LifeHouse Productions

SPECIALIZING IN 3D BIOMEDICAL ANIMATION

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July 23, 2015

Maria Pallante
Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

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

Dear Register Pallante and the U.S. Copyright Office Staff:

Thank you for the opportunity to express my experiences, concerns, and suggestions towards ultimately improving Copyright Law.

I am a medical illustrator who's co-owned LifeHouse Productions, a 3D medical illustration and animation business for over 15 years. We serve a variety of niche markets including pharmaceutical, medical device, hospitals, education, and medical litigation. I am also Publication Production Manager in the Office of University Communications at Wesleyan University, facilitating the production of direct mail, marketing, and promotional materials. My two careers give me the benefit of seeing the creator's side and user's side of the copyright system; what's working and what isn't. Following my answer to your questions below, I've included more about me and my background as it pertains to artists' rights, copyright advocacy, and business management.

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

The most difficult part of licensing our work regards to educating prospective clients on copyright law and the value of our work. Clients often expect to own our work outright for a relatively small (as compared to what a full transfer of rights would be worth) fee. They often do not understand that the <u>expression</u> of their idea is *de facto* its creator's intellectual property.

Professional consumers of art and the general public are uninformed. Many, if not most, people assume that they are able to freely and immediately use any image that is returned on a web-browser image search. They do not know to question whether an image's copyright is being managed or if the image is in the public domain. They do not know they need to seek out the copyright holder to ask permission to use it, nor do they expect to have to pay a fee for use.

Specifically pertaining to our medical animation and illustration, our work is difficult to monetize because we have the extra burden of educating our clients regarding the training and education as medical illustrators we have as a foundation for producing accurate images, plus the time spent on scientific and

medical research for each project in advance of any sketches or concepts have even begun. We add value to each project by verifying the facts and double-checking our clients' submissions of fact more so than any other (untrained, uneducated in medical illustration) illustrator could.

Very few people actually read or understand the agreements that are presented and executed in licensing artwork. Large corporations don't want to spend the resources (human resources, time, and money) to review and revise contracts. Art Directors and Art Buyers are not in the position to negotiate the licenses, because oftentimes even they do not understand the language and they are not empowered to make those changes. This business environment is overwhelming and extremely discouraging for artists.

For example, one time, when negotiating with a well-known global publisher, I pushed repeatedly to modify the wording of their license agreement which referred to a secondary licensing fee schedule attachment that wasn't provided to me and I was told didn't exist. The Art Director said they couldn't edit because it would take too much time for their lawyers to review and revise it and it would affect all their contracts going forward. This was happening under the pressure of their tight publication deadline—for which we wouldn't begin creating work until the wording was corrected. Finally, the Art Director offered me a different, and more beneficial, boilerplate licensing agreement, which still contained reference to the non-existent attachment, and we proceeded with the project under her written assurance that there was no such fee schedule. These types of challenges for freelance or small business artists are sadly commonplace.

The Copyright Office would do a great service to our economy by producing a widespread educational campaign geared toward the general public—and highly visible in widely used image aggregators like Google, Flickr, Facebook, Instagram, and the like—on copyright law, rights, and responsibilities. It would also be a tremendous help if aggregators like Google Images posted a large disclaimer, perhaps as a pop-up window over the search results, explaining that one must seek permission to use images found there. Lastly, a boost to our economy and our market, would be to eliminate the work-for-hire clause in Copyright Law that permits publishers to dominate the business dealings over the small business and freelance creators like us.

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

Our clients more often than not require that we do not include a copyright notice or signature with our work that they publish. People viewing the published work do not know who produced the work or who owns the copyright to it. It's difficult to establish and protect our rights when our identity is hidden from view.

Our clients take our electronic files and may post or share them on sites for which we haven't granted use (like YouTube). We do not want to enter a litigious relationship with our clients, therefore it is challenging to address these issues or to be fully compensated for such uses. It is unknowable how far and widespread our work may be downloaded and shared from those third party sources.

We do not have the resources to track where our images may end up, identify global infringers, and enforce fair compensation for their infringements. In practicality, it doesn't make financial sense to pursue these infringements, since litigation costs may exceed the cost of an award in our favor.

We are very concerned that Orphan Works legislation, as outlined in the Copyright Office's draft, would create an extraordinary burden on us to protect our work from infringement. We would need to factor in the time to prepare all our work, past and ongoing, for submission to a registry/registries. We have of our work, which is almost completely electronic, backed up on disks, but much of that data is native to earlier versions of software or hardware, for which we may not be able to access any longer, making our past work virtually inaccessible to us without incurring extra expenses to retrieve them for inclusion in a registry.

Under the draft legislation, remedies for infringement will be so limited, that it will further discourage us to pursue litigation. Infringers will know that there is even a smaller— if not infinitesimal—chance they would be held accountable for their illicit actions and will confidently make unauthorized uses of images freely.

