DEPARTMENT OF
ART as applied to medicine

Celebrating 100 Years 1911 2011
TEACHING EXCELLENCE in MEDICAL ILLUSTRATION

Maria Pallante
Register of Copyrights
US Copyright Office

July 20, 2015

Dear Ms. Pallante,

I am writing as follow-up to my meeting with you on January 20, 2015 and to respond to the current Notice of Inquiry (NOI) for Visual Works under the Copyright Act. Thank you for this opportunity to comment.

I am a practicing medical artist, and the director of the graduate program in Medical and Biological Illustration at the Johns Hopkins University School of Medicine. I have created thousands of surgical illustrations depicting operative procedures performed at Johns Hopkins Hospital by 1) observing these procedures in the operating room, 2) follow-up discussions with the surgeons, and 3) refinement of sketches and development of final illustrations. I conceptualize, edit, and depict the subject matter, presenting it in a manner a camera could never capture. Because I have worked for myself and for an institution, copyright to my work is held by various entities: by me, by Johns Hopkins University, and by medical and general publishers.

I currently serve as the President of the Association of Medical Illustrators. As professional medical illustrators, my colleagues and I create images of complex medical topics for health care providers (such as new techniques to safely and efficiently perform a minimally invasive surgical procedure) and for biological researchers (such as describing molecular interactions in a cascade of events within the cell cytoplasm). Our visual images contain valuable intellectual property worth protecting.

We also create images that explain to patients clearly and effectively topics regarding their own healthcare issues: how a disease affects internal organs, how a medical device or procedure can help, or the importance of compliance with prescribed health regimens. We develop well-designed and illustrated brochures, animations, and apps that educate patients and empower them to help themselves. These are a few examples of how our professional skills can improve the shockingly low health literacy of many Americans.

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If our work has weaker protection under the changes being studied by the Copyright Office, my livelihood will be compromised. The path will be paved for "good faith users" who perform a "diligent searches" to infringe on copyright. The prospect of more medical images being "available" online, with less copyright protection, could drive talented, well-trained practitioners out of our field and has the potential to decrease the quality of medical visualization created in this country. Those who pirate our images - and potentially revise them or create derivative works without good understanding of the content – will be the beneficiaries.

In answer to the specific questions in the NOI on Copyright Protection for Visual Works:

1. What are the most significant challenges related to monetizing illustrations?

The unauthorized availability of my images in digital form (online) and lack of understanding on the part of "potential users" that they are protected works.

2. What are the most significant enforcement challenges for illustrators?

I have experienced many instances of infringers "orphaning my work for me" by removing my signature and then using (publishing) it with no identification. The practice of removing the metadata from images is rampant. How will this be prevented under the proposed system?

3. What are the most significant registration challenges for illustrators?

Re-registering my existing images (upwards of 5,000) in a database as a requirement to protect them from being "orphaned" and to protect my copyright being infringed.

4. What are the most significant challenges or frustrations for those who wish to make legal use of illustrations?

Vague language defining Fair Use and the interpretation of such language create frustration for users and creators.

5. What other issues or challenges should the Office be aware of regarding illustrations under the Copyright Act?

Mass digitization and use of commercial registries could be useful as searchable ***databases for images that the creators intend to be in the public domain***. Requiring all images to be registered in a system - which at this time does not exist and cannot provide protection from infringers – appears to be implementation of plan that has not yet matured. I urge you and your Office to use the utmost responsibility as you craft our next Copyright Act.

Thank you for the opportunity to provide commentary from the perspective of a professional, working illustrator in an academic healthcare setting.

Sincerely,

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