Dear Copyright staff,

I am deeply concerned about the impact of passing the so called “Orphan Works” legislation that poses a threat to my lively hood and that of all other visual artists.

I have spent a lifetime, and thousand upon thousands of dollars investing in my talents and skills taking classes, and perfecting my craft through blood and sweat. Any piece of art I create, whether it be a quick sketch or highly detailed design is the result of this enormous dedicated time and effort, and I absolutely depend on my ability to earn a fair income from my creations. My ability to survive depends upon it.

It is difficult enough to for artists to defend their rights to exclusively license their creations for a living wage in this digital age full of piracy. It seems as if we are on the verge of making it impossible.

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

There is a growing sense in this country that all visual creations are free for public use thanks to rampant piracy on the internet. This idea is in fact a rationalization of the theft of artists work and investment. Imagine a carpenter building a beautiful oak cabinet that takes over a week of intense labor built upon a lifetime of skills. Imagine if a stranger unwilling to pay for the cabinet could just somehow duplicate the cabinet by taking a picture of it and then have the cabinet in their own own home for free. Imagine if the laws protected this behavior?

That is the position artists are finding themselves in: Having the fruits of our labor (our products) simply taken from us because it's easy to steal what can take a lifetime to create. Because our medium is visual and not tangible it relies on the visual sense and experience. If someone digitally copies our work it is just as good as theft. That is an income we have earned being stolen from us.

Any law that makes the theft of a product legal makes no sense.

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

Once someone has felt justified in making copies of original artwork it can be very difficult to find financial restitution in the digital age. Many of these visual thefts are not even about profit for the thieves who often just share the work online. Once it is available for free (and it is seen that there are no legal ramifications for this) the image becomes widely viewed and no one is willing to pay to use it legally.

This also encourages a negative trend in large companies who would ordinarily commission or license works from artists. Such vital sources of income now lower their rates or in many cases feel they have the right to use the art for free as well.

What's left are artists struggling to eat and pay off student loans.

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

Artists are not attorneys. We create in spurts and can be prolific to the point that one would never be sure what is worth the time to register until it's too late. For example, on a good day I can fill half a sketchbook, with almost 40 sketches. Some of those may be worth protecting but I won't know until I have had time to evaluate them objectively, which is often long after they are draw. Should I be expected to register 40 works a day in order to protect them? Often sketches are things of beauty and worth protecting for the purpose of licensing, and even a quick sketch is the result of a lifetime of work-- just as a doctors diagnosis (even one made in minutes) is the result of many years of education and experience.

Often sketches are the rough drafts or foundation of a more intricate more developed artwork, but when they are created the artists may not even be aware this is something he or she will revisit. What happens if artwork is revised? Are we expected to register the sketches, the color tests, the revisions, the final work, and all possible future alterations?

It would be like having an author separately register every page of a book in progress including separate registrations for all rewrites.

Artists would have to have attorneys hovering over them at all hours of the day filing for copyright. Who can afford that? Who could create like that?

We are not corporations with highly paid legal teams ready to patent all our new discoveries, but we have right to own and license those discoveries and earn a living from them.

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?

The rampant piracy make sit frustrating to the consumer because they feel frustration at having to pay for something others are using illegally for free. There is a growing sense that all art is public domain. There is a misguided growing sense of entitlement to art for free without any thought given to the artists. Passing laws that would make this entirely legal for the vast majority of visual creations will also result in less new works being created for consumers to access legally. Artists will share less of their creations for fear of theft and be more difficult to find, commission, or license.

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

No one wants to hire or an artist whose work they cannot see before hand or license artwork that they cannot view. Merely sharing samples of my portfolio online or even displaying them in a gallery now puts me at risk for having my work digitally stolen and copied and profited from while I starve. The orphan works makes this legal in many cases. It is like effectively allowing someone to steal my work and my resume and my life experience, leaving me with nothing.

Thank you for your time an consideration. The livelihood of a great many rests on the right thing being done.

Yours Truly,

-Walt Batycki