July 21, 2015

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

Dear Ms. Pallante and the Copyright Office Staff:

Thank you for allowing the artistic community to address the issue of upcoming copyright legislation with your office directly. As a freelance fantasy illustrator for nearly twenty years, it is with a sense of urgency that I write you today.

Over my career I have seen pay rates stagnate, or in many cases decrease for illustrators in my niche of the illustration world. Work-For-Hire contracts proliferate the marketplace. The situation has become so troubling that I formed the website Artpact.com to help artists understand their rights and fight for better wages and contracts.

Using my experiences as an illustrator, and as a leader of artists within my community, I would like to share my unique perspective in answering the questions you recently posed to the visual arts communities.

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

Licensing artwork grows increasingly difficult in a corporate atmosphere where companies expect artists to sign Work-For-Hire contracts. The corporate attitude has increasingly shifted to, ”Sign away all your rights, or we will gladly find someone in this country, or abroad, who will gladly do so.” The pressure this puts on an artist is tremendous.

Turning down paying work is a difficult thing for an artist to do. But what most artists fail to realize is that the compensation being offered for the sale of all their rights to the piece is not nearly enough compared to what the company reaps from such a deal. Also, as a contractor, the artist is getting none of the benefits that an employee of the contracting company receives. They also fail to see that it creates a precedent within the industry that it is difficult to recover from. We are fighting that fight now.

On talking with a photographer in his sixties, I was told that nearly one third of his yearly income is generated from the resale of image rights. If he had signed Work-For-Hire contracts throughout his career, this income would not be available to him.

In short, Work-For-Hire contracts are the death knell for the artistic community. I feel they have no place in creative relationships unless a significant financial payout is offered to the creator of the work, which is almost never the case.

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

Simply put, time and money.

With the proliferation of sites and individuals selling merchandise with images they don't own the rights to, enforcement is nearly impossible. There is no possible way for an artist to keep up with all of the possible copyright infringement against their image rights. I regularly see my colleagues' imagery being used on merchandise without their permission, or the permission of the company it was created for. Even large corporations are finding it difficult to keep up with the infringement of their imagery, and they have the financial means to employ people specifically for that task. What is an artist who can barely pay his bills supposed to do in the face of such an overwhelming problem?

Also, if an artist did decide to do something to enforce their rights, legal fees can be daunting, even under the current system. If anything like Orphan Works were to go into effect, the results would be devastating to artists. Lawyers who may have taken a case under the current system based on a contingency would no longer do so. The amounts awarded in most cases would not be enough to cover lawyer's fees, so artists would rarely act, and image theft would spread like wildfire, moreso than currently.

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

Again, the answer comes down to time and money for the artist.

For example, a comic book artist working on a monthly book produces twenty-two pages per month for that book. This is a daunting time commitment to begin with. If that same artist has to register a copyright and pay a fee on every page of that book, it becomes an infeasible venture for that artist. That would be 264 copyrights filed yearly, and that's just for that one comic book. Would they also need to file copyrights for all of the sketches they may use as self-promotion on social media sites? You can see how quickly the artist would spent the majority of their day filling out paperwork instead of making artwork.

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?

I feel that the current laws do an adequate job of dealing with fair use issues. Perhaps some rewording of the laws need to be considered to deal with various digital media. My concern would be that expansions of the rights for agencies to more easily make use of imagery under

fair use would lead to confusion, and loop holes that corporations may be able to exploit to their advantage, and to the artists' disadvantage.

The current fair use laws already create enough confusion. On our site we are constantly answering questions regarding what constitutes fair use, and what does not. We have to do so because so few people understand the law as is, and cannot afford a lawyer to explain it to them properly.

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

I think the globalization of the market is a very important aspect to consider moving forward. US copyright laws are not enforceable in other countries. With the internet, companies worldwide have access to an artist's entire portfolio, and watermarks are easily cropped out or manipulated digitally. If there is nothing that artists will be able to do about their rights being infringed globally, shouldn't we make it as easy as possible for them to keep and enforce their rights in this country?

If something such as Orphan Works passed, I would severely limit the publication of my work, and would entirely eliminate posting my work on social media. I would simply limit my work to public showings and galleries. This is not a feasible solution for many visual artists, though. So please, recommend laws that favor the rights of the artist to congress.

I leave you with a quote from the artist Odilon Redon from 1870.

"The world is full of fearless talkers and blasphemers; the harm they do is only to themselves. For me the real misfortune, the only real torture is the spectacle of false authority that imposes itself. I bear a grudge against those who by their credit, their position, by the authority of a promise improperly acquired, open to naïve souls the first joys of goodness and beauty. I resent all those who, under the arches of our temples, make heard injurious outcries against good: those who martyrize genius; those, finally, who, in the field of awareness, falsify and pervert the natural meaning of truth. These are the truly guilty. Here lies the evil which must be exorcised."

Thank you for your time and consideration.

Jim Pavelec