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U.S. Copyright Office
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Re: RE: Notice of Inquiry, Copyright Office, Library of Congress
Copyright Protection for Certain Visual Works (Docket No. 2015-01)

Dear Catherine Rowland,

Thank you for this opportunity to comment on the problems visual artists face in the marketplace.

I am a free-lance illustrator who makes my living creating and licensing images for children's books, magazines, product packaging and many other applications in the Canadian, the US and international markets.

For artists like me, copyright law is of primary importance to my livelihood, not an abstract issue. Our copyrights are our assets. Licensing my work is how I make my living. I fear that the changes in the proposed new law would end my successful career and foreclose illustration as a career to young people.

The proposed new US copyright act, has the potential to do great harm to those of us who create intellectual property. It would expose to misuse countless works of visual art because clients often require artists to omit identifying information from their work, or because credit lines can be easily removed by users. I would like to restate my opposition to this bill.

The kind of provisions proposed in the Shawn Bentley Act would shift the burden of diligence from the owner to the user. Over the course of a career, a moderately prolific artist will produce hundreds of works. To register those images, the artist would have to locate them, unframe them if necessary, scan them, color correct them, keyword and catalog them, return them to their files or frames, add metadata and fill out registration forms for each one for at least two registries. All of that would take thousands of hours. It would be cost prohibitive and an administrative nightmare. And all this non–income-producing time would have to be stolen from time that would otherwise be using to create new work. For example, Picasso died in 1973 and yet 42 years later, the teams cataloging his works have still not even enumerated his output.

I see no practical way that I could monitor any potential infringement of my work in any publication or database anywhere within the reach of the internet. My creative work is one of the most the most personal forms of private property that I have because it wouldn't exist without the specific expression that is a result of my outlook and experience. Nothing justifies the exploitation of my private property by others. Image creators should not be compelled by law to hand over our assets to competitors any more than Microsoft should be forced to give their material to Apple. Imagine a law that said that. There are many

interests out there that would benefit from having quality content and in whose best interest it would be to simply take it free.

The 1976 Copyright Act guarantees artists the exclusive right to authorize or withhold reproduction of my work and to create derivative works. It guarantees this from the moment a work is fixed in a tangible form, and it guarantees this without imposing formalities such as a copyright mark or registration. The Berne Convention for the Protection of Literary and Artistic Works forbids such formalities as a condition on my enjoyment and exercise of copyright. This is particularly important for visual artists because many works appear without credit lines or identifying information.

The new proposals would be worse for us than the pre-76 law. The new technologies available to infringers would make it worse. Under the Shawn Bentley provisions, there would be no way I could stop infringers from harvesting my "orphans" and Photoshopping them into cheap "derivatives." I and every other artist in the world would then have to compete at a disadvantage against commercial infringers licensing imitations of our own works.

The following is my response to the five questions you've posed.

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

The lack of negotiating power of the independent artist and the confiscatory scourge of work-for-hire and all-rights publishing contracts come to mind. Work-for-hire for independent contractors deprives an artist of authorship in direct contravention of my constitutional right to secure the exclusive rights to my work for limited times. This loss of authorship is compounded by the loss of all secondary income created by the ongoing licensing and exploitation of that work, including the exclusive right to create derivative works. Meaningful copyright reform would prioritize amending the law to apply work-for-hire only to true employees.

The biggest challenge to monetizing/licensing my work is to keep control of where it appears and who uses it, and to keep my copyright notice and contact information associated with the work. I always use a watermark, but there are multiple companies with software and tutorials instructing users how to erase watermarks. There is nothing I could do to prevent my work from being ‘orphaned’.

If the Copyright Office is sincere about protecting rights of creators, it should make it illegal to remove a watermark, illegal to remove metadata, illegal to remove copyright information, and also illegal to mass digitize any works not in the public domain without written permission from the creator, all with stiff financial penalties.

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

The two major challenges to copyright enforcement are the high cost of legal fees in an infringement lawsuit; and the orphan works policies now being proposed again to Congress. A copyright law built on the foundation of orphan works law would allow internet companies to syphon off revenue from artists with the hopes of creating an even better revenue stream for themselves. There can be no bigger challenge for those of us who make our living creating new works than to have to compete with giant corporations that can get artwork free from artists and compete with us for our own markets.

The penalties provision is another glaring loophole for anyone who chooses to make payment for usage the option of last resort. Once a work has been published there is no certain way to establish a reasonable fee. Any user can offer any fee and unless I’m agreeable to the offer I have no option but to file a prohibitively expensive lawsuit that would cost more than I could recover. I’m therefore afraid that this part any copyright legislation would constitute a no-fault license to infringe.

It is not realistic for independent creators to find justice against giant corporations. We cannot sustain the legal battle. For corporations, litigation is part of doing business, and they are staffed with entire departments and outside counsel as matter of course. As far as they are concerned, if they are in the wrong, all they need to do as their defense is keep you in court. The drain on time, productivity and procedural runarounds designed to drive up costs all take a measurable toll.

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

The burden of compliance to protect ones own work would be impossible for an artist like myself with hundreds of images in my body of work. The proposal to reintroduce registration would become another financial burden for artists. No matter how little registries might charge in the beginning, they would soon begin to introduce charges and fees that would grow as they gain a greater and greater competitive advantage over freelance artists such as myself. Anyone who says this won't happen is not living in the real world. It would result in artists like myself paying to maintain images in somebody else's for profit registries. As for the images we can't afford to register, or those we can't find the time to register, or those we can't find decades old metadata to register will all fall into noncompliance and a lifetime of images created will be free to be exploited by others. The best solution for artists would not be to re-introduce registration, but to do away with it entirely, as has been done with copyright registration in the rest of the world.

3. 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 have never personally experienced a challenge or frustration in making legal use of other visual art. It’s about respect. As a professional illustrator I only use other visual art for inspiration, or under the doctrine of fair use. In cases where I want to use another artist’s image, I will ask permission, which is usually granted provided I credit them accordingly. I do the same when asked for permission. In this age of social media artists are usually happy to share providing it’s not for profit or doesn’t show their work in a bad light. If I can't credit some work that I'd like to use, there are plenty of other artists who will grant permission.

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

There are many registries, beta sites, etc., but not a single one of them is even remotely ready to start licensing work to the public. And even if someday they ultimately develop the necessary technology, it would still take decades for artists to load up their works – if they could afford to.

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.

The proposed new copyright act would jeopardize the copyrights of thousands of freelance artists such as me, and do so retroactively. All work created by all artists throughout the world, regardless of age, whether published or not, whether of U.S. origin or abroad, will be subject to exploitation.

The work that I create constitutes a valuable inventory that I can license any time, now or in the future, as part of my day-to-day business. Nothing in the universal copyright conventions gives any user the right to devalue my inventory for their own gain.

Freelance, independent artists are finding it challenging enough these days to earn a decent living without suffering further erosion of their earnings and potential earnings as imagined in these outrageous

proposals by corporations with vested interests who have consistently try to devalue creative and intellectual property, culture, art and the artists who create it, in order to profit.

I urge you to consider the harm this proposed new copyright act can do to existing businesses in the U.S., Canada and throughout the world and to reject it.

Thank you for your time and attention in this matter.

Sincerely yours,

Barbara Spurll

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