July 15, 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:

My name is Melissa Broussard. I am primarily a scientist, but also do freelance illustration on the side. I've been doing illustration work since 2004, and have produced material for Saturday Academy, been published in the Linux Journal, created a number of works for scientific institutions as well as private commissions. Freelance illustration has frequently helped make ends meet during difficult times, and, as such, is an important issue for me.

As you are receiving a large number of letters, I will try to remain brief:

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

There are a few major issues. Firstly, individuals and organizations often demand the complete forfeiture of rights from the artist, which, at worst, prevent these works from serving in a portfolio (which can hamper acquiring future customers), and mean that any future commercial use or derivations result in no additional pay. This is *particularly* bad in work-for-hire situations where companies “hire” you for a single job, and the terms of employment are signing a contract forfeiting all IP rights—without, of course, paying benefits or anything of the sort that would normally come with such employment.

Second, in cases where rights are not forfeited, the clients *assume* they are and use the work for non-licensed purposes. Without a small claims court for copyright issues, the legal fees for these cases are so large that it is often not possible for small-time artists like myself to pursue legal action beyond a “cease and desist” message or takedown request, which are often ignored. The same problem exists for outright theft of art in various ways, particularly on the internet and by clothing and jewelry designers. Urban Outfitters has stolen small-time artists' designs repeatedly in the past, for example, with few consequences. Small artists need more protection from large corporations, as they cannot afford large legal bills like corporations can—it is a tough world for content creators.

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

High legal fees, apathy on the part of infringers and the public in general, and the new orphaned works act as proposed. The first two are self-explanatory, so let's look at the third:

Problem 1: definition of “orphaned works”. There is a real problem of *actual* orphaned works, defined as works to which the copyright holder has died or the business holding the rights has gone bankrupt without leaving the work to anyone. If the definition were stated in such a way that it did

not apply to contemporary works, there would be much less pushback from artists.

Problem 2: “diligent effort”. If works are not registered, they are still theoretically protected. However, if they are not in the registry, it is very easy to imagine someone claiming that they “tried” to look for a contemporary artist and just couldn't find them (yeah, right), so claim their work under the new orphaned works legislation. Again, smaller artists are more likely to get nailed with this than larger ones, as they are often strapped for both cash and time.

Problem 3: minimizing harm to infringers. “Good faith” infringers, as defined by the proposed law, are likely to not actually be acting in good faith at all when it comes to contemporary works. If the fee is small, large clothing designers, stock photo clearinghouses, and other predatory businesses will simply steal the designs, pay the pittance, and the artist will not get fair compensation for their work.

Problem 4: the real issue—the system that creates orphaned works. The Copyright Office has had, for a long time, the habit of extending copyright and extending protections. The current problem of orphaned works is the natural conclusion of this process. **It is almost laughable that the Copyright Office feels the need to allow these protected works be used for commercial purposes while maintaining a “Mickey Mouse + 20 years” copyright policy**. This has to stop. If all copyright ended at the death of the author/artist, this would not be the problem it has become today. The former standard of 28 years + 28 years renewal would be very sufficient for most artists. Older works should enter the public domain, as they are part of our collective heritage and culture and therefore *rightly belong to the public*.

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

Volume, money, and time.

I have taken over ten thousand for my own personal use as artistic references, and have created over a thousand individual artworks, and I expect to live another 40+ productive years! Because I have not had to register anything yet, I would need to spend **months**, doing nothing else, to register each one. Registering a few images every night would take **years**. Either way, it would be hundreds of thousands of dollars of my time, which I can't afford as a part-time freelance. This process will be even worse if I have to pay per image! And then, at the end of it all, the office is going to take a cut of my tiny profits for the pleasure and make it harder to compete in the marketplace!

And if I don't comply? My work can be automatically harvested by bots, cropped, flipped, and then sold, while claiming that they were acting in “good faith” and that they “just couldn't find the artist” (again, they wouldn't try). These harvested works would then be sold at a pittance, which would threaten the livelihood of full-time artists who can't compete against a machine.

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 an artist, referencing photographic works has always been an issue. This is why I've taken thousands of pictures to form my own photographic library, to avoid potential lawsuits. When you can only charge $20-40 for a finished work, there is no room for licensing fees for reference images. I wish photographers would allow their works to be lightly referenced for less than 50 cents, but I know that it won't happen—they have to eat too!

As a scientist, I make fair use of (credited) photographers for talks, lectures and educational

material I prepare. There are numerous GPL-liscenced photos which are easily used for these noncommercial, educational purposes.

As a citizen, I am occasionally frustrated by being unable to acquire useful, but out-of-print books published between 1920 and 1980. Libraries and research institutions are the ones that really need these works available, and to make these works available to citizens. Again, the real issue is the duration of copyright creating the orphaned works in the first place.

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

For a government deeply in debt, unable to pay for the health of its citizens or adequately maintain major infrastructure, it seems foolish to try to set up such a massive database. Even assuming everything went perfectly and millions upon millions of works were registered, could you afford to maintain it? How high would the fees have to be to support it? I have a nagging feeling they would be high enough to strangle small-time artists out of the market.

Cheers,
--Melissa Broussard