July 19, 2015

Re: Notice of Inquiry from the U.S. Copyright Office

TWIC:

As a holder of copyright and a visual creative professional, I am very concerned with the proposal of legislation and rights usage in regards to creative visual works. A fellow professional had brought to my attention that there is a potential bill to change copyright in how it functions, with whom I register copyright, and how it will affect my current business as an artist. Therefore, I feel it only right and necessary to bring to light my firsthand experience in this matter.

In 2008, I was just graduating from college when the Orphan Works bill was circulating congress. You can imagine my horror at the prospect of not retaining rights to all the work I was told I must put online in order to find a good paying art job from a potential client. Not only that, but that there was virtually no other way for this potential client to see or find my work, as printed directories were becoming obsolete and most agencies would only represent artists previously published. Thankfully, the bill was not passed, and I went on about my business as an independent artist, gaining contracts with a multitude of companies both large and small.

During my business negotiations I am always concerned with the copyright to creative work. Since I am an illustrator - I draw and paint pictures for my clients - the question of usage/ licensing of my work is most often defined by me, due to current law. With large clients, I will often have to bend to their non-disclosure agreements and a flat rate of payment (work for hire) as the original "idea" for the project was not my own. With smaller clients, I often have to educate them on the definition of a copyright, and what it means they will get from me with our contract together. With these small business individuals they often need artistic guidance and suggestions, so I often require that I maintain the right to license the work in some way afterward. This very small contractual guideline has helped me in many ways retain my: 1) financial peace of mind, allowing me to sell reproductions of my work when I can, 2) help me obtain payment from clients who would otherwise be unwilling (and unlawfully) to fulfill their contractual obligations, and 3) retain my integrity as a businesswoman and an artist.

So in both cases, with the large and the small businesses, I am hired because of my ability to produce for them a piece of art that they require for their marketing, printed product, movie production, animated sequence, ebook, website, business logo, etc. I am hired because of what my art *looks* like. I am hired because there is no one else that can make what I make. It takes a tremendous amount of time to research, sketch, layout, organize, and finally finish a piece of art. Even though a client may know this, they still drive for a bargain, and the only way I can do that is by maintaining my right to the original work. And the only thing that protects me and my work is the current law and copyright office, by preventing it being available somewhere/somehow else.

As a young artist, I am also very familiar with the latest technology and advancements in making art, especially when it comes to digital art and reproductions. It is all too easy to "Photoshop" a piece of art: change the color a little here, crop in a corner there, scale the background pattern, and viola, a "new" piece. It is just as easy to download an image from a link on a website, and paint/erase out any copyright symbols or artist signatures so as to make such a transformation completely unnoticeable. With Photoshop’s new cloning tool, you can’t even tell that the image was altered at all. To top it off in proven tactics, I have had a friend who worked as a graphic designer for a company too poor to license art properly, and who had literally forced her to create derivative works hoping to attract clients to their business. I have witnessed artist peers battle with reproduction companies selling products with their artwork on it, only to find out some other artist was making "derivative" works and selling it to the company. There has also been a new outcropping of printed product manufactures that have now made it easy for an individual to upload a piece of art that is not their own, print it and sell it for their own profit. These companies have a search capability in where other individuals, who may not have known who produced the art, can then purchase a product from the company. This company then claims no fault of infringement on copyright and maintains all profits from sales of these infringed works. This kind of thing happens at least once every two weeks, and artists like myself usually have no real financial means to fight in court because *someone else* is making money on OUR work. Therefore maintaining copyright, especially for digitally created artwork, is of *utmost* importance. Digital artwork essentially only exists in reproductions, with no original piece available for sale. Therefore if an artist that creates a digital piece cannot retain the copyright to the work, for whatever reason, cannot hope to make a living creating art as such. It will all be for loss and only reproduction companies would stand to benefit from these artworks.

On a different note, I have found that registering for a copyright surprisingly easy, only that I find putting together my work into a collection to submit is a bit tough. Though I know I do not have to submit everything as a collection, the cost of submittal can become prohibitive when entering 100 works at $35 per work for instance. Especially when it might take 50 of those pieces to make up the cost for it. So, in a sense, I have to weigh what pieces I can afford to submit to copyright, just as I have to weigh which pieces are portfolio ready for a client. Additionally, I have not found any issue whatsoever working with clients on usage rights when I make them clear in contracts. The only time I have heard of such issues is when an artist did not define usage in their contract and then the client takes advantage of the artist's mistakes. This happens quite often as businesses know that the work that artists create for them is worth more in reproductions and reuse than the original piece itself. Most business minded artists, like myself, know this and prefer to maintain leverage over our work by retaining the copyright, as I have previously stated.

What I would like to know is, wouldn't the proposed agreement to let libraries document artists' works in digital format also create a general allowance for other business to do the same? Wouldn't something like this grant carte blanche to any individual, currently and in the future, to appropriate and use my work for their sole profit? How can I as an artist both promote myself and protect my work without having to wait the 3 to 6 months it already takes to get a copyright? I must stay current and in the public eye to even have a chance at making a living on my work. If I have to register with a privatized corporation (which by law is an "individual") wouldn't that grant them the right to do as they please with my work - my livelihood? How can I trust an entity like that not to take advantage of me like so many public and private businesses already do on a daily basis?

Thank you for reading my comment. I sincerely hope that some of what I've shared will shed some light on the current state of affairs for artists that live and work in the United States. We already make so many compromises to do what we love - what is in our hearts - and we can only hope to maintain that right through the laws that are made.

Sincerely,
Jessica Chrysler