J. David Spurlock

633 NE 167th Street, STE 321 • North Miami Beach, FL 33162

Maria Pallante
Register of Copyrights
US Copyright Office
101 Independence 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 and the Copyright Office Staff:

I am an artist, history of illustration author, and educator. I have served in various positions on the Board of the Society of Illustrators — Dallas; including multiple terms as President. I have lectured nationwide including on copyright law at Rutgers School of Law in Camden NJ. I have founded multiple illustration art scholarship funds. I have taught various Commercial Art courses, over decades, with a focus on art as a business, at various schools including at The School of Visual Arts in New York City, The Kubert School of Cartoon Art in Dover, NJ, and 10 years at the University of Texas. For over 20 years, I have also served as an agent to many Hall of Fame cartoonists and illustrators. I, with my attorneys, have fought and won cases regarding copyright law, trademark law, and Fair Use.

As one who has long derived their livelihood from both visual art and books on illustration and cartooning history, and as one who has great personal knowledge and experience as to what is of concern and needed by illustrators, photographers, authors and cartoonists; I write you today to say that generally, with a few exceptions, the 1976 Copyright Act is GOOD law that serves the cultural and collective good, in all aspects of copyright including both, A) protection (designed to inspire new works by aiding authors and artists derive a livelihood from their work) and, B) for Fair Use and Public Domain works which likewise enrich our society culturally.

Artists' Photographers' and Authors' copyrights are the creators' personal assets, the licensing of which is the basis of our livelihood. Many of the proposed "Orphan Works" changes would be so damaging to the livelihood of authors, illustrators, photographers and cartoonists that it would drive many from the field and have a chilling effect that undermines the original intent of copyright law which includes the inspiration of new creative works toward a richer, better educated society. Additionally, statutory damages are necessary to minimize damaging infringement. In regards to your questions:

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

A) Corporate Image Banks whose predatory policies have a chilling effect on publishers hiring artists to produce new, original works.

B) Publishers' corporate attorneys pushing Art Directors to not hire the best artist but to hire whomever they can coerce into signing away all rights as "Work For Hire" though the artists are actually independent contractors with none of the benefits of an employee. The United States, like other countries, should not allow this coercive practice of forcing contractors to sign away their rights under a fictional reference to "Work For Hire." This practice undermines the Constitutional principals of authorship found in Article 1, Section 8.

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

A) The high cost of policing infringement through the courts. The solution is that Statutory Damages should be more universal and IF limited to registered works, not have any different timeline for Statutory Damage coverage than any other registration timeline policy.

B) Internet use: Unauthorized use on the Internet must be held to the same Fair Use restrictions as printed works. Copyright holders growing time spent policing the outrageously high spreading of unauthorized works on the internet is creating an overwhelming burdon on the creators/owners.

C) Proposed “Orphan Works” policies: Under “Orphan Works” proposals, like with unregistered copyrights, owners have to spend a small fortune in legal fees and court costs to prove damages. Such policies inspires infringement. Copyright law MUST be designed to discourage infringement.

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

The 1976 Act did a good thing for all, by not requiring registration. This minimized work for the Copyright Office and visual art creators alike. To return to the 1909 mentality of required registration is extremely burdensome on visual arts creators as photographers, illustrators, cartoonists often create hundreds of works a year. The time scanning, filling out paperwork, and fees required to register all works places an unfair burdon of work, time, and expense on visual arts creators.

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?

Fair Use as outlined in the 1976 Act (and the case law since, based there-on) is sufficient. Recent case law decisions clarifying and expanding Fair Use, has made the original justification for Orphan Works legislation unnecessary. Remaining push for Orphan Works legislation is by organizations attempting to create a loophole to allow them to infringe, for the sake of profiteering, upon the rights of professional artists. Please help quash these repeated, greed-inspired attempts to manipulate copyright law. The passing of Orphan Works legislation would be at the expense of the owners and creators of their intellectual property. The combination of Fair Use and Public Domain, is enough to discuss, enrich, and educate without trampling on individual copyrights which are designed to inspire the creation of new works, but can only do so if the creator/owner clearly and authentically, controls their own intellectual property.

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

A) There is a wealth of secondary rights licensing going on that illustrators, photographers and cartoonists have not been made aware of and not been paid for. In other countries artists are properly paid for such and this hidden income stream needs to be better handled in America in favor of the aristic creators if images. Congressman Jerrold Nadler’s American Royalties Too (ART) Act of 2015 would help.

B) The concept of digital image registries (other than the US Copyright Office) is ridiculous and impossible. If any Orphaned Work legislation passed, any attempted non-government registry would be used by commercial infringers to claim anything not found there, to be orphaned. Thus inspiring rampant infringement that the true owners could not afford to police. In practice, Orphan Works legislation would inspire and profit thieves.

In summation, challenges artists would face if these new Orphan Works copyright proposals become law are significantly burdensome to artists and would have a chilling effect on the creation of new works which would undermine the basis of all copyright law which is to inspire a richer culture and thus better American society.

Yours truly,

J. David Spurlock