July 19, 2015

To: Maria Pallante, Register of Copyrights

I am a freelance artist specializing in both 2-D and 3-D work, and though I have only been making a career in the arts for about 10 years, I can say strongly that inherent copyright protection of my work is hugely valuable, and the ability to license my work and have exclusive rights to all of my work – and derivative works as they are currently defined under current copyright law – is key to the long-term survival of my career.

What are the most significant challenges related to monetizing and/or licensing photographs, graphic artworks, and/or illustrations?
Artists must spend a significant amount of time marketing their works if they want to monetize them. We work extensively with clients, maintain portfolios and collections, advertise for ourselves, and create promotions that range from small advertising to large, expensive gallery shows. All of this must be done in addition to the hours upon hours of work actually spent creating valuable content. This is a hard business, and for many, it is not very profitable, and the constant devaluing of art is a constant struggle that we can't and never could afford. Stock image distributors create an unrealistic public view of what one should pay for art licensing, and in turn, the artists whose art is featured in such databases are underpaid. Already, even under our current copyright law, it is amazingly easy for anyone with access to the internet to download visual content; so much so, that some feel they have the right to use artists' work for free, when indeed their intentions may violate fair use.

In the case of 3D artists like myself, the issue of derivative works is especially relevant. Photographs taken of 3-dimensional pieces are derivative works, and if these photos are published to blogs with proper credit to me, the original creator of the 3-d piece, then it is fair use. This sort of use is beneficial to me, as it shows the public my work, and gives potential clients the resources they need to get in touch with me. This is how my business grows. However, when uncredited derivative works are published, potential clients have no way of finding me. And if the image is published and monetized by someone else, it cuts into profits that I should be able to make, and creates confusion about the authorship of the pictured work – thus affecting my income on two fronts.

What are the most significant enforcement challenges for photographers, graphic artists, and/or illustrators?
Current technology allows the rapid spread of digital information throughout the internet, and image editing software which makes it extremely easy for people to remove watermarks, change image colors, create image collages, etc. Artwork (original or derivative digitizations) can move and evolve rapidly. It is already difficult to find all of the cases of unlicensed use of artwork, and in many cases already difficult to enforce the illegal use of art, be that to have it credited, removed, or royalties paid. If the offending party is operating outside of the US, the problem can be impossible to solve.

The Orphan works and Mass Digitization Report proposes ideas that would make all of the above problems exponentially more difficult – or worse, make what is a huge problem for artists completely legal for potential art users.

What are the most significant registration challenges for photographers, graphic artists, and/or illustrators?
Under current copyright law, I have not had to register any of my individual artworks in order for them to be protected by copyright. I rely heavily on this system, and I feel that a system of inherent authorship makes sense. If anything, I feel that need need more resources to enforce the proper crediting and use of artwork, with penalties for the removal of watermarks and metadata.

What are the most significant challenges or frustrations for those who wish to make legal use of photographs, graphic art works, and/or illustrations?
Honestly, there are very few, and the inconveniences that these parties face are largely invalid. Occasionally someone may run into a situation where the author of an image or other content that they want to use is very difficult to find or contact – however this is just as often the result of improper use of the image in the first place (publishing without credit to the original artist). Furthermore, if the original author can't be contacted, there is no reason why a company cannot choose an alternate image which they are able to fairly license, or commission an artist for an original work.

Other than that, those wanting to use visual content are often faced with a fee to license or commission visual content from artists – however, the lack of startup capital, or restrictive project budget on behalf of a company is not, and should never be, the problem of the authors that they wish to hire. Any person who works should be paid fairly for their work, and artists are absolutely no exception. Especially in these days of easy “crowdfunding” for projects that the public wants to see, a company must simply budget for the costs to license or commission visual content. This can only be considered an inherent reality, and not a problem that needs to be solved.

If someone does work for you, you pay them. If you buy a piece of something that someone made, you pay them. End of story.

What other issues or challenges should the Office be aware of regarding photographs, graphic artworks, and/or illustrations under the Copyright Act?
The creation and use of derivative works is already one of the greatest challenges I face as an artist, and it affects me on multiple levels. First, the creation and sale of a derivative work (which the Orphan works and Mass Digitization Report proposes should be legal) would rob me of revenue very directly. And secondly, I rely on proper crediting of my work as a means of advertising. Images of my work being utilized on the internet under Fair Use, with proper credits to me, brings in new clients and allows me to be recognized as an artist. This is the single most

important way in which my business grows, and so it is of utmost importance that when my images, or derivative works of my artwork (in this case, photographs of my 3-D art) are being used without giving proper credit back to me, it is imperative that I am able to make the offending party remove the image or comply with fair use. I must have the support of copyright law behind me in order to do this. However, if these derivative works become legal for infringers to use as they please without giving me credit for my hard work, then my business would cease to grow, my existing clients could easily be lost, and my work could very well stop being profitable for me.

In conclusion, and to address the problems I see with the Orphan works and Mass Digitization Report, the philosophy therein seems to be that an artist's work is useless to him or her as an individual, and that the true value of the work lies in making it available for all to see. And while in some skewed context that sounds like a beautiful fairy tale, it is instead a nightmare. Stripping artists of what is inherently their personal property, in order to distribute it to the masses and profit only a select few, reeks of communism in the most blatant, obvious regard.

If you devalue artists, you devalue art. If you strip artists of the very tools with which they earn their livings, then making new content will not be a viable way for them to make their livings. They will seek other jobs, in an economy that already lacks enough jobs for everyone. But most importantly, they will stop making new content. It will cease to be. The very thing that is supposedly worthless in the hands of its creators won't be available for the public to see at all, because its creators won't be bothering to make it anymore.

You will kill art.

Sincerely,

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