July 22, 2015

Maria Pallante
Register of Copyrights
U.S. Copyright Office
101Independence 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 opening up comment on you inquiry on protecting Visual Works under a new copyright law.

I have been a professional illustrator since 1982, working many types of jobs: Freelance, work-for-hire, and salaried positions. I think I have a reasonable grasp of the practical needs of working artists and the needs of the market that allow them to make a living at making art. Your report on Orphan Works and Mass Digitization appears to be a blue print for "destroying the village to save it." In you effort to solve an issue of questionable significance you are threatening the ability of artists to conduct a successful business based in the real world, NOT the theoretical one you seem to describe.

The process of limiting liability that you propose, a fuzzy definition of good faith diligent search, and possibly onerous requirements put on the artist to protect their work, means the END of the commercial illustration business made up of small independent authors, who are commonly the source of new and different ideas. These sorts of businesses are a source of many jobs, competition to large companies (and each other) and incubators of new ideas. Your proposals have far reaching implications that are not being properly weighed in this document.

The Mass Digitization proposal makes a mockery of the Constitution, the free market, and rights of ownership. PLEASE know that MANY creative people ARE paying attention and are DEEPLY DISTURBED. It goes well beyond international conventions on fair use and incidental small scale copying. It threatens to saddle artists with HUGE expenses to protect their work, and small return when that work is reused at prices they do not control. At the heart of this proposal is the notion that art creators have little value in their control of their artistic assets for resale. This is UNTRUE, as is evident by the desire of private firms to control access to these assets.

In response to your posed questions:

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

- Existing copyright law that permits work-for-hire without extending the benefits of normal employment to the worker. Repealing work-for-hire might begin to redress this imbalance of power.

- Stock image companies that compete against the artist with the artist's own images, selling at deflated prices, thus separating the artist from control of his/her work.

- Copyright Office's poor system of maintaining visual arts copyrights.

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

- Finding Infringers. Fortunately, under our current system we have sufficient clout to inhibit infringement if our work, if copyrighted. This allows us to focus on business and creating art with the knowledge that we have financial protection if infringement happens.

- Proposed laws that remove power to protect our art and demand fair compensation. Also legal proposals of processes that assume we have all the time and money in the world to comply and still remain in the business of making art.

- Orphan works legislation removes the ability to enforce our right in a practical fashion. No lawyer will take our case, and no court will be able to compensate us for the time and trouble to enforce our rights.

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

- Artists produce thousands of images that need copyright protection, photographers even more. The time and expense of protecting these images through copyright is currently close to prohibitive. It seems likely the proposed scenarios for privatizing copyright protection, and complying with requirements for data (so infringers cannot claim good faith infringement) will multiply the cost to the point of crushing the market for art creation. Note this situation is vastly different than that face by authors of written works, and is not comparable in any way.

- The copyright office has been unwilling to create or purchase a modern system of copyright registration and management, one that has public search capabilities. Such a system would belong to all the people and not private interests that will wish to exploit the content for their own benefit over the owners of the art.

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 view the world and other visual works and then synthesize something new that is significantly different. So there is relatively little difficulty in dealing with the orphaned works issues. The current fair use regulations seem adequate for commentary and blog use. The current law is working well. It DOES protect the people who are making the images in the first place, more or less. Dispite the current protections, keeping credit for authorship attached to an image in this digital age is very problematic and is a ripe area for infringers to take advantage of as protective cover for claiming orphaned status. If they are able to take FULL commercial advantage of the disconnect of art and authorship, pretty much ALL artists will die the death of a thousand nibbles. We - I - will be overwhelmed by the mechanics of defending my work at my own expense without the ability to recoup the true expense in money and time in a small claims court.

- Libraries and museum have in the past complained about uncertainty in the ability to copy and protect visual artifacts. However, recent court cases have helped define a reasonable area for them to maneuver to protect their collections.

- The true burden to others in using art is the need to compensate the artist for the time and effort placed into making the art. They are more than willing to use an image if it costs them nothing or little, but when asked to shoulder their share of the true cost of creation of the image, most will decline and go look for something they can get cheap. Forcing a licensing system on artists that does not represent the true cost of compensating the artist's efforts is just WRONG. New infrastructure rules re. creative ownership, if they effected other professions - lawyers or drug companies, would NEVER fly.

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

- There is a SEVERELY broken domestic system of returning compensation to artists from reprographic and other secondary rights licensing in both domestic and overseas markets. The current system does not return the more than $300 million dollars generated annually to the actual artists whose work is being licensed. This number is likely to grow and continue to benefit the few, not the many. THIS is something your agency should be focusing on instead of the current re-writing.

- There are no registries in any overseas markets that behave in the proposed fashion as would be required to make a viable market for artist to thrive.

Under a new copyright act as now suggested in the Copyright Offices document, the effort REQUIRED of artists to participate in multiple registries, to ensure successful infringement searches, are greater than the time and money available to artists that will allow them to continue to make art and a run successful business. It is totally

ridiculous. NO ONE - of the 100's of illustrators and photographers I know, have the time and money to do this with the large body of their work. I urge you to step back and rethink this entire approach to placing the entire burden of copyright protection on the creator and none of the responsibility on the user of images.

What if the requirement were to provide an image of medium resolution to a single search site where those that want their art available for reuse could voluntarily upload it with contact information? Those that wish to search it pay a small fee if a match is found. This would then provide the contact information needed to deal directly with the artist's agent. If a match is not found then one can assume the artist does not wish to sell, and a new piece of art can be commissioned. If we are referring to historical materials where the image can be dated by its content or appearance to be over a certain age without available authorship, certify it as an orphan. Will this be free or cheap? Unlikely.

But who is claiming that protecting the rights of creators is free to the user? Doing so will break the commercial market for art creation, and then you will have accomplished the exact opposite of what the copyright law was created for.

Thank you for your attention in this matter. As you look into this matter further, please consult artists who actually run businesses creating art when making such theoretical proposals.

Sincerely,

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