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

The cost and time to register are among our greatest challenges. We create hundreds, if not thousands, of pieces of art annually. To add on top of that the time to properly prepare works for submission would dramatically impact our available time to create new work.

When registering our work, I never felt fully confident that I entered our information correctly. The technical questions on the copyright registration forms lead me to believe I should have consulted an attorney prior to registering. It was nearly impossible to speak to someone at the Copyright Office, because the phone lines were always busy.

There is limited incentive for registering. One of the greatest reasons to register is to maximize the full-extent of benefit of copyright should one bring a successful suit against an infringer. We are not in the business of suing people, let alone, suing our small niche clientele. Also, we cannot afford to hire an intellectual property attorney for each and every suspected infringement case.

The Copyright Act mandates the US Copyright Office is to administer the mandatory deposit provisions to fulfill its mission "to promote creativity by administering and sustaining an effective national copyright system". We submitted work for registration and it took about one year to receive registration confirmation and certificates. The extraordinarily lengthy process, inability to speak to someone on the phone at the Copyright Office—due to telephone lines being constantly busy— made me a skeptic of the effectiveness of the Office to handle registration at all. Now, with the draft legislation outlined in the Office's report, I feel the US Copyright Office has renounced its mission, which is even more troubling.

"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 Publication Production Manager at a university, I see first-hand that users do not understand copyright law. They, as stated above, believe images they find on web browser image search results are free to use. A fair amount of users want immediate access to use images. They want a simple process to properly purchase usage rights to work. They want to be able to share the work broadly, but don't understand the implications of uploading images or videos to third-party sites like YouTube or Facebook.

Users do not want to pay to use the work. Or if they are willing to pay, the amounts they are willing to pay are a fraction of the market rate. This sentiment, again, is due to a lack of education on copyright law. The solutions I proposed above may address this issue.

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

The draft legislation the Copyright Office published in June 2015, if enacted as law, would most likely put us out of business, invalidate our Constitutional exclusive rights, and leave us with futile legal means of reparation to enforce our copyrights. I am distressed that the Copyright Office is focused on serving the interests of users and would-be infringers by drafting Orphan Works, Mass Digitization, and Extended Collective Licensing legislation that would reverse legal protections we creators have and would ultimately discourage the creation of new work. This draft legislation is happening all while massive amounts of global revenues from reprographic royalties of secondary licensing of U.S. artists' work are unaccounted for and reaped by unauthorized organizations, rather than being returned to their rightful recipients. I am also troubled that the Copyright Office makes claims in it's report that a viable search for a suspected orphan work of visual art could be conducted ont the Copyright Office's website or on the PLUS registry, when in fact, that is impossible. As you know, The Copyright Office's registry is not searchable by image; one must have the Title, Name, Keyword, Registration Number, Document Number or Command Keyword of a registered work to find it there and the search results do not display an image, only text based-information. The PLUS Registry is in Beta Phase 1 and one can only search by PLUS ID or Name. We are suspicious of the PLUS Registry because, while not even a litigant in the case, they have received from Google a confidential amount of settlement money that should have gone to infringed artists and rights holders.

Lastly, I support Congressman Jerrold Nadler's **American Royalties Too (ART) Act of 2015** which calls for the Copyright Office to bring transparency and justice to artists' secondary licensing rights, and I thank the Copyright Office for recommending this bill to Congress.

Respectfully,

Dena Matthews
Medical Illustrator
On behalf of LifeHouse Productions, LLC

About me: I am a medical illustrator, international speaker, author, artist, and teacher. I am a partner at LifeHouse Productions, LLC, a leading edge biomedical animation and illustration studio. My company's work has been honored with numerous awards including the Medical Marketing Association InAwe Gold award, Telly Awards, and Rx Club awards.

I earned my B.S. degree in Biology from the University of Connecticut and a master's degree from the University of Illinois at Chicago's Biomedical Visualization program. As past vice chair of the Association of Medical Illustrators' (AMI) Artists Rights Committee I advocated for artists rights in Washington, D.C and spoke as a panelist at the 2008 U.S. Small Business Association's roundtable discussion on the economic impact of proposed orphan works

legislation. As a board member of the American Society of Illustrators Partnership I, along with medical illustrator Tonya Hines, co-represent the AMI. As past chair of the Healthcare Businesswomen's Association Metro Chapter Entrepreneur Affinity Group I organized highly-rated programs that help advance the business skills of it members. I co-created the Trilogy Healthcare Business Network, to expand opportunities for small businesses in the medical sector within Connecticut.

I taught a graduate course on medical animation at New York University's Center for Advanced Digital Applications, taught Photoshop for Painters to the Tolland County Artists Association, and guest-lectured during Swansea Animation Days in South Wales, U.K. I co-authored a chapter on 3D Animation for *The Guild Handbook of Scientific Illustration*. Most recently, I presented on 3D biomedical animation to the faculty at Wesleyan University. Since 2010, I have been tweeting about artists' rights issues under the handle @denamatthews.