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July 21, 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,

Thank you for the opportunity to comment on the critical issues visual artists face concerning the proposed copyright changes and the current marketplace.

I am a professional architectural and historical illustrator and a member of the Society of Architectural Illustrators in good standing. I have been a self-employed artist for 41 years. My work is seen in numerous suites of historical illustrations done for numerous historical sites/museums, scholastic books/websites as well as many architectural presentations for marketing, permitting and funding.

All my work has been copyrighted and therefore copyright law affects me 'right in the pocketbook' from the ability to make (or not make when infringed upon) a reasonable living, pay bills and taxes, own a home and collect royalties for granted uses. It is becoming all but impossible to protect my work against infringers/unauthorized uses and collect compensation for those infringements when I find them. My artwork has been my primary source of income for four decades. Proposed changes would endanger my ability to earn a living from my art and collect a revenue stream from it. At this time, the market is forcing small business people like me, a sole proprietor, to compete against large corporations who mostly demand non-negotiable 'work for hire' contract conditions of any artist who wants to do business with them. In addition, existing 'registries' are not protecting their artists as they should and are not paying already collected royalties to their artists as they should.

The situation at hand is a national disgrace and not benefitting most artist/creators. I urge you not to adopt the proposed changes, continue to protect our artist's rights as stated in the January 1, 1978 copyright law and support Congressman Jerrold Nadler's American Royalties Too (ART) Act of 2015.

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

A) Publishers who require artists to sign off on all rights as a condition of employment or mandatory 'work-for-hire' terms strip the creator of all author's rights and provides no employment benefits.
B) Massive image banks can claim images (orphan works) when a search fails to locate copyright owner. Those claimed images could then be re-licensed for their profit without compensation to the original author. The cost for an artist to register works with an image bank or commercial registry is high and time consuming with little pay off. Personally, I do not know any self-employed artist who can afford this or the time required to register all work or hire an attorney to do the work. I fear mandatory registration, as a condition of an artist's protection, with a new for-profit registry will add yet another unfair artist burden to an already unfair system, provide inadequate compensation to the author (artist) and that it would not act in the best interest of the original artist/author, but on behalf of self-profit as the mega-image banks and existing registries act now.
C) I will lose control over who uses my artwork, where it is used, placement of my mandatory copyright and credit line and providing my proper contact information. In addition, the display of my own "signature © date" located on all artwork could be completely cropped off.

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

A) Finding a skilled copyright lawyer to take a case on contingency for a registered work which has been infringed upon.
B) Unrealistically high legal fees and long process incurred by the copyright holder to challenge an infringer who used a registered work.
C) Unregistered works: there is almost no chance of finding a skilled copyright lawyer to take a case on contingency. High legal fees are not warranted for what most likely will be a very small settlement value.

Case C happened to me years ago. The infringement was blatant and very public and I documented it carefully. I spoke with a highly respected copyright lawyer and was advised there was almost no chance of covering the cost of litigation, let alone receiving damages. Since that time, my work has been infringed upon many times. There is little I can do to halt it or recover damages, compensation or lost income. The infringers know most artists simply cannot afford to go after them. Many do not stop infringing when caught by the copyright owner, even when infringement proof is provided, the infringer is asked to stop infringing and provide adequate compensation to the copyright holder.
D) Against my wishes and copyright protection advice to clients, many of my clients reproduce my artwork without a proper credit line or simply crop off my hand signature with © and the date. A person seeing that reproduction might erroneously conclude it is not copyrighted, will not seek to find the creator (me) and that they are free to reproduce, license and/or sell.
E) The wide use of the internet has made infringement very easy and it is all but impossible to track the infringements on and off line. Infringers simply copy to their hard drive, change the metadata embedded and use as they wish. No one can track that material unless someone spots it. I embed copyright metadata information into my art images (IPTC information) and that still does not stop

people from stealing my work (and income) and unauthorized use.

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

A) Financial burden, cost to prepare, cataloguing and processing artwork.
B) Time spent not making a living preparing, cataloguing and processing artwork.
D) Cost to pay someone else to do the work.
C) Locating earlier works, cost to have them shipped back to artists (if they can be found), preparing, cataloguing and processing, return shipping.
E) Losing protection for pieces not found on grounds of non-compliance with any new authorized registry.

Please do away with mandatory registration all together; it is not feasible for most artists and will not be effective protection.

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?

A) Mainly I do not use another's work unless it is a legitimate non-commercial or educational fair use and I give a credit or link if I can find one in a discussion.

B) The existing systems in place; locating an author to get proper permissions.

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

A) Pre-existing artwork created after 1/1978 and still under that copyright law and protection. It is not logistically possible to locate and register all those works.
B) Unfair financial, superior legal strength and sheer staying power advantage of large corporations and image banks. It will not be a case of who the legitimate copyright owner/author is-it (is) and will continue to be whoever has the deepest financial pockets, in-house legal counsel and the staying power to fight long, drawn out court battles. The large image banks and corporations know this and use it to their advantage to infringe, reap the financial benefit and simply paying a slap on the hand penalty down the road; they have made their profit and simply move on. Rather than infringe, large corporation should stop demanding work-for-hire and start commissioning their own new artwork.
C) Infringement and lack of a way to protect one's own copyright is robbing artists of their livehood and in many cases putting artists out of business. Most self employed and freelance artists simply cannot compete against these powerful and wealthy corporations. A new authorized for-profit visual art super-registry is not the answer; it will enrich the registry and the image banks they do business with, not the artists. US artists are not being protected or receiving the royalties they should now with the existing 'registries'. It will just be another nail in many self employed/free lance artists' proverbial coffins.
D) The little spoken of or recognized secondary use reprographic market is robbing creators of income not once but twice and possibly for good. The practice of someone licensing first use, then selling a second (third, fourth?) use without creator knowledge or creator compensation is unconscionable.

E) Further weakening this segment of the US working population and the societal/cultural benefits derived from their creative artwork.

6. What are the most significant challenges artists would face if these new copyright proposals become law?

A) Loss of any meaningful intellectual property protection, especially for earlier work
B) Inability to fight large corporations, unauthorized mass digitization, registries and image banks effectively
C) Loss of profession, current and future income

Thank you for allowing my voice to be heard. Please continue to protect our artist's rights as stated in the January 1, 1978 copyright law.

Sincerely,

Les Barker

Les Barker