July 21, 2015

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)

Dear Ms. Pallante and Copyright Office Staff:

I sincerely thank you for this opportunity to comment on the importance of maintaining U.S. Copyright Laws and how proposed changes to those laws will detrimentally impact visual art professionals like myself. I am certified medical illustrator who received a Master of Arts from the Johns Hopkins University School of Medicine in 2010. That same year I founded my business, Weissbrod Studios. I have received top national awards for my work both as a student and a professional medical illustrator.

In addition to my medical illustration work I completed eight years of service as a multi-media illustrator in the United States Army Reserves. My service included a yearlong deployment to Iraq in 2006-2007, in additional to multiple overseas temporary duty assignments, where I created work that received top honors at the Military Graphic Artist of the Year competition in the illustration category. Throughout my service I earned many medals and awards for my service as an illustrator in the U.S. Army.

Even though I am relatively new to the field of medical illustration my experience to date has me very concerned about the proposed changes to U.S. Copyright Law. I will do my best to provide comments on the five questions you have charged us with answering.

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

I have to be able to control the copyright and licensing of the original work I create. If I do not or am not able to do this I will not be able to make a living, period. There are many clients, often large companies, who want to own all rights, first and secondary rights, to a work so THEY can commercially benefit from MY original works. For example, if I create a body of work for a client, like that of a book project which can have hundreds of illustrations, and that work is done under a work-for-hire contract I relinquish all rights to any work I create for them up to and including my personal artistic style. Not only could I infringe on myself with my own style after this project but I have also just created a body of work that can now commercially compete against me. I would not even be able to advertise this work to gain any future work. Plus the company would then be able to make additional profit from the re-licensing of the work I created for them.

It is my company policy never to do work-for-hire and because of that I have been able to assert my copyright and re-license my work to clients who ask for it. I am able to do this because I was able to

control the primary and secondary rights to my work. Companies absolutely know the value of visual art and will do everything they can to strong arm artists into relinquishing their rights in order to get work.

The current system often pits us against our own clients by allowing large and small companies to demand that independent artists sign away rights in order to get published. The problem with this, especially in the scientific and academic communities, is that my clients must get their work published and need the art I create to visualize their work. I am told over and over again that when researchers and medical professionals look through book chapters or journal articles they first and foremost look for clear and accurate illustrations. The publishers recognize this value of our work and take advantage of the fact that they can often force artists into signing over rights, often secondary rights, under threat that their clients work will not be published. This in turn upsets our clients who say our artwork is preventing or delaying their publication. I have been threatened that I will not receive any additional work from either the publisher or client simply by asserting my copyright. Even if I am successful in holding on to my copyright when negotiating with a multi-million dollar publisher, they still hold all the cards, and can "allow" me to keep my copyright but demand secondary rights and more. I, along with my client, need to be published too in order to make a living.

It is obvious that this is not a level playing field. It in this regard that I question who might be pushing for all of these copyright reforms to gain further access to our very profitable visual work of art.

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

Fact, users steal our copyrighted images. This is especially true in this digital age and there's not much we can do to avoid it. We have to be able to advertise and show our work in order to obtain future work. Even if I register a work, put my copyright mark on it, watermark it, and ensure metadata is correctly applied all of those can be removed by willful infringers who want to use my work. People want artwork but they don't want to have to pay the original artist for it. They also do not want to be bothered by copyright law and I humbly ask that you not make infringement easier by lightening penalties or creating legal loopholes.

Even if we chose to enforce our copyright there is an extraordinary financial burden on the artist to pursue infringers through the Federal court system. I have found many cases of infringement on pieces of my work but a copyright lawyer is extremely expensive and out of reach for my budget. There are some artists who pursue infringers and are able to be compensated under our current system (e.g. statutory damages and legal fees recovered). However with proposed changes such as Orphan Works and the Small Claims Court could drastically alter what limited options artists have.

A concern I have about the new Orphan Works report is that it could essentially eliminate the financial benefit of pursuing infringers at all. It actually creates protections for infringers, whether they are good faith or ill-intentioned. What would the cost benefit be for an original artist having to pay federal court legal fees and only be awarded actual damages in an infringement case? Theoretically any work could be perceived as an orphaned and would automatically by subjected to limitations on damages. Would it be possible that in a small claims court an infringer could make more money off of the infringed piece of art than the original artist did? This could be especially true when the damages awarded to the original artist are limited by pre-determined "reasonable compensation" rates. Please help protect us and update copyright law to enforce copyright and penalize infringers.

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

The current registration process is extremely cumbersome. It is expensive and time consuming for individual artists. Many may scoff as I say $55 to register a piece of art is too expensive but please consider how many pieces I can create in a day, week, month, year, or lifetime. Add to that the amount of time it takes to compile and format the information necessary to submit for registration and note that as lost revenue as well. Yes, there are group registrations but doing so dilutes the monetary damage awards should a work in that group be found to have been infringed. Each piece must be registered individually. The amount of time and fees quickly add up, even with only the Copyright Office's registry.

Adding additional registries that an artist must register with in order for their copyright to be recognized by courts only compounds the issue. Since these will be commercial registries we must assume that there will be a registration fee with each one. Even if this fee is considered to be nominal these will be commercial registries and there will likely be additional fees (e.g. maintenance fees, usage fees, storage fees, admin fees, and so on) as stated in the Orphan Works Report.

There are many questions and concerns with this proposed new registration system. On top of the fees, how many of these commercial registries will I be required to register work with? If I don't register with every single registry will my art be considered orphaned and be given up for commercial use by "good faith users?" Who stands to gain financially from this type of commercial registry system? Certainly not the artists who create the work. How could a system like this possibly protect individual artists?

It seems to me that this is directly linked to the concept of Orphan Works and provides protections to users who want to glean commercial value from MY work for free and without the protections current copyright law provides.

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?

I personally do not see any challenge with this, I create original works. Like many of my colleagues in the medical illustration field I often reference other images and illustrations for accuracy purposes. Regardless of the subject my work is held to a high standard of accuracy and I must be able to accomplish such. That said using reference to create an original work is not the same as infringing.

Often publishing companies will not allow an artist name to be included with their visual work in a publication. Different companies have different policies on this. Some publishers will remove signature blocks or copyright notice in publications even when an agreement with the client says the name of the artist must remain visible. They know our work increases value with publication. This can hinder a good faith user from being able to locate an artist.

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

Who represents visual artist? It is disturbing to read about groups that on the surface appear to support artists' rights but who are directly supporting propositions like Orphan Works or Mass Digitization that

would negatively impact so many of us visual artists. With the proposal of Extended Collective Licensing pilot program I am concerned about where the money for artists will go, and to whom, and for what use. In my work around research and academia there is quite an emphasis on conflicts of interest when applying for grants or bidding on a contract. Clients, and those doing the awarding of contracts, are scrutinized for potential conflicts of interest. It is the original artists, creators of the works, who should be the ones to benefit from their copyrighted works.

In conclusion, I would be my sincere hope that this Copyright Office look to protect artists' rights and prevent any loss of artists' control over those exclusive rights. I am hopeful that this Copyright Office will work with visual artists as we move forward together.

Thank you very much again for both issuing this Notice of Inquiry and for reading my letter.

Respectfully,

Elizabeth N. Weissbrod, MA, Certified Medical Illustrator
Weissbrod Studios