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Ms Maria Pallante
Register of Copyrights
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re Notice of Inquiry, Copyright Office, Library of Congress
Copyright Protection for Certain Visual Works (Docket No 2015-01)

July 23, 2015

Greetings,

My name is Jeffery West and I am a professional illustrator and have been for the last 28 years. I specialize in information illustration and visual explanations. My clients include the largest hi-tech companies of Silicon Valley, the Fortune 500, as well as entrepreneurial start-ups. My illustrations are used in communications media including print, web, digital, presentation, and packaging, for marketing, sales collateral, advertising, direct sales, publishing, educational and non-profit, and public relations applications. My work has been published and distributed in America, Canada, Europe and Asia. I am also a fine artist and produce original digital prints, drawings, and paintings for sale.

I am writing to express my concerns over proposed changes to copyright in general for all creators in all media and for the Visual Arts in particular.

I have enjoyed and continue to have a livelihood from a long and successful career in no small part because of the advantages that U.S. Copyright law provide me for controlling and leveraging the products of my talent, unique vision, and effort. In order to secure my copyrights and the financial opportunities of licensing, I register all my work before publication. Controlling the copyright and usages of my images not only makes a living income but also supports the integrity of my thinking, style, and brand; it discourages those who efforts can only consist of imitation and cheap work done by low paid work-for-hire help.

I deal with the licensing of my images as a normal course of business. The negotiation for multiple usages under my copyright both during and after the commission of an illustration are a significant part of my income and livelihood; it would be difficult to have a sustained middle class income without the income derived from having my copyrights. My images are my business asset and the multiple licensing creates my income. There is no limit on how long an image is a viable income engine. I regularly receive inquiries for images that are years old either to directly license the image or to create a derivative.

A critical element of my work is the ability to make derivatives digitally. Because I use Adobe Illustrator and generate .eps files for the final art, art does not degrade through multiple copies. The line work and shapes are generated by mathematical formula; an image can be resized infinitely, unlike a bitmap image which has a finite number of pixels composing the image. The file also remains "live", meaning changes can continue to be made without image quality loss. Most significant, visual elements can be selected and recombined into different compositions, a strategy I use to enable efficiently in creating my illustrations, but are also easily used by people seeking to infringe on the images.

In answer to the questions:

1. Monitor and Licensing Challenges

My most significant challenges to monitoring and licensing my illustrations include the lack of resources, time, and ability to track an image that a larger organization might have available. Once an image is released to a client, it is gone. The illustration that I present to the client is always in a digital format. The nature of the medium allows for rapid transfer, distribution, and the making of derivatives.

There have been software tracking apps that would report if an image was posted to the web and one went searching for it. If a derivative was made or a portion of the illustration taken, the software would not be able to track the recombined illustrations. The process involved time and money to regularly track all of the images I have created. At the peak of my career, I was producing 60 - 100 illustrations per year; I was busy working long hours to produce that volume and had little time to do anything else! Illustration by it's nature relies on the personal style and thinking of the individual and often takes years to develop. It is not something one can hire employees to produce.

I have to trust that my clients will abide by the terms of the Agreement used to originate the illustration; in most cases I believe my clients do. I think this is because there has been a general awareness raised in business regarding intellectual property, copyright, and usage rights. I think this also occurred because there has been more visible litigation regarding infringement cases that fewer businesses want to run the risk. In this way, the threat of penalties and a strong copyright law have helped creators have a living. However my experiences have verified that conscious infringements of my work have taken place and I have pursued these vigorously through legal challenges.

Other challenges include people being able to find me and identifying me with a particular illustration. I have maintained a consistent website and contact info through the majority of my career and people can easily locate me. I complete the metadata in each file, however metadata can be easily removed. Many people do find me easily but who knows how many won't and don't take the time to look? There persists a mindset that because one can find an image on the Internet that it is somehow okay and free to use.

2. Enforcement Challenges

I have experienced numbers of infringements that I became aware of and pursued with lawyers. These are not small and incidental; the total value of the infractions has been over several hundred thousand of dollars. As a one person shop supporting a family, this is a substantial amount, enough for a college education or two, plus money set aside for a retirement!

The challenge of enforcement is the leverage that a larger business can bring to bear against me as a one-person business. As a claimant, the burden of proof is on me. To successfully challenge any infringement is a significant burden on my finances and my time, even with a registered copyright and copies of the infringement. Corporations and publishers have the resources to retain lawyers over a long haul and play a waiting game. In some of these cases I was able to reach a settlement, however it was smaller than the value of the infringement. In other cases I was not able to get a settlement and was advised by my lawyer that pursuit of a claim was potentially more expensive that what the infringement was worth. In all cases I was able to stop the infringement, however recovering damages have been mixed. For the majority of practitioners, illustration is not a high income profession.

3. Registration Challenges

Once I have learned it, and after several letters from the Copyright Office on the correct way to register my work, I find the online registration system fairly easy, albeit a bit clunky and outdated, to use. The user interface is not very intuitive or friendly and should be updated. The help files and Powerpoint presentations are useful but could be improved. For large bodies of work, it is tedious and time consuming to have to individually enter the title of each work.

4. Challenges to Buyers/Users of Illustration

I think the challenge for users is that have to pay for the use of an illustration. I think buyers get frustrated that they can't own an illustration outright and do whatever they wish with it including monetizing it themselves.

5. What other issues?

Copyright is a critical element in fostering a creative environment just as was intended when Copyright was created. Authors must be able to profit from their works and be protected from other larger business interests in order to be able to continue to create. Concepts such as Orphan Works and mass digitization rob and place the burden of proof and enforcement on the creator; they are detrimental to creative spirit, enterprise, and interests.

I urge you to keep in place the ethos of protecting creators in considering any changes regarding copyright. In the eyes of people who create, an ounce of prevention is worth a pound of cure.

Sincerely,

Jeffery West