Register of Copyrights
US Copyright Office
Washington DC

July 19, 2015

Mary Newell DePalma, Illustrator
199 Wren Street
Boston, MA 02132

Re: Notice of Inquiry, Copyright Office, Library of Congress
Copyright Protection for Certain Visual Works (80fr23054)

To the Copyright Office,

I have been a commercial illustrator for 32 years. I have a BFA in Medical Illustration from Rochester Institute of Technology, and have published work in the fields of advertising, editorial, medical, textbook, and trade book illustration.

Illustrations are my products. I sell licenses to use these products, and maintain an inventory that I re-sell on a regular basis. Re-use fees are a significant portion of my business. It is important that I control how and by whom my work is used.

As a sole proprietor, I am solely responsible for my taxes, pension, health insurance, and legal services. My vacation and sick time are unpaid. I create images whose licensing income supports me now and will sustain me in my retirement when I am no longer producing new images.

I have created thousands of images and there are not enough hours in the next ten years to digitize label, and register them. Nor is trolling the internet to check for illegal use of my work an efficient or productive use of my time. It is not MY responsibility to find who is using my work and then identify myself. Creating a registry which collects small fees from illustrators to register their works only creates a market in which someone other than the content creator will profit.

The expense of retaining a lawyer for a copyright infringement case is prohibitive for me. Large corporations know this and capitalize on it.

It is clear to me that corporations that act as ‘middle men’ in the visual arts business profit more than the illustrator. Companies who amass art with work-for-hire contracts are one of these. Clip art and media monitoring companies who re-sell digital content on a subscription basis and do not reimburse the content creator directly are another. If my work is part of this valuable content, I should be compensated directly. These practices have eroded the viability of freelance illustration as a profession during the years in which I have been in business, because someone other than me is being paid for work that I do.

It is unfair to expect freelance visual artists to accommodate companies who engage in mass digitization, at our expense. It is disingenuous to say it is too large a job to locate copyright holders when they are embarking on the enormous job of mass-digitization. Locating and

reimbursing copyright holders is an expense and an inconvenience to them, but is a ruination for content providers such as myself.
It may not seem worth it to protect small fees payable to me and other content providers, but every dollar counts in a small business.

Furthermore, I am concerned about use of the phrases ‘the public good’ ‘for the benefit of scholars’ and the like. As a picture book author/illustrator, I already contribute to the public good when a library purchases one copy of my book and thousands of people read it, free, forever. If each library purchases one copy of my book, and/or one digital copy, and shares it as they do, I am still able to support myself. Work in the public domain is available to digitize for free, but copyrighted work is protected so that I, and others like me, are justly paid for the work we do.

As a children’s author, of course I am concerned how my work is re-used. It should be re-used appropriately in order for me to maintain my reputation as a speaker or artist-in-residence at elementary schools. Permissions are of importance to me not only for my brand and income, but as a matter of my personal integrity.

In brief:

1. The most significant challenges related to monetizing and/ or licensing my works are: work for hire contracts, publishers who do not pay an additional fee for digital reprint rights, and companies who specialize in providing content such as digitized magazines, newspapers, and books. All of these are examples of my work being re-used for profit without compensating me.
2. The most significant enforcement challenges are identifying infringers and the expense of litigation.
3. The most significant registration challenges are time and fees. I create many many illustrations a day. Some of these are paid work and some are speculative. Some become parts of other work. It is impossible for me to register all variations. I would be spending potential billable hours scanning, naming, filing, sorting, and registering this content without any significant return.
4. I do not make use of other creators’ illustrations or photographs.
5. Another significant challenge for the copyright office are organizations created to collect royalties that will be distributed to ‘artists groups’ or ‘charities.’ Individual artists are in need of their own income for economic survival. In the digital age, it is increasingly easy to identify and contact artists.

Artists and illustrators do not have a large trade group to protect our interests in this matter. We are many small independent business owners. We need copyright protection to maintain our businesses. Thank you for giving me the opportunity to comment.

Sincerely,

Mary Newell DePalma