7/20/2015

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 (80fr23054)

Dear Ms. Pallante and the Copyright Office Staff:

Thank you for reading my concerns regarding copyright and how it directly affects me as a professional artist. Creating art is my profession and something I have passionately pursued my entire life. I work hard to afford this career path. Part of that work is partnering with various companies to license, or otherwise use my artwork. These are very important business arrangements and would be threatened by proposed orphan works legislation.

Below I will answer your questions on this topic:

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

Not having bargaining power with large companies.

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

Currently there are many entities, unfairly using my images for profit. These entities either do not care that this is theft, or claim that they “just found it online”. As a self employed artist, my time is already stretched thin. Policing violations of my own copyright is something that is not physically possible. Allowing an attorney to pursue these would be optimal, but I cannot afford to hire an attorney for this purpose. The proposed orphaned works legislation frightens me greatly

as I cannot afford to loose business by companies using my works without my consent, nor can I afford the time pursuing them.

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

As a visual artist I create many many works. Some may never sell, and a couple sell frequently. It is difficult to determine which will become successful. In order to protect my own creations, under the the proposed orphaned works legislation, I would have to register every work, past and future, regardless of my ability to make money from any single image. This is unacceptable, inefficient, and a wasteful use of my limited resources.

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?

Contacting the artist, either by utilizing existing contact information or doing a quick search online (including the use of free image search software like the kind available through google.com) This can take mere minutes. Now when compared to the amount of time an artist would have to spend to properly document, photograph, keyword/catalog, fill out proper registration documents, etc, for each sketch, doodle, painting, etc, that may or may not lead to a sale is a frightening proposal indeed and quite

certainly placing a monstrous proportion of work on the artist.

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

On this question I eagerly defer to Brad Holland who’s expertise on this subject is not just notable but quite thorough.

He writes: "*There are many, but let's cite only two here: a.) the claim that there is already a viable*
visual arts registry that would benefit artists; and b.) the black hole that is reprographic and other secondary rights licensing in the US.

a.) I was concerned to read the claim in the Copyright Office's 2015 Report that there is already a "credible" visual arts registry that "functions as a 'hub' connecting registries in eighty-eight countries, and provides both literal and image-based searches." Stated this way, it might suggest to Congress that such a registry actually exists, that it is stocked with artists' images,

and is ready and able to start licensing those images to the world. If this is what you've been told, I'm afraid you have been misinformed. There is no such thing.

I am one of the most prolific published artists of the last 50 years, with multiple awards, a client list that includes nearly every major publication in the country and a place in the Illustrators Hall of Fame. If there were such a registry I would know about it, and if I thought it would be beneficial to my interests, my work would be in it. But I know of no such registry and neither do any of my colleagues.I am, of course, well aware that there are many wannabe registries, beta sites, etc., including some that I believe to be well-meaning. 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.

Here's what I've been told by an expert on the subject:

"Even if there were a fantastically easy and cost effective means of scanning and placing works into a searchable database – which existing registries CANNOT do -- that would not solve the problem of all the pre-existing works for the last 70 years that are still under copyright. Scanning and digitizing such works would be impossible with any conceivable technology."

And here's what another expert told me, the creator and former owner of one of the most widely respected artists directories in the graphic arts field: " [T]he concept of creating an inclusive, cost effective database for imagery is impossible. I represented 400,000 images, had 500 portfolios of artists online, verified listings of 50,000 graphic artists, and I know the time and cost for creating databases. Not possible.Not feasible. Not cost effective. And if there were multiple, smaller databases, not workable."

I have no doubt that one or more of the wannabe-registries could swell its inventory overnight by making sweetheart deals with giant image banks to locate their images there: these corporations have the money and resources to do it. It could then present itself to the world as a "credible" registry, and works not found in the registry declared orphaned. But if this should be permitted, it would only serve to sharpen the competitive edge these corporations already have over freelance artists. Yet corporations don't create. Individuals do. And if Congress chooses to certify a couple of visual art supermarkets that only corporate image banks could afford to patronize, the US government itself would be striking another blow against the small business owners who actually create new art. And in doing so, it would strike a blow against art itself, and with it, the public interest.

b.) Most artists are unaware – or only vaguely aware – of the massive secondary licensing already taking place in the reprographic rights markets. We have learned that in the US this

licensing has been going on for over 30 years, with combined revenues of roughly $300,000,000 annually. In other countries where royalties are distributed to artists, surveys by the International Federation of Reproduction Rights Organizations show that visual arts royalties average at least 15% of total collective fees. Yet in the US, neither I nor any of my colleagues were ever informed about this potential revenue stream by anyone involved in that licensing, nor by a couple of rogue organizations who have subsequently claimed the royalties as their own "found money."

Moreover, once we learned about this growing source of income – and we had to learn about it on our own – we were informed – in writing– that artists have no standing to know anything about how these royalties – derived from the work of artists – are being collected and spent. Because this has been going on under the radar for so long, the groups now taking artists' royalties may insist that settled expectations in the marketplace should be institutionalized into the new copyright law. This would be wrong because it would reward those who withheld financial information from rights holders by allowing them to claim the "orphaned" funds for their organizations, not once or twice, but for good. With the growth of digital licensing, royalties derived from these secondary licenses are growing dramatically. So unless something is first done to correct the current system, we fear that the creation of an extended collective licensing program will only serve to lock artists out of their secondary rights income forever.

Instead, I