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July 23, 2015

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

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

Dear Ms. Pallante:

This is to ask that you create policy to protect visual authors (and other creative artists) to retain their exclusive rights, and support an economically sustainable environment for professionals practicing the visual arts.

I have been practicing as a photographer and board artist for 7 years. I am currently completing a certificate program in botanical illustration. I hold a BA degree in fine art with a major in Photography and an MA degree in Applied Behavioral Science.

I am grateful for this opportunity to participate in the first inquiry into the protection of visual art for nearly 40 years as technological “management” and industrialization of creative work have encroached on the economic assets and livelihoods of visual artists.

What follows are my assessments of the elements which affect my income and protect my rights in my work, as well as that of other artists.

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

- Lack of negotiating power of independent contractors
- Unfair work-for-hire and all-rights publishing contracts
- The loss of secondary royalty income from the diversion of artists’ domestically-earned reprographic royalties by the Copyright Clearance Center, content aggregators and commercial databases to publishers and from the diversion of foreign-earned reprographic royalties from overseas collecting societies to U.S. recipients
- Limited regulatory oversight of collective rights administration by the Copyright Office to assure royalties are paid to the artists who earned them
- The length of time before the exercise of termination rights

Copyright supports a property right that enables an economic market for the creation and

dissemination of my artistic works. For professional artists like me, that property right is created throughout the pursuit of my craft and sustained expenditure of great effort, time and money in the production of my artistic creations.

My work is displayed through the Worldwide Web of competitive necessity and as an affordable alternative to business and engagements with galleries. Unfortunately, this allows my work to be offered for sale by content aggregators who have secured no authorization from me to license my work. I am not concerned with fair use of my work, or the use of my work on blogs that celebrate or comment on art. However, it is unfair to use my work to promote other interests. These occasional infringements found on the internet are insignificant in comparison to the sustained, unauthorized licensing of my work for the secondary reprographic uses marketed by commercial content aggregators, databases and the Copyright Clearance Center. The secondary royalty stream continues to expand in both value and marketshare. The Copyright Clearance Center returns royalties to rightsholders, but does not return any royalties to visual artist rightsholders for work embedded with the published works it licenses. Huge commercial databases engage in this unauthorized use. This significant loss of licensing revenue is unexamined and unchecked. This outcome does not comport with the intent of the Copyright Act.

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

- Implementation of the resale royalty, and the designation of that royalty as inalienable is necessary
- Delay in the legislative implementation of the federal resale royalty since the U.S. joined Berne in 1983, and has resulted in a generation of resale royalties lost to artists and their heirs in the U.S. and around the world
- In the case of illustrators, painters and photographers, in many instances the original art was never sold by the artist, but passed into the hands of publishers, advertisers and others through the production process

I therefore support the proposed American Royalties Too (ART) Act of 2015 which calls for the institution of the reciprocal royalty in the United States, and for the Copyright Office to bring transparency and justice to artists' secondary licensing rights.

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

- It is fundamentally unreasonable to require registration for visual artists as a prerequisite to statutory remedies. Without these remedies, including attorney fees, costs recovery and injunctive relief, visual artists cannot adequately enforce their rights
- Registration for visual artists is burdensome, unrealistic, costly and fraught with potentially fatal technicalities of which may artists are unaware. The 1976 Copyright Act

was revised in part to try to prevent the loss of rights to American creators by removing burdensome formalities that caused the forfeiture of rights
- Requiring registration nullifies the benefits to creators provided by the 1976 Copyright Act

The spirit of the Berne Convention prohibition on formalities should be honored for U.S. visual artist.

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?

- I do not require use of the work of others in my practice

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

- The right to authorship in the U.S. should be indisputable. Work for hire for independent contractors deprives an artist of authorship in direct contravention of constitutional rights to secure the exclusive rights to work for limited times. This loss of authorship in 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 and not to independent contractors or suppliers
- The length of time to exercise the termination right must be shortened. By the time a creator can exercise a termination right he or she has been denied income from their work for three and a half decades. The exercise of the termination right has become an unequal legal fight against large enterprises
- All statutory remedies should be automatically available to all artists at the moment an artist fixes a creative expression in a tangible form
- It is virtually impossible for independent creators to find justice against giant corporations. We cannot sustain the legal battle. For corporations, litigation is a part of doing business, and they are staffed with entire departments and outside counsel as a matter of course

In conclusion, each of the exclusive rights conferred by copyright has a value. We rely on the divisibility of our exclusive rights to earn our livings. Any rights not specifically transferred in a license belong to the artist, including rights to uses not yet known or invented. When a use has value, part of that value is shared by the creator. Without the creative work demand and the market to meet it, the demand would not exist. Yet, we experience significant difficulty enforcing our rights because of the dramatic imbalance between the individual creator and large publishing enterprises and their associated allies. In many cases, revenue streams that directly belong to visual artists have been wholly diverted to other parties, and artists are foreclosed from the exercise and enjoyment of their rights.

This Administration and many previous ones have applauded the values and virtues of American small businesses and have committed to support them. Inability or ineffectiveness in protecting

the property rights of individuals and small businesses directly affects the careers and incomes of both individuals and small businesses in the art field. The U.S. Constitutional's Copyright Clause contemplates that encouraging individual effort by allowing personal gain is the best way to advance public welfare. The public welfare is not expanded by facilitating the interests of entities with greater economic power over the creative efforts of the individual creator.

Sincerely,
Christine H. Rollins