July 19, 2015

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 (80fr23054)

To the Copyrights Office:

Thank for you giving artists the chance to respond to the new proposed changes to copyright law and speak of my experience as an artist. I feel the new changes that are being proposed will not only threaten, but destroy my business. My copyright on my work is my assests, if I turn those over I have nothing.

I create character art and illustrations for people, mostly individuals to keep for their own collection. I always maintain the full copyright of each of my works. Commissioners are granted the right to redistribute a watermarked version of the commission to their own digital gallery. These digital galleries include websites such as DeviantArt.com.

The watermark is not to be removed as it is how the work is identified as being mine and thus identifies that I am still the sole owner of the copyright. I allow the redistribution because it works to not only give me free marketing, but people often enjoy sharing their creation. No one else however, is legally allowed to redistribute. No one other than myself is allowed to alter the work either, I prefer it stay this way because then I have complete control over what legally happens to the image.

Why would I want to remain in complete control? Simple. If you buy and build yourself a home, wouldn't you want to stay in complete control as well? I can spend anywhere from a few minutes to several months working on a single piece. I see no reason I should be forced to have to hand over my Constitutionally granted ownership of my work.

Furthermore, by not allowing others to freely take and use my work helps to protect my clients. If someone were to steal my work and claim it as their own they could potentially steal clients. However, not only would they be robbing myself, but they'd also be robbing the commissioner. If a commissioner things that person is the one who created the work, they very well can be fooled into paying the art thief for a commission they'll never receive.

If works where to be made “orphaned” and available to the public to be commercialized from the moment the work is created, how then will anyone be able to trust an artist they intend to commission?

My business would plummet and I would no longer be able to make any sort of living. Art thieves would be protected under these hypothetical laws while the original artists would be punished.

Furthermore, the proposed ideas for the new copyright law would take the punishment of artists to a point that is extremely idiotic and brutal. The new law would require the artist to have to pay to keep their work. The first problem in this lies with the fact that not every artist earns enough from their work to be able to afford to pay to maintain their copyright. I know that I would not be able to afford to claim

every one of my own pieces. I also know that I could never hope to claim all of my past created pieces which are currently protected, as they should be.

The other issue that will arias is that there is still no guaranteed protection. Once these private sector "copyright" companies have the documentation of our work, who is to say they will not abuse it?

Private sectors that do not create their own work, do not deserve anything form of copyright ownership. They most certainly do *not* have a place in saying who owns what. If I create a piece of art, be it a visual medium or audio, I should not have to pay a third party to claim my rights. Such thinking is not only asinine to the artist, but it's abusive in the way it takes advantage of the lifetime spent on their skill and trade.

That said, here are my responses to your five questions.

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

I do not face many challenges in my current sector of the freelance market. I work mainly with individuals and extremely small businesses, such as video content creators. These commissioners do not have any problems with me maintaining the full copyright to my work. However, problems I have witnessed my fellow artists endure include large publishers who demand that the artist strip themselves of ALL of their rights to their work.

That problem and attitude that publishers have is the exact reasons I do not work with large businesses and publishers. Firstly, it can be difficult enough to get a commissioner to agree to pay you a fair price. A visual work can take several hours to create, that time could be spent earning a pay check at another job, so it is important that the time is properly compensated. After all, we may be called starving artists, but we truly do prefer to actually be able to buy food to eat.

The reason I'm mentioning this, is because the copyrights to a creation is where the bulk of an artist's income can emerge. Currently artists are being robbed blind of their royalties. Either by mysterious "copyright" corporations that aren't actually affiliated or genuine representatives of the artists or by publishers who force artists into signing away their rights.

Why would the publishers lobby for such a thing? Simple. They don't want to pay the artist to make changes. They don't want to pay the artist to redistribute the image passed what was initially agreed upon, which is usually only the first edition distribution. They want to cut the artist out of the deal as soon as the work is finished. That way they can do as they wish, how they wish, when they wish, and not owe the artist a penny.

Meanwhile the artist, such as myself, would be left starving. This is not figurative speech mind you, I am being literal. Cost of living is high, we need our copyrights protected and to stay in our possession. Our copyright are our assets.

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

Currently the biggest challenges we face are the high costs to go through with the proper legal lawsuits to handle infringement cases. I cringe at the thought of having to hire a lawyer to handle an

infringement lawsuit. If I ever need to I shall do so; however, the cost is definitely an issue.

The second, and currently even more terrifying problem, is the threat of these new proposed copyright laws. Orphaned works are too broad. Under the current law an artist who is too poor to pay to license their work will be forced to forfeit their rights. Therefore the would not be able to enforce their copyright because the very law that was originally meant to protect them has horrendously betrayed them.

Not only that, but would you just take a moment to stop and imagine what an orphan works infringement case would look like? It would entirely in favor of the art thief. An artist would have very little chance to be able to prove beyond a shadow of a doubt that they are indeed still the legal copyright owner. However, the art thieves will be able to simply utter the words, “it was an orphan work,” and they could be given an almost free pass on taking the artist's work.

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

If a registration became forcefully necessary for copyright and protection from the orphan works laws it would be a nightmare.

