name written on the work (meaning they wouldn't be given credit), would severely underpay authors and allowed TokyoPop the right to request a second piece with the same rate as the first, and, should there be any disputes between TokyoPop and the author, would legally bind that person to a

required presence with a private conflict resolution company located in LA (meaning if you didn't or *couldn't* show up, you'd lose that case). Quite frankly, these new laws proposed that have the Orphan Works Act at their core are quite similar to what many described as a contract that held no regard for artist's rights.

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

As I stated at the beginning, my research showed that it's very difficult to acquire a significant settlement in an infringement case if the work in question hasn't been registered. This has always struck me as rather odd. Given that most infringement happens over the internet, it's very easy to preserve, archive, and present proof of ownership of any work in such a case. Why should registration be a factor that decides the result? I do agree that it's impossible to for an individual to actively defend their copyright over all the dark corners of the internet constantly day in and day out. So I can understand the concept of registration strengthening an individual's ability to defend their copyright with government support (if that's what actually takes place). Such a concept seems like something that should be an optional (like an added service). I might mistaken in how registration works and the roll that it takes in an infringement case, however this strengthens the fact that passing laws the pressure individuals to register all of their works past, present, and future wouldn't go well.

I'd like to share an example of an infringement case that I frequently look back on. In October 2012, a 3D artist by the name of Kouotsu was involved in a infringement case with TurboSquid, a website that sells 3D models. Here are links to the posts that explain their situation in detail:

http://kouotsu.tumblr.com/post/34658255983/icannotstand-brotis-icannotstand

http://kouotsu.tumblr.com/post/34732573054/the-ceo-of-turbosquid-got-back-to-me-today-with

To summarize what happened, Kouotsu designed and modeled a 3D figure for a collage assignment in 2008. They posted the design on their Deviant Art account and gave permission for others to make models of their own based on the design so long as credit was given (one could say that this is an example of "fair use"). Because the person hadn't put their name on the actual design (the JPEG used), it had made it's way around the internet without credit being given. Fast forward to 2012, Kouotsu had discovered that someone had taken their design and put it up for sale on TurboSquid, making a large sum of profit in the process. It's bad enough that credit wasn't provided as required by the initially, but it violated their copyright in the instance that they did not give the infringer the right to distribute their work. To make matters worse, TurboSquid appealed to the infringer by

stating that “they worked hard on the model” and so on until ultimately, the CEO informed the original creator that the $800 TurboSquid had made off of the model was “donated to disaster relief” (which makes no sense at all. A court fine of whatever amount will not care if you have a portioned of the amount reserved for something like a vacation). Unfortunately, this is where this person’s story ends. The infringer kept the money they made after their violation of TurboSquid’s ToS, TurboSquid donated the money they earned off the infringement to disaster relief and claimed it to be in the original author’s name, and the Kouotsu received 0 dollars from the infringement, time taken to have the infringement removed, and the market confusion.

Now while it’s possible that this situation could have gone in Kouostu’s favor is he had registered his design, there was no way for him to predict such an act would occur from simply uploading their design for enjoyment on the huge art sharing website of Deviant Art. In effect, requiring registration for better support in an infringement case such of this is unreasonable. It would make more sense to look over and re-evaluate this part of the current copyright law rather than rewrite it entirely.

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

There are four challenges when it comes to registration: time, location, money, and probability of use. The first two points can be put together. I for one don’t even know of any locations where I would be able to register any of my creative work (I figured I’d just search for the location when the time came). Even if I did, it would be very time consuming to consistently travel to a specified destination to have my works that I intend to post online frequently, registered whenever I finish a piece, especially if I live or am situated in an area that is a great distance from the place of registration.

When I first learned of being able to register creative work, I initially assumed that it was something that would require payment, which turned out to be true. That said, because current copyright laws protected my works from the moment they’re created public, why should I have to pay to have them extra protected by the law when they’re already covered? Besides that, most artists don’t even remotely have the money to register even a fraction of the work that they make in a year. If the Orphan Works Act being proposed passes, countless artist will have their works stripped of protection, all because they don’t have the money or means to do so.

The fourth point is supported by the situation explained above in regards to Kouotsu and TurboSquid. There was no way for the original author to have known at the time that what can start as a simple act of sharing their design with others can turn into a huge infringement case. While most artists would more

likely register a creative work that they intend to sell to the public, the odds of ever needing to do so for something as basic as a design or sketch is unnecessary, especially when the creator retains copyrights that are protected by law from the moment they've posted their work.

