Bree DiQuinzio

July 20, 2015

RE: Notice of Inquiry, Copyright Office, Library of Congress
Copyright Protection for Certain Visual Works (Docket No. 2015-01)

Dear Ms. Pallante and Copyright Office Staff:

Thank you for taking public comments on the problems artists face; I appreciate that you have taken the time to listen to our concerns.

I fear that the proposed changes to copyright law will undermine the ability of our artists to make a living. Artists need to be able to retain creative control of their work. Taking away the tools they use to protect their livelihood is cruel and unnecessary, and I entreat you to consider the ramifications of the proposed orphan works legislation. We've already seen what happens when a corporation claims control of 'derivative' work, and it is always a disaster for the artists and writers who do the creative heavy lifting. I'm referring to comics, where a number of characters were declared 'derivative' because they were created as part of an ongoing series, and their creators never saw a dime for their later (often extensive) use and success. Companies have used loopholes to deprive artists of compensation, but the proposed changes to copyright law would make this sort of thing standard, normalized.

I am hobby artist – I don't have reason to be afraid for my own sake, because my art isn't how I put food on the table, but I understand the amount of work that goes in to making a living off of art. Artists already generally work at or below the minimum wage. They work incredibly hard and they bring beautiful things into the world. Not only would the proposed changes hurt our existing artistic community, they would discourage younger generations from sharing their creations, if they bother to create at all – and we will all be the poorer for it.

As I mentioned above, there is already a huge roadblock to artists retaining creative control of their work, and that is that publishers routinely demand that artists sign away their secondary rights to their work as a condition of receiving assignments. These predatory tactics are already common practice, and the proposed changes could easily exacerbate corporate abuse of an existing power differential.

The most significant current barrier to copyright holders enforcing their rights is legal fees, as artists are generally not well-paid, but the orphan works policy being proposed would be much worse. Currently, an artist can generally only afford to sue infringers is by hiring a contingency fee lawyer, which is only possible in the first place if they have registered a copyright. If they have not done so – and many creatives do not – then they can only sue for damages, and it is usually impossible to get a contingency fee lawyer for such cases. Because the settlement value would likely be so small, it is often not worth it for a copyright owner to litigate in the first place. This means that artists are exceptionally vulnerable even under the current system, but under the orphan works legislation, all infringement cases would become liabilities – not worth pursuing because the fees would be so steep and the potential payout so small. In addition, copyright lawyers would be unlikely to even take such cases on unless required by law. In effect, the proposed copyright essentially create a no-fault license to infringe and a legal climate in which infringement is a rational business decision.

Registration is a huge roadblock for visual artists as it is; making such a thing mandatory if an artist

wishes to retain creative control would be a nightmare. To start with, the sheer volume of work produced by visual artists is a barrier to registry; visual artists often create multiple images per day for years on end. This volume means that registering their collective is a prohibitive investment of time – to the extent that the proposed changes to copyright law would mean that any artist who wanted or needed to retain creative control of their oeuvre would be unable to do much else, and any fee quickly snowballs into an exorbitant cost, especially for the most prolific artists. The vast majority of artists could not afford to comply with the new provisions, but not doing so would give them no recourse when their work would inevitably be stolen.

The best solution for artists will never be re-introducing registries. The rest of the world has the right idea here; do away with registration entirely.

Fair use already offers a significant amount of protection for those wishing to make legal use of visual artworks. Those wishing to make use of a specific work for commercial purposes may have difficulty in locating the original artist and negotiating for use, but there is no reason this process needs to be made easier by stripping artists of their legal protections. Non-commercial use is already protected, and those wishing to use art for commercial purposes do not need carte blanche license to infringe.

Archival in libraries and museums is, of course, a worthy goal – but that is not commercial use, and expansions of fair use are all that is needed to ensure work is preserved and maintained for future generations.

Existing copyright law already makes it possible for organizations to divert secondary income away from artists; we do not need to institutionalize this kind of predation and abuse. What we need is heightened transparency and accountability, which the orphan works legislation does not address. To that end, I do support Congressman Jerrold Nadler's American Royalties Too (ART) Act, which includes provisions to begin returning 'orphaned' royalties back to artists, and I thank the Copyright Office for recommending this bill to Congress.

Thank you for your time,

Bree DiQuinzio