July 19, 2015

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:

Thank you for the opportunity to comment on the problems visual arts face in the marketplace.

I'm writing to stress that for me, and for artists like me, copyright law is not an abstract legal issue. Copyrights are our only assets. Licensing them is how we make our livings. Unfortunately, I fear that many of the changes now being proposed by orphan works lobbyists would end that kind of success for all artists, but especially those just starting out.

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

Two major challenges: a.) Publishers who demand that artists sign away their digital and other secondary rights as a condition of accepting assignments; and b.) Predatory Competition from giant image banks.

The system, as we currently have created it gives advantages and all rights to the publisher leaving the artist in the cold for all monetizing. As a solo artist, I currently have little or no recourse when an image is used without my permission. I receive no monetary recompense when it is reproduced, those monies have been stopped at the publishing house. This creates a dead end for a solo artist, both monetarily and creatively. 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 becomes a de facto “employee" for the sole purpose of forfeiting copyright, but receives none of the benefits of "legal" employment. 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. Work-for-hire undermines the very principles of authorship embodied in Article 1, Section 8 of the Constitution.

Giant image banks have persuaded many artists to register their work with them on the promise that they would open new markets for them. This has created an incredibly expensive price for a new artist to enter the market. Then these same organizations use the images for their own profit, leaving the artist out of the monetary loop.

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; and b.) the orphan works policies now being proposed again to Congress.
Artists are among the most innovative and creative people in our society and yet they are also among the lowest pay scales. For an artist to afford a lawyer to represent them, they can only do so on contingency, and then only if the artwork in question is “properly” registered. If they have not had the financial ability to register it “properly”, they only have the opportunity to recoup the actual value of the artwork, and not the lost income. Not even as a “contingency” case, would a lawyer take on such a case.

The proposed orphan law would make almost all artwork created by solo artists, that are in the lowest earning brackets, undefendable, unless pro-bono, thereby giving all the income rights to the infringers. This is especially concerning as the digital ability to copy-paste-and-print with high quality are increasing .

Reducing the solo artist to small claims court is diminishing their abilities to have viable livelihoods. If an infringer can, under the proposed orphan works policies, after a undefined “good faith”, use my artwork to create profits and my only recourse is in small claims. That is in essence saying my work and ideas have little or no worth. Yet, the potential the “infringer” has found worth. Why is the artist written out of this equation?

3. What are the most significant registration challenges for photographers, graphic artists, and/or illustrators?
Volume, expense and time.
As an artist, I can create multiple images during a week. Do I know which will be profitable? No. But, under the proposed policies I would be required to spend my time and money not on creation of more artwork, but on registering EVERY artwork I have created and EVERY piece of creativity I express.
As a solo artist, I must use the limited funds I do have, not in the creation of more art, but for the registration of the art I have created. This is not innovation. This would be unimaginatively time consuming. Time not creating is stolen time from my income potential.

The best solution for artists would NOT be to re-introduce registration, but to do away with it entirely, as has been done with copyright registration in the rest of the world.

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 a visual artist, I am acutely aware of the ability to make derivative artwork. Learning is building on what others have brought us. The digital world has opened up the sources of materials. But the important word in the question is LEGAL. I personally think the copyright laws are working, albeit challenged. What I do not think is that a mass distribution of artworks created by young/growing/new/struggling artist as free for usage to all would be of benefit to any artist. The proposed policies will decimate the ability of artist to create businesses and be creative, economically participating individuals.

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

There is no national registry to date.

The “registries” that currently exist are pseudo-registries and not economically viable to artist, in fact in many instances they give no remuneration to the artists involved and use images without credit or value.

The cost-prohibition of scanning and uploading means that all of the current bases are text-based and therefore confusion between artworks is inevitable. Making the cost of registration prohibitive, again creating high bars for small or entry artist and for established, productive artists.

Artists are unaware – or only vaguely aware – of the massive secondary licensing already taking place in the reprographic rights markets. We have learned that in the US this licensing has been going on for over 30 years, with combined revenues of roughly $300,000,000 annually. In other countries where royalties are distributed to artists, surveys by the International Federation of Reproduction Rights Organizations show that visual arts royalties average at least 15% of total collective fees. Yet in the US, neither I nor any of my colleagues were ever informed about this potential revenue stream by anyone involved in that licensing, nor by a couple of rogue organizations who have subsequently claimed the royalties as their own "found money."

Yet, artists have no standing to know anything about how these royalties – derived from the work of artists – are being collected and spent. This has been going on for 30 years, to the detriment of all artists. Future policies should not continue on this, nor extend it, as the proposed policy would.

Artists should be able to and be fully aware of all of the monetizing done with their creativity.

Instead of the proposed policies, 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,
Cynthia Yolland
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