4. ***What are the most significant challenges or frustrations for those who wish to make legal use of photographs, graphic works, and/or illustrations?***

I'm assuming that this statement is referring to using the actual work of a author. Simply put, the most significant challenge is to contact and gain permission from the original author of a creative work. The closest example that I've come acrosson a daily basis is reblogging or posting an work on Tumblr, Facebook, and Instagram or allowing a commissioner to repost a commission on their blog. In both cases, the obvious solution is to cite the work and give credit to the original author (though sometimes the author will state that they'd rather not have their work reposted).

Fan art is a considered derivative work due to the fact that the only copyright used without permission tends to be a widely known character or setting. This is protected under fair use due to the fact that a good portion of the public that views fan art tend to know who the character(s) is originally owned by, especially if credit is given).

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

Other than the issue of enforcement depending on whether a piece of creative work is registered or not, there's nothing I can think of that actively hinders artists under the Copyright Act.

Now that I've answered the 5 points to the *Notice of Inquiry on Visual Works*, I'd like to make my opinion clear on the recently proposed rewriting of the current Copyright Act as a whole. Needless to say, the reason I'm writing and the several arguments that I've made about the required registration of creative works makes it clear that I'm against these changes, which have the Orphan Works Act at their core. The situation had been brought to my attention via several Tumblr blog posts that simplified what the changes would entitle. Quite frankly, I'm utterly baffled as to how anyone would believe that this proposal is a good idea or how it would benefit anyone when it clearly does the opposite. If any of these changes were passed, countless artists on the internet (myself included) would be terrified to posts anything at all on any blog, be they hobbyists or professional.

Below is a link to an article that briefly explains a simplified version of the changes being proposed which I am basing my argument on:

http://ipaorphanworks.blogspot.com

Going through over the facts listed, first and foremost I don't understand how a proposed bill that goes against every American's Constitutional right could go as far as it has. Why should whatever an artists creates be automatically owned by the public the moment they want to share it? As an artist myself, I can say with certainty that nothing I create and share on the internet is done with the intent for others to use it as they please. Can they view it for their enjoyment? Can they share it with others? Can they discuss and criticize it? Yes, as none of these goes against my rights to the ownership of my work. Can they legally use my works for their own means without my permission (including but not limited to selling them on e-commerce sites)? Absolutely not as doing so takes complete advantage and victimizes an artist. Despite this, that's exactly what these laws being proposed are intended to do. What's more, these proposed laws intend to take away all protection to all forms of artwork, past and present, that countless artists have made public (ranging from simple sketches to commercial artwork) unless they're registered. As I've stated several times, it makes no sense to travel and pay in order register something a simple as a sketch or a design. The sheer volume of artwork artists create within a year is staggering. Nobody, professional artist, hobbyists, or otherwise, has that kind of money. Yet, if these new laws that "orphan" any creative work that aren't able to be registered were to pass, infringers like the one stated in the case above would legally be able to run rampant. Any content creator (myself included) will state that the one thing that they disapprove of for any of their works to be used for commercial use without their approval, yet these proposed laws will make such acts legal, even among big-name companies. Even worse is that it legally supports "good faith" infringers, people who can "*say"* that they made an effort to contact the original creator before infringing upon their work. That's a clear step back in protecting an individual's copyright as there's no tangible proof that an attempt was actually made to contact an author. Just as bad as this point is that these proposed laws would allow others to directly alter one's work and copyright these "derivative works" in their names, thereby allowing infringement in one of it's purest forms to become legalized.

In conclusion, i**f these laws were passed, it would essentially make it impossible to progress as an artist, both casually and professionally, without fear of having their work legally taken and used without their permission. It is a bill that supports infringement of all kind and disregards the creative rights of all artists.**

Honestly, I'm completely baffled and speechless as to why these laws were even proposed and how they've gotten this far in the approval stage. I've stated the basic definition of the current Copyright laws at the beginning of this letter and everything about these new laws goes against that and the rights of every content creator. It would slam the doors shut to any individual trying to make a career out of being an artist. It not only undermines the "little guy" in the visual entertainment industry, but also seeks to harm hobbyists who draw for fun. I can hardly contain my frustration that such a bill has come this far, especially because this appears to be the ***third*** time it's happened and at it's worse. It's bad enough that a good portion of society doesn't view art as a career, but seeing this is akin to telling all artists, professional and hobbyists, to put away their pencil and tablets for good.

Thank you for taking the time to read this letter and I hope that it has made an impact in how devastating that passing of the Orphan Copyright Act, and any laws similar to it, would be to the creative industry and beyond.

Sincerely yours,

Onyx Azor.