July 22, 2015

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

RE: Notice of Inquiry, Copyright Office, Library of Congress
Docket #2015-01, Copyright Protection for Certain Visual Works

To Whom It May Concern:

Thank you for the opportunity to comment on this issue. As a Board Certified Medical Illustrator—one of only about 250 in the world—I feel my say is often drown out by large organizations with loud and well-funded voices, yet it is my artwork and the work of my unique and highly-trained, highly-specialized colleagues that provides the visual clarification of complex scientific concepts and procedures so critical to education in science, medicine, and healthcare. My clients tell me frequently that it's my illustration that bring their teaching and writing to life and allow it to be understood by others at various levels of scientific expertise.

For almost fifteen years, I supported my family and myself by operating a successful biomedical illustration studio full-time and by licensing the reproduction rights to my archive of illustrations. My clients are primarily non-profit groups—best-in-class research centers and medical institutions as well as the world-renowned physicians and scientists that work at them—and the for-profit publishing companies that are so integral to the academic publish-or-perish system. Whether created for a for-profit or for a non-profit entity, the objective of my work in nearly always education.

While I continue to operate my studio part-time, about 1 year ago, I transitioned into a new full-time role as Medical and Scientific Art Director at Harvard Medical School (another non-profit educational institution). I am now helping to build the school's online learning program in medical education. In a way, I now stand on the other side of the fence, yet in both roles—Freelancer and salaried Art Director—copyright is fundamental to my daily work, and I protect my own as well as credit that of others.

I'd like to answer your questions from my personal viewpoint:

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

Intellectual property is the name of the game. The fact that individuals and companies want to reproduce my work speaks to its value. It is my extensive training, unique experience, and artistic skills that make me a valuable consultant, and it is these same skills that make my products—my visual creations—valuable pieces of intellectual property. The illustrations I create are the assets of my company. Without the ability to carefully license and re-license my work and to control the reputation established by the accuracy and quality of that work by preventing the creation of derivatives, there is no way I could continue to earn a living as a professional artist. I price my work commensurate with the rights licensed, and exclusivity is often a factor in my contracts with

clients. Without control over the reproduction of my work, I simply could not make a living in this field.

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

Time. The internet has made visual work accessible to almost anyone, and it has birthed a new cultural belief that everything is (or should be) in the public domain. There seems to be an assumption that artists create work simply because they love to express themselves. While that may be true for some fine artists, as a biomedical illustrator my visuals serve science—They are educational content. The creation of them requires investment of significant time researching, consulting, and iterating to assure that the work is accurate and didactic. I consider myself a scientist and my clients respect me as one. As a self-employed professional, I simply could not dedicate my days to combing the web and contacting infringers. That effort would leave me no time to practice my craft and contribute to the advancement of medical education, and little hope of financial gain in the end.

Money. I cannot afford attorney fees to even begin to prosecute infringers of my work—and many infringers know that and feel protected by that fact. Even when I do identify infringers, the legal system leaves me little recourse. It's a bit like a time-consuming game of Whack-a-Mole, with little-to-no financial compensation and new infringements popping up continuously. There are, however, copyright holders who are capable of protecting visual work—the multi-million dollar international corporations that have become the norm in medical and scientific publishing. They have the money to hire full-time attorneys to prosecute infringers as well as lobbyists to influence lawmakers to legislate in their favor. Many of these companies are my clients or the publishers of my client's manuscripts. These are the same corporations that now, almost as a rule, present self-employed artists with take-it-or-leave-it contracts full of work-for-hire terms, low rates, and long payment periods. These corporations work to grow their visual archives by gathering intellectual property created by artists and have found ways to monetize this work via databases and secondary licenses. Even if I do manage to retain copyright to my illustrations, they still may appear, illegally, within these databases and none of the fees collected from this secondary licensing will ever come to me, the copyright holder, as it should.

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

After educating myself thoroughly about contracts, licensing, and copyright, I had to make a decision: Will I register my work or not? I considered the time, paperwork, and expense of registering the hundreds of illustration I create each year. I understood that the Copyright Office Registry is not searchable in any meaningful way for visual material. (Searching for medical illustration by text only is fruitless.) I weighed that against the potential to defend my copyright—registered or not—particularly against well-funded organizations. And in the end I decided to spend my time creating new visuals for paying clients and to license my own archive of work instead.

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 artists, we are all inspired by the work we see in the world around us, but in the end my creations are original, and I take the utmost precaution to be sure that's true. I warrant it to clients

in my contracts. I do not “repurpose” other artists’ work. “Repurposing” or “mash ups” without permission is simply stealing (intellectual) property.

In my work at a medical school and in my experience with researchers and physicians over 15 years of contract work, I’ve seen few cases where current copyright law prohibited the use of visuals for the advancement of education or research. With due diligence and proper attribution by the user, a solution is never far from hand.

Even if there are select cases when the copyright owner is challenging to locate, that burden must fall upon the party hoping to reproduce the image. Taking away the (intellectual) property of individual creators for the purported good of society is unacceptable.

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

The creation of functional and fair private databases of artwork is impossible to imagine. I could not afford the time to prepare and submit a career’s worth of work, let alone bear the cost of submission. And to what end—To have a third-party company control my intellectual property? I’m keenly aware that the Copyright Clearance Center is a for-profit institution that does not redistribute secondary licensing fees to visual creators. Yet another fox in the hen house is a mistake.

It has become increasingly hard to survive as a self-employed medical illustrator despite the best training and the highest professional standards. If the copyright revisions being proposed become law, it will likely be the end for many talented self-employed medical illustrators and have a devastating impact on our contributions to the field of medical education.

Respectfully,
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