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 and the Copyright Office Staff:

Our copyrights are our assets. The ability to license are artwork and control their use is how we make our livings. I have done work for other people and done artwork for my own projects which I sell directly to the public.

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

Existing copyright law has opened the door to these abusive business practices by permitting work-for-hire contracts. When these agreements are imposed on freelance artists, they deprive the artist of authorship and designate the commissioning party as the art's creator. The artist is treated as an independent contractor in every other way: covering overhead,
supplying his or her own tools of the trade, workspace, training, and covering his or her own liabilities, retirement, insurances and other costs of business. At the same time they loss the right to their artwork and any future profit that could be made with it.
Many foreign countries do not recognize work-for-hire agreements. I believe it would be a step forward for American artists if the US Copyright law was amended to repeal work-for-hire imposed on independent contractors.

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

The two major challenges to copyright enforcement are a.) the high cost of legal fees in an infringement lawsuit. Usually a Cease and Desist letter will be enough. Most artist are not rich and have to find a contingency fee lawyer. The orphan works policies now being proposed would make it harder if not impossible to have the lawyer fee paid that way.

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

In four words: volume, expense, paperwork and time. Also competition from the registries themselves. Thousands of works. To register those images, the artist would have to locate them, unframe them if necessary, scan them, color correct them, keyword and catalog them, return them to their files or frames, add metadata and fill out registration forms for each one for at least two registries. All of that would take thousands of hours. And all this non–income-producing time that the artist would otherwise be using to create new work.

Under the Shawn Bentley provisions, there would be no way I could stop infringers from harvesting my "orphans" and Photoshopping them into cheap "derivatives." I and every other artist in the world would then have to compete at a disadvantage against commercial infringers licensing ghosts of our own works that took far less work to make than the originals.

On going and long standing character from series could be picked and used by others. Be reediting the existing artwork or drawing new work based off of someone else's creation.

Creating art is not a high profit job for most creators and the lost of time and income from their own work would be a very hard blow to artist and their families.

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?

My only public use of other people's material is the fair use I make of it. In those cases where I include images, I credit the sources and provide links where available. Where other people have used my work in similar non-commercial postings. The authors of these blogs have credited me, and I have never objected to such uses. The current copyright law is working, it is working as intended for the most part.

Libraries and museums, of course, would probably require more latitude than I should be given, for archival and preservation purposes. But it is my understanding that in their most recent filings with the Copyright Office, the original justification for orphan works legislation has vanished and the cause stands exposed as simply a drive to permit the commercial infringement of copyrighted art by working artists.

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

Many artists and I are looking at hundreds of images that would have to be rephotographed and in some cases hunted down to rephotograph.

I worked on a continuous series for 2 1/2 years. If all of those had to be submitted it would be hundreds of images alone. Even though some of them were drawn many years ago they are part of the story.

Also I have posted some of my own artwork on-line as a way of eliciting interest in my artwork so that I can sell it and by doing make a living for myself. Those images are shared with viewers sometimes on the day they are drawn or painted. So there is not a lot of time to file paperwork on ever item on a daily or weekly basis.

6. What are the most significant challenges artists would face if these new copyright proposals become law?

Depending on the severity of the changes to the copywriter law, the cost and time involved in registering art work, also how much of my work and work I have to bid for jobs against are "orphans" or derivatives could drive me and a lot of smaller artist out of business altogether.

Instead, I support Congressman Jerrold Nadler’s American Royalties Too (ART) Act of 2015. It may not be a perfect solution to the current black hole that is reprographic licensing in the US, but it contains a provision that would create an honest visual arts collecting society that would begin returning lost royalties to artists. This would at least start to bring transparency, accountability and justice to artists' secondary licensing rights, and I thank the Copyright Office for recommending this bill to Congress.

Thank you for giving us the opportunity to express our concerns about this issue.

Sincerely,
Mario C. Tennon