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July 21, 2015

Maria Pallante
Register of Copyrights
U. S. Copyright Office
101 Independence Avenue 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:

Please let me express my gratitute for the opportunity to comment on the problematic issues that face the visual arts community. As both a professional business owner, author, artist and educator for more than 35 years, I come to you with an indepth understanding of the value of copyright law – especially with regard to their importance as an income source and their long term asset value for family and estate planning.

With regard to the questions you have posed…..

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

Four major challenges: a) Publishers who demand that artists sign away their digital and other secondary rights as a condition of accepting assignments; b) Revising the OW Bill; c) Predatory competition from giant image banks; d) Educating principals of ethics and fair practices.

a.) For thirty years or so, many publishers set policies that demand art directors use artists who agree to sign their rights away. These demands are initiated by company attorneys who ignore industry design integrity. Existing copyright law encourages business practices to permit work-for-hire contracts. These types of agreements designate the commissioning party as the art's creator and deprive the artist of authorship, expense refund, future revenue, and none of the benefits of "legal" employment. Work-for-hire undermines the very principles of authorship embodied in Article 1, Section 8 of the Constitution. Since 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.

b.)The Copyright Office proposals to Congress with regard to revising Orphan Works (OW) bill are, without reserve, opposed by artists since they appeared more than ten years ago. A law built on the OW concept would allow internet companies (especially those who establish “image banks” to not only make revenue from artists works but place artists in an unfair and highly challengeing competitive market that sounds very much like unfair labor practices.

c.) Further, these so-called image banks who charge high registration fees mislead artists to participate in an art distrubtion concept touting that they will earn boundless incomes but in the end only discover the arrangemtn eat into artist royalties. In fact, these “modern-day” concepts of attracting markets only go to exploit artists work for their own financial reward. To further the problem, artists end up competing against themselves since the rates these web markets create lowball the art to such an extent that artists can no longer achieve proper financial return for their creative thought and execution.

d.)As an educational institution, students expect to be taught about fair practice rules and regulations. They want to know how to protect their rights and pursue their arts and their careers in a way that is not only fair to others but fair to themselves. If the very world around them is usurping their rights to earn a living by unfair practices, without the support from the very agency that was established to originally protect these rights, how will our world proceed.

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

The very proposal the Copyright Office has made to Congress is essentially a revised Orphan Works (OW) bill. Artists have resoundingly opposed Orphan Works bills since they first appeared a decade ago. A copyright law built on the foundation of orphan works law would allow Internet companies to syphon off revenue from artists with the hopes of creating an even better revenue stream for themselves. There can be no bigger challenge for those of us who make our living creating new works than to have to compete with giant corporations that can get artwork free from artists and compete with us for our own markets.

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

In the end, if the government succeeds in passing this new copyright legislation, artists like myself will end up paying to maintain our intellectual property in somebody else's for profit registries. And what about the images many can't afford to register, or those we never found time to register, or even those older images – these will fall into noncompliance – thus open to exploitation by anyone and everyone!

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?

As the author of twelve text books on Botanical Art & Illustration, and sixteen supporting educational course paks, students use these materials to develop their understanding and skills. I have already seen unfair use of these materials despite my copyright notice. Any law that further negates the rights to maintain copyright would make these textbooks completely open to rewrites under different names for individual purposes.

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

Based on current proposals to Congress, it seems logical and fair that no artists group that supports this legislation be allowed to receive any financial benefit from the creation of copyright registries or notice of use registries that profit even further from artists they were created to help.

In addition, there are many professional business arrangements established with lawful contracts that exist today in the art industry. These legal contracts are at risk of becoming null and void due to the proposed government copyright proposals. The entire art industry, its mode and methods of transaction, and means to livelihood for individual artists and their established studios, is in jeopardy. Those of us who have created fine art original works and valuable signed and limited edition prints are at risk of losing intended income. If these images become fair game for an open and extensive market, not bound by integrity and fair practices, artists across the nation are at risk of losing today's income and future income, income that edition sales are intended to establish. Fair game practices will decrease future value of edition prints thereby placing aging artists at the risk of lost income. This trickle down effect will damage a whole future economy for artists, their families, and values that museum collectors around the world have interest in.

Again, not only speaking as an award-winning fine artist with work in two museums, original and edition prints on the market today, but also as a commercial artist, an educator and as an author, these future proposed changes will affect the minds, hearts, and income for generations to come. This proposed copyright law is dishonest and unconstitutional and should not be passed. We cannot continue to erase the "yellow lines" of our society expecting that a reduction in our society structure and an increase in a "free-for-all" philosophy will ensure our humanity. We must strive every day to protect not only ourselves, but also everyone. As a country, as a community, as a society, we are nothing if we ignore basic human rights.

Once again, thank you for reading my letter. I ask you to recommend that artists are allowed to maintain exclusive rights to their intellectual property as guaranteed by Copyright Law since January 1, 1978; and that visual art be excluded from any orphan works provisions Congress writes into the new copyright act.

Sincerely yours,

Olivia Marie Braida-Chiusano
Artist, Author, Educator
OM Art Designs
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