July 22, 2015

Maria Pallante
Register of Copyrights
U.S. 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 would like to formally thank you for giving artists an opportunity to speak up regarding the proposal and possible revival of the Shawn Bentley Orphan Works Act. Creating an open discussion about how these changes to current copyright law will affect real people who make a living off of their art is of the utmost importance. I am grateful to be able to voice my own opinion and establish my stance on this pressing issue.

To introduce myself, my name is Kristin Lewis. I am a freelance illustrator and painter. A portion of my income over the last decade has been made through the sales of custom art pieces and digital reproductions of my designs. I am mainly self-taught, and have built both my portfolio and skills from the ground up. Creativity is a part of my essence and always will be. Therefore, I find it especially vital to protect my images and ideas.

Needless to say, these proposed laws would affect me in a very big way. But I certainly am not the only one. There are other countless artists who make a living off of their art part or full-time. It is how they pay their bills and take care of their families. Sales off of original works as well as digital prints keeps a steady flow of income coming in, so to have their art put at risk of being labeled as orphan works if they are not properly registered will not only be detrimental to the existing art industry as a whole, but to the individuals who put their blood, sweat and tears into creating these original works of art.

With that said, I hope you consider my following arguments for preserving the current copyright laws which prevent intellectual property from being infringed upon by businesses and individuals. The five questions listed below will each be addressed thoughtfully, listing the many challenges that freelance artists, including myself, have to face.

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

The main challenge of selling my art, personally, is preventing the infringement of my images and ideas. Since most of my sales are generated online it is especially

important for me to maintain an internet presence. This includes posting newly finished pieces to several websites so that people may view samples of my work. That way potential clients can assess my skill set and decide whether or not my style fits the vision or project they have in mind. Even with the existing copyright laws, it would be a fight to maintain my intellectual property if it is stolen as there are several steps I would have to take to stop others from profiting off of my creations. If the existing laws are superseded and any of my works are labeled as orphans, there would be very little I could do to recover my work. As an individual, I do not have the same resources as large internet companies who would have the upper hand if they adapted my work for their own gain. It essentially takes the power from my hands and places it in the legal binding of a non-living entity. As an artist who values the income and success that illustrating and painting has brought me, this is both disturbing and discouraging to consider.

As far as licensing is concerned, I alone have to take on the risk of negotiating terms with a company who may or may not honor the contract between us. If the current laws are changed, it will become unfeasible for me to fight against such acts of disloyalty. Not to mention, if my work is adapted I will not be able to license that image for my own financial gain since it will no longer belong to me. If this occurs, money will be taken from my own pocket and put it into the possession of large internet companies, reducing my chances of making a decent living off of the art I work hard to create.

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

As a continuation to the answer for the previous question, the enforcement of existing copyright laws is already a challenge for the majority of freelance artists. There are not only numerous ways for intellectual property to be infringed upon, such as outright stealing or copying the design, but the cost of taking the guilty party to court is not always a viable option. Meaning, it is not always obtainable for an artist to effectively win a court battle as lawyer fees can be exorbitant if the works have not yet been registered. The time spent in court can also be both mentally exhausting and daunting, leaving little time or energy for creative endeavors.

For many artists, such as myself, our best option if our works are not yet registered is to send Cease-and-Desist letters until the stolen image is taken down. As mentioned before, if the copyright laws are changed this will become unachievable. If the Orphan Works Act does indeed pass, this will not only provide more significant challenges for artists, it will undermine the ability to recover their work once it has been stolen.

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

Two major resources: time and money. As a freelance artist, I only have so much time to dedicate away from creating new works since this is a source of income. Time for me is valuable. So is money, which needs to be itemized between household bills and expenses, new supplies, as well as other various business costs. If I am forced to register every single image I will create or have created in the past, that would sap my mental and financial resources that normally would go into the act of creating. To hire someone who could aid me in recovering, scanning, digitally editing, and preparing my work for registration is not an option financially. Also, considering some pieces are no longer in my possession this seems nearly impossible to achieve, leaving those works vulnerable to infringement.

In addition, many artists do not send in a single file for registration, but rather send several pieces together at one time. This essentially means that these images will be at a high risk of infringement until that occurs. If the existing copyright laws are abandoned artists will be extremely hesitant, even afraid, to post any of those new works online until they have been registered. Thus, it will slow their growth and progress in the online marketplace.

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?

Although it is true that with the invention of the worldwide web there has been an influx of visual media, the original creators of those works should still be able to contest having their works sold for financial gain by any other than the artist themselves or those who have obtained the proper licensing. In all honesty, I have major concerns about the enforcement of the Orphan Works Act and how it could easily be abused.

For example, if I sold a piece to a client who then decided to post a photograph of it online without my knowledge (and that image was then circulated around the internet without proper credit), would it be fair to label my art as an orphaned work and have it be legally utilized by a corporate entity? Even if I do my best to protect the work that I post online, my watermark could be digitally removed so that the image can no longer be linked back to my website. Is it fair for my image to be adapted by a company who has the resources to hire artists to create the designs they need? These laws would only benefit the companies, rather than the individual. Not to mention, there are also many online companies that sell the rights to images with the knowledge and permission of the photographers and artists. There is no shortage of ways to obtain designs legally without having to adopt the concept of orphan works.

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

Existing competition is one of the biggest challenges that artists have to face, as we are one among many. Large chain stores that have their artwork mass produced for cheap overseas heavily undermines the creative work ethic that freelance artists strive to maintain. By flooding the marketplace with easily reproducible images that are sold well below most gallery and freelance market values, artists have to find more innovative ways to make their pieces stand out above the rest. In addition to businesses, we also have competition against thousands of other talented visual artists. To add the unnecessary burden of having to catalog and record every piece of art, past and present, so that the works can not be considered orphaned on top of the already existing competition is more than unfair, it is ruthless. I, as well as many others, feel that these laws are being considered as a way to damage and even destroy the freelance artist industry so that major corporations can optimize sales and maximize profits.

As an American, I believe in being a self-made entrepreneur and giving back to the community in some form or another. I know many other artists feel the same, and have done so by donating to a worthy cause or non-profit organization, teaching classes, painting a mural to beautify a neighborhood, or holding a charity event, for example. I only wish I could make more money from my art so that I could give back to my own community in a positive way. For me, that is one of the most important reasons why we should not take the power away from the artists, but give them the resources to thrive so we may continue to have an impact on the world around us without fear of infringement.

Another challenge we have to face is the circulation of outdated artist myths. We need to debunk the myth that art should be free for the taking, and give value to those who create visual works of art for the world to enjoy.

Thank you very much for taking the time to read my letter, and I urge you to consider keeping copyright laws in favor of those who create the work, not those who wish to take the images for themselves.

Sincerely,

Kristin Lewis