July 19, 2015

Maria Pallante
Register of Copyright
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, DC 20559-6000

RE: Notice of Inquiry, Copyright office, Library of Congress

Copyright Protection of Certain Visual Works (Docket No. 2015-01)

Dear Ms. Pallante, Copyright Office Staff and those others it may concern:

Recently it was brought to my attention that changes to U.S. copyright law were being proposed and that these changes, to describe them charitably, would be of great negative impact to me and those in my profession as visual artists. As such it is with great solemnity that I compose this letter to voice my concerns with regards to these proposed amendments.

I confess that I do not bring to this discussion the level of professional gravitas of other long time illustrators that I know have done in their letters. I am 25 years of age and have been actively engaged in building my skill level for the last 8 or so years to work in fantasy illustration for games and books. Instead, I seek to provide something different. Unlike them, I am a member of the next generation of artists currently working in pursuit of a fulfilling professional career. As an aspiring illustrator my education, my decisions with regards to my day jobs, and even my social life have all been tailored and crafted around my endeavors for artistic excellence. However, these proposed new rules with regard to copyright fundamentally begin to erode the bedrock of the ways in which artists generate our living. The proposed ideas represent no simple layer of extra inconvenience or legal hurdle toward a profession; but rather would, in practice, invalidate a young lifetime's worth of work, experience, diligence and practice by ensuring that the industry I have devoted my life to thus far, was too costly to be worth the effort to continue.

The proposed Orphan Works inspired rules, would not only effectively end the careers of many professional illustrators, it would make it nearly impossible for new ones like me to step up and take their place, while actively handing even more power to corporate interests–who already see us as little more than potential revenue streams– than of which they are already possessed, to control the world of visual arts and entertainment and actively continue the trend in this country away from equality and toward an oligarchy in which people are at the mercy of massive corporate entities with the power and influence to control all our works.

And so with this letter it is my hope to convey the importance of not allowing the Orphan works inspired amendments to continue and to demonstrate that for me and those like me, this is no abstract legal formality, but rather one that would directly and powerfully impact the visual arts community, young and old. To that end I will attempt to answer the questions posed by the copyright office to the best of my ability along the specific lines of an aspiring visual author and to show how they differ from but are no less important than the concerns of an established professional.

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

For established professional creators this question likely typically revolves around publishers who try to force them to give up secondary rights as a condition of even being given an assignment–essentially a type of exploitation which tells the artist to decide between having the money to survive in the here and now or having a potential revenue stream down the line–a decision that other business professionals are rarely if ever asked to make–and giant image banks that take artists images and undercut prices and their ability to sell work in general. Beyond these however is the reality of clients who recognize the need for your abilities but are unwilling to provide fair compensation for your services.

At the heart of all of these practices however, is the same core lack of understanding. It is the naked unwillingness to value the power and effort involved in creations of the visual author as worthy of compensation in the same way as other craftsmen or professionals. One does not make the erroneous claim that the services of a lawyer or a plumber should be gained for free or upon the dubious promise of "exposure." However, the devaluation of the visual author's work product ensures that an artist will hear both claims regularly over the course of his or her lifetime as entities both large and small engage in the type of cognitive dissonance that is at the heart of the current proposals: the idea that the work created by artists is too valuable to be left in their hands and to not be available to the public… and yet not inherently valuable enough to pay them for the effort, skill and time its creation necessitates. This is, in essence, the core difficulty of monetizing any artistic endeavor: the belief by society that they are freely entitled to an artist's work and energy and that it is some how different from any other craft or service to which they are not entitled to for free. Copyright protects artists from this mentality (to a point) and provides both recourse and revenue when someone attempts to steal that which we need to survive.

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

At this precise moment it would be almost facetious of me to answer that question with anything other than the current proposed rules changes that are prompting the necessity of this very letter. A rules change that would necessitate my work being at

the mercy of for profit entities that could then, with very little effort, tweak my work and create derivative versions, to compete with me to my own clients, real or potential, provide me no recourse and bleed me dry through registration fees for everything from the sketches to the finished product, is more than a challenge, it is an obstacle that would make it virtually impossible for me to become a professional illustrator in any way shape or form currently understood.

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

There's no simple answer to this question but the most obvious conclusions to be drawn from this are that should the proposed rules take effect, the most violently and obviously detrimental after effects would be the combination of volume of material to be copyrighted, the paperwork involved in the process, the expense and the time involved. All of which have massive prohibitive effects on the efforts of beginning artists.

At its core, art is an iterative process. One does not simply become a master or even proficient craftsman of any type quickly. A master carpenter for example makes a great number of pieces before he/she creates anything close to a master work. Those early pieces may still be valuable and overtime the early designs may themselves prove as desirable as their later masterpieces. This is true for visual artists but only more so as to be good at visual communication and to have technique of a level applicable to the industry standard requires one to be a certain level of prolific.

To give some concept of the amount of work an illustrator creates that they'd have to protect on average, considering just projects and ignoring practice images and studies, I make anywhere from 15-40 preparatory sketches per project, at least 1 detailed finished drawing for a piece and then the final painted illustration. At one point I was doing 1-2 of those a week. Even factoring in the bare minimum number of practice sketches necessary per project that's still around 30 pieces a week. Over the course of a year that translates to around 100 finished pieces and more than 1500 drawings. Many professional artists or those more prolific than I actually complete significantly more finished and commercially viable pieces than that. All of them would need protecting under the proposed updated rules as one can never be sure with perfect certainty what the most valuable piece of theirs will be. The massive effort of registering those kinds of numbers with copyright offices, let alone the likely multiple ones necessary under the proposed rules would itself alone be cause for great concern.

It becomes even more onerous when one considers these offices would be for-profit entities and as such, likely to demand payment for their registry. The expense involved with the sheer numbers coupled with the issues laid out above about the already difficult status of getting people to want to pay for art in the first place

would make the effort to protect one's work almost prohibitively expensive and the necessary paperwork involved for registering each piece would be incredible.

Beyond the listed difficulties however comes the most precious of commodities for which none are guaranteed an excess: time. All the factors listed previously are dependent heavily upon time and if an artist is bogged down by onerous paperwork without serious way of knowing that it would pay off, the artist cannot spend time in the endeavors to which they are desirous and suited: creating new work. This is especially so for younger creators who may need to hold down some other form of work to support themselves while developing their abilities and for whom time is already at a precious premium. To strip us of that by forcing us to go through this added effort to protect our assets and inventory is essentially crushing the individual artists or leaving them prey to the large corporations do to them as they wish.

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?

Simply put, I've never encountered anyone who's suffered from significant frustration of any sort in the desire to make fair and legal use of work. Anyone who uses work in a non-commercial setting seems to understand that those who created the work deserve proper credit for its creation and in many cases I've seen, endeavor to do so. In other cases, the lines of text "no images are created by me and are still owned by their original creators" is standard boilerplate on many online image sharing communities. Currently, the only time I personally use other artists work is for inspiration or reference and then it's more likely that I'll be creating my own reference or am using said reference with the tacit or more likely explicit consent of the photographer, or in educational posts on my blog. As such matters constitute the bulk it not all of my need for other people's images, the current fair use copyright exceptions are more than enough and I still cite the artist as a source if I can (which is the case significantly more often than it is not).

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

Simply put, artists are not lawyers. I at one point gave serious consideration to studying law and to say I have found wrapping my mind around the legal morass associated with the discussion difficult to process would be charitable at best and a laughable understatement at it's absolute worst. The current copyright statutes that grant inherent and instant copyright the minute something is created are a godsend in many ways to many artists who are often flummoxed by the intricacies of copyright in general.

This lack of clarity in the law and its layered nature creates a special challenge for artists in understanding and protecting our rights. The current measures under discussion would only exacerbate that problem, rather than simplifying and

clarifying the situation to make life easier and more tenable for those in the artistic fields.

At the outset of this letter I made it clear I wanted to demonstrate the real and detrimental impact of the proposed rules would have on me and others in the visual arts. I feel I've made it plainly clear as to what those effects would be but to make it even more plain and evident as the sun rises in the east, should these propositions become law I would stop trying to create art as a profession. I would have no reason to continue to share the work I make with anyone as they could too easily profit from my work without any of the requisite effort. It would be plain as day that someone could steal from me with the government's consent as long as I chose not to engage in what would too easily become an exploitive system. My career would be over before it began and a lifetime of work would suddenly, irrevocably and callously be for naught. I can say with unwavering certainty that I am not alone in this matter.

It is with sincere and ferocious determination that I implore you and those in your office not to permit this to happen. Do not deprive the nation of an entire generation of artists simply because corporations do not value what we do enough to provide us the fair compensation we are due. We do need reform in copyright law. In many ways there are murky areas of fair use that could be clarified, and issues with regards to review and critical examination of media in visual forms. It is the believe of myself and many in the visual arts however, that such reforms should be tailored to protect the individual and small time creator from both the illegitimate scammer, and predatory companies, not to further insulate the large internet power houses as I am concerned the proposed ideas. Based on my examination of the proposed ideas, I do not believe that they create the type of change and reform that is needed.

Thank you for your time and the consideration in hearing our concerns as artists.

Sincerely,
Aaron Radney
Illustrator