July 20, 2015

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U.S. Copyright Office
101 Independence Ave. SE
Washington, DC 20559-6000

RE: Notice of Inquiry, Copyright Office, Library of Congress
Copyright Protection for Certain Visual Works (Docket No. 2015-01)

Dear Catherine Rowland, Maria Pallante, and U.S. Copyright Office staff,

I am a visual artist (designer/illustrator) who makes my living off of the images/artwork I create. Copyrights are my assets that I license to companies to use on their products (or sell outright depending on the project). I am very concerned that much of the information I am seeing in relation to orphan works/mass digitization seems as though it could allow infringers loopholes that could completely eliminate my ability to keep earning a living through my art.

Through a few artist's networks, I have heard about an alleged comment made to the effect of "once a work was published, it no longer holds value to the creator". This could not be farther from the truth. If a company licenses one of my works, and it sells the product(s) it's featured on well, then another business may contact me to negotiate to use that same image on a non-competing product for an additional fee. Also, the original licensee could renew/extend our licensing contract resulting in more income for me off of the same piece of artwork, and that piece could continue making income for years while I am creating new artwork.

1. What are the most significant challenges related to monetizing and/or licensing photographs, graphic artworks, and/or illustrations? From an artist's perspective, as a business, I need to have an on-line presence to license my work, and since my visual work is my "product", I have images of my work available to potential clients to review. The public and purposeful infringers steal these images, remove or crop off watermarks, then use it or sell it as their own. I feel that orphan works makes this even easier for infringers, and it appears that I could potentially be awarded less damages should I pursue legal action and win under this new proposed law (not to mention some groups would be exempt altogether, as noted on page 12 of the Orphan Works and Mass Digitization report).

2. What are the most significant enforcement challenges for photographers, graphic artists, and/or illustrators?
First issue, cost. I cannot reasonably afford to go up against an infringing business/corporation in court, assuming any lawyer would even take my case in the first place. I do register my artwork with the U.S. Copyright Office, but even those fees have been increased recently. Secondly, the proposed orphan works legislation. As stated above, even if I go through all the necessary steps to register my art, anyone who can see an image of it online can steal it, then claim it as their own saying they don't know who created it. Then I am responsible for somehow spending even more time and money tracking them down, and then I have to prove they didn't do a "diligent/reasonable" search (whatever that actually means or how it is interpreted isn't even clear at this point, which is why artists like myself are VERY concerned about all of this).

3. What are the most significant registration challenges for photographers, graphic artists, and/or illustrators?
Again, fees take their tolls. I currently must register every piece to be eligible for damages/legal fees should I somehow be able to fund a lawsuit. Also, I am absolutely NOT AT ALL comfortable registering all of my artwork with a private corporation so they are able to create some enormous database of artwork. Who will oversee what these companies do? What if they are directly related to companies that infringe? What if the company goes bankrupt? Who then has "rights" to the artwork database and what will they do with it? Too many unanswered questions to date...

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? This doesn't really apply to me since I don't use other's artwork in my designs, but if I did, I would just hire an artist or photographer to provide the art I needed, and if I didn't know who created it, I would find something else. I certainly would not spend hours and even more of my income trying to track down an author of a piece, which is precisely why others won't either. If they don't have morals like I do, or if they are a large company and know an artist can't possible try to enforce their copyright due to legal costs versus a proposed limit of damages, they will still use the found piece anyway.

(cont. on page 2)

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5. What other issues or challenges should the Office be aware of regarding photographs, graphic artworks, and/or illustrations under the Copyright Act? Under current law, I don't need to register every sketch, every photo, every color way, or any other creative work I make. It is mine upon creation. What will happen with our current bodies of work or images already "out there" under this new law? Are we responsible for registering all existing work as well so those pieces do not become orphans? The proposed legislation (what little we know of it), appears to make us responsible for registering ALL of our creative works in order not to possibly have it considered an orphan. This is completely unreasonable. There are entirely too many unanswered questions and in all honesty, it appears as though the proposals have been discussed behind closed doors with no representation whatsoever from the visual arts community. Not only that, the public is GREATLY uneducated about copyrights in general. In my opinion, the uneducated public and large corporations pushing for legislation that can take more money from creative people in general are the largest challenges I face as a small business today.

Thank you for the opportunity to comment. I hope that in the process of helping some with their issues of making truly orphaned work available you do not destroy the creative community's ability to employ themselves with the images we create.

Respectfully,

Marsha L. Rollinger

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