Maria Pallante
Register of Copyrights
US Copyright Office
101 Independence Ave SE
Washington, DC 20559-6000

July 23, 2015

Re: Notice of Inquiry, Copyright Office, Library of Congress

To whom it may concern:

I am a professional medical illustrator of 15 years, 14 of which have been as the senior medical illustrator for the Journal of the American Medical Association in Chicago. During the years, I have also worked independently on a per-contract basis, and now am a full-time partner in a self-owned, self-run company, Amino Creative, LLC based in the Boston area. I hold a double BA in Biology and Studio Art from University of North Carolina at Chapel Hill, and a MA in Medical and Biological Illustration from The Johns Hopkins University School of Medicine. My work has received numerous recognitions and awards. I have served on the Board of Governors of the Guild of Natural Science Illustrators (GNSI), and am currently on the Board of Governors of the Association of Medical Illustrators (AMI).

As a professional medical illustrator, I make a valuable contribution to the understanding and communication of medicine and science, at both a specialist and general public level. I create illustrations that are instrumental in conveying accurate information; it is my intellectual property and as a self-employed illustrator, forms the core basis of my livelihood.

My ability to continue to contribute is dependent on a climate that is protective of artists' rights.

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

Unlike the production of some other forms of visual work, such as photographs, the creation of medical illustrations takes a significant time and intellectual investment because of the nature of communicating with a high degree of informational accuracy. Thus each of my visual creations has a substantial inherent monetary value that is not just realized by the first time licensing or sale, but importantly by subsequent licensing and reuse. The suggested direction of copyright law revision would jeopardize my ability to retain control of and make decisions about the terms of distribution, sale, and derivation of my own work. This is especially vital to running my own business in a successful manner, being able to efficiently and effectively contribute to the scientific community, and simply earn a living doing so.
Having worked in the environment of one of the largest medical publishers in the world, I recognize the need to promote dissemination of valuable clinical and research information in a manner that is easy and accessible to further the advancement of health care and public wellbeing. However, new means of licensing and access and the emergence of content aggregators and other databases, originally implemented to foster this intellectual exchange have had the ill side effect of disconnecting creators from their work. These systems do not

necessarily convey or assign the appropriate licensing that are in line with the original terms of use, and this is often unknown to the potential licensee who is looking to secure legal permissions.

The changes to copyright law that are being proposed will only foster an environment that facilitates and promotes potential unauthorized licensing of visual work without securing and paying for the rights from the creators/copyright owners to do so. It has also created some confusion as to the meaning of "fair use," incorrectly associating it with "educational use". The educational field, yet, is a vibrant and growing market for my work. Protection of investment, copyright, and authorship should be of concern to both publishers and individual creators alike.

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

My process of production and collaboration with top experts in science and medicine is time-intensive, and is the primary focus of my business. Time is also spent in day-to-day operations and contract negotiation. It is not my focus to spend valuable creation time to police my work, searching for instances of unauthorized use. Yet, the suggested copyright law changes, such as those concerning so-called "orphan works", combined with a conflation of "educational use" with "fair use" and the ease of digital capture and manipulation, the opportunity for misuse would dramatically increase. And, increasingly, I can foresee that it would fall upon my shoulders to find and pursue those who have unlawfully taken, used, or created infringing derivative work without my permission or without providing me compensation.

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

I have created hundreds of illustrations in my career. Conditions permitting, I will go on in my career to create many hundreds more. If we are to register all of these works individually, the expense is highly prohibitive. The current condition to register cannot be a sustainable requirement for full copyright protection, and for appropriate legal recourse. We should be able to rely on the passive protection afforded to us when we put an idea into a tangible illustration.

One of the disappointing aspects of even the current means of registration is that the copyright office registration site is not visually searchable, but that, for our type of work is the primary and easiest means to identify the creation. Can you imagine how many descriptions might read: "Anterior view, anatomy of the heart"? Also, I was shocked to hear that Copyright Office has discarded many of the visual art deposits in their safekeeping. If a verifiable deposit is a requirement, and also part of the CO goal of creating a searchable database of visual records, I don't comprehend how this works toward that goal.
The PLUS registry has been referred to as a means to solve the problem of identifying and locating visual works, but as of this current time, it is not a functioning database, and will take years before adequate visual imagery can be deposited by the creative community. If the creator /copyright owner cannot be found, through a searchable registry or other means, the draft legislation that is being considered would make every visual work into a so-called "orphan". And in following, I would be unable to control of how and where my work is used, effectively taking me out of the picture in terms of compensation. Moreover,

when it comes to maintaining academic integrity and accurate understanding, in the medical illustration field, being able to control a works' appearance in the appropriate context is everything.

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?

Different clients have different needs in terms of licensing illustrations. Some find it valuable to their institution or business to have exclusive rights to use illustrations in their market, for example pharmaceutical companies creating proprietary educational material for patients. Proposed legislation like that of the so-called "orphan works" would create situations that could place me in breach of the terms of existing contractual agreements, without the ability to adequately pursue those unauthorized uses.

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

Work-for-Hire has been of immense, ongoing concern in our field. In current copyright law, the term "work-for-hire" has very specific qualifying criteria that unfortunately have been misused and misunderstood as a means to acquire all rights to an illustration (versus retaining copyright and licensing appropriate coverage). These misperceptions are very hard or impossible to correct in the marketplace, and this type of language should be examined more closely, in order to facilitate an environment that promotes authorship and protects intellectual property for posterity.

Sincerely,

Cassio Lynm, MA, CMI

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