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

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

To Whom it May Concern:

My name is James Gardner, I'm an freelance artist and illustrator. I'm fairly new to the field of illustration but my illustrations have been featured in the Communication Arts Illustration Annual and I am already facing the challenges of making a living in this field. I'd like to share my perspective on how copyright affects the ability of a person to make a living producing art and attempt respond to the five questions posed in the Copyright Office Notice of Inquiry.

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

When making a living and supporting my family as a freelance illustrator, contracts can ebb and flow with the season and state of the economy. Because of this, it is vital to maintain revenue streams independent of initial commissions and fees. Continued resale of my images is an important and ongoing part of my income. In the digital world it is already difficult to prevent unauthorized use of my work—Replacing copyright laws with anything that would make it more difficult for me to retain rights to my original work, or make it easier for internet companies to appropriate and profit from my creations would seriously hinder my ability to make a living.

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

In a mass media sharing environment artists work can be easily shared and appropriated by individuals for various uses. However, the real concern is when companies appropriate, infringe and unethically profit from artists work on a massive scale. As I understand it the very idea of a Copyright is meant to protect a creator's investments of time, effort, and resources while providing for eventual access for cultural and societal benefit, AFTER the author has had a significant period to profit from her effort. The Copyright Office proposals to congress, which seem to be based on the Orphan Works bill, do not uphold the spirit or purpose of the copyright concept. Can you imagine if a farmer had to register every fruit they grew, or else Some big company like Walmart could swoop in and scoop the "orphaned" fruit out of their fields and sell it for themselves? Enforcement is hard enough now with the law supporting us. Enforcement in the system proposed would only work against artists. Even an artist who registered every scribble or photo they ever made would still have to compete with corporations building a library of stolen work. No thank you.

3. What are the most significant registration challenges for photographers,

graphic artists, and/or illustrators?

Time and money. If I am expected to register every image I make it will mean a monetary burden, even if fees are low. Also it will be a significant time trap to register and provide info and metadata for every image—but if laws like those proposed are passed the alternative is that somebody could scoop it up for themselves. It isn't logical that I should have to invest extra time and money just to keep the rights to something I created in the first place. There is also the concern that a private registry can change their fees or process making it even more difficult in the future.

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 reference other photos graphic art works, and/or illustrations for inspiration only. If I need a photo to copy directly I take it myself. The only time I've ever wished to make use of someone else's work was back in college for inclusion in papers or as part of student design projects. Those uses fell easily within fair use for educational purposes. However, I still contacted the authors for permission. Anyone who is frustrated wishing to make legal use of others work is probably trying to get something for nothing. If someone expects to make a profit by appropriated other people's work I hope they will be very frustrated. Please do not change the law to make them less frustrated.

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

I believe the Copyright Office and Congress should take a close look at the types of organizations lobbying in favor the proposed changes. If they stand to profit while the actual artists and creators will suffer, you must ask yourself how that could possibly be an appropriate revision. Ken Dubrowski explains it as follows:

"The kind of system the Copyright Office has proposed to Congress seems all too familiar to me. Artists have already seen their foreign reprographics royalties diverted away from them for at least 20 years. I fear this is exactly what is going to happen with the proposals the Copyright Office has made to Congress.To prevent this unjust conflict of interest, it is imperative that no artists group that supports this legislation be allowed to receive any financial benefit from the creation of copyright registries or notice of use registries. These artists organizations have failed artists and should not be allowed to use this legislation to profit even further off the artists they were created to help."

I heartily agree with Ken, and add my recommendation that if orphan works provisions cannot be eliminated entirely, as least exclude visual arts.

Thank you for your time,