Imagine if you will, just how much a single visual artist can create in a week? I easily could create 14 pieces. I could create even more! However, for this argument let's stick with the idea that I create 2 images or graphics a day of varying sorts. Apply that to how many days are in a year, and I'll have created 730 images. That's 732 in a leap year.

Now if I were forced to have to register every single one of those, that means I'll be forced to spend several minutes to hours a day filing forms. That is time I do not have. That is time I should be spending working on more commissions or finding new clients.

On the other hand, the forms will then have to be processed by someone. In short, the amount of work that it would require to properly process hundreds of thousands of artists each day would be astronomical.

To make matters worse, there is word that I would have to pay to register my work. I would not be able to afford to pay it. Even if it were only $1 per image. I would then lose $730 a year, assuming I only make 2 images a day. Given the amount I make per commission that would devastatingly eat into my profits. Also, just so we're clear on this, my profits are small. What I make in commission goes directly into paying my bills and buying food. I rarely have much of what any normal business would call a profit.

Small freelancers, like myself, would be financially murdered at the hands of the orphaned works laws. To make matters even worse, art thieves would be able to swoop in like vultures and take our work. All that would be required of them to do is spend, at most, 5 minutes in a graphics/photo editing program to make minor alterations to our work and then they'll be legally allowed to sell it as a derivative work. Keep in mind, when I say art thieves, I'm including large businesses who want to take advantage of

In conclusion, if you truly want to help artists, then do away with all form of needing to register a creation in order for it to be fully protected. The idea of needing to register is antiquated and serves no purpose to actually helping the artist.

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 a digital illustrator myself I do occasionally use stock photographs for textures; however, this isn't extremely common. I prefer to hand paint in as much as I can. That said, I do my best to use as much of my own work as possible. I almost have a camera on me to take pictures of anything I think might come in handy one day.

Furthermore, the art that isn't mine that I do use I have full legal rights to do so. There are websites that distribute texture bundles and things of the such where you can purchase the rights to use these images, provided you do not redistribute the image itself raw and unaltered. Yes, it costs money, but it supports another artist and gives you legal permission. Is it worth it? Undoubtibly.

Furthermore, there are places such as Deviantart.com or flickr.com where you can find royalty free images or images uploaded under the creative commons license attribution 3.0. On occasion you may see an artist who specifies that their images are free to use provided you use them on the same websites as it was originally posted on; however, those same people are usually willing to grant special permission if you get in contact with them.

The only people I can see having any real problems or “challenges” with wanting to legally use a work, are those asking to use something the artist has no intent on letting be used. For example, I would never let one of my character designs be used for someone else to be able to claim as their own. I created mine, go off and create your own.

That said, I have had a few people reach out to me and ask if they could use my work in collaboration with a blog that they write. I had absolutely no problem with this, especially since they said upfront that they would properly accredit me for my character art. I checked on the post and they did as they said.

In that regard I have no problem with someone using my work. As long as everyone can tell that it is mine, that I am the copyright holder, and that there is a clear way to navigate back to the original source (for example where I posted the image online myself or to one of my digital galleries).

On another note, those, individuals or large businesses, who have problems with not being able to legally use an image are a kin to a child who wants what it can't have. That is, from an artist's point of view.

Sadly, the orphan works laws would give said people the ability to take whatever they please. Artist's wouldn't be able to earn a living off their copyright. They're work would likely be repeatedly stolen and used without their consent. Worse yet, their work would be claimed by thieves. The thieves then will get the profit and the artists will have to compete against rip offs of their own work. That is, if at all. What would be stopping a large business from coming in and grabbing a small artist's creation all for themselves? Nothing at that point. Absolutely nothing. There would be a large door left completely open for anyone and everyone to commercially infringe upon every artist's rights.

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

The fact that the orphan works laws are being proposed for a second time is cause for concern enough. Earning a living as an artist is difficult. Each artist takes it upon his or herself to protect their work

from art thieves. They do their best to build a demand for their work and a big enough name so others know who they are. The orphan works laws would destroy all of that. The hard work would no longer be about building your brand or style. It would instead be about trying find a way out of a corner that you were forced into. A corner where you have no power to protect your work or your name. If people can steal your work, they can steal your name. In the freelance world, your name is your brand. As you probably understand, your brand is your business. Without it, we have nothing.

Artists will die off. You may of heard people crying that we artists don't “deserve” to keep our works to ourselves, but with our works stolen from us, we will have no desire to create anymore. Where will the benefit to culture come from in that? From the ghosts that arise from graves of our talents?

In addition, we visual artists here in the United States of America do not currently receive a single cent of royalties for our work. The music industry pays royalties, am I wrong? Doesn't the film industry pay royalties? Author's receive royalties for their work, yes? Why is it then, that the visual artists, be graphics, illustrations, and so forth, do not see a single penny?

How about instead of looking to away what is working for us, the Register of Copyrights finds a way to provide artists with protection that does NOT require registration. How about you find a way to help us be treated with respect and receive our royalties? From what I have heard artist's royalties are being taken by a mysterious company that wont disclose any details about itself. It most certainly is not a company any artist that I know of has agreed to work with or sell their royalties to.

I feel that this is a much more appropriate and pressing matter to address at the moment. Instead of stripping the rights of and shutting artists out of what they're owed, how about we find a way to improve on the current system and support artists.

Sincerely,

~A small freelance digital artist who are debating about putting out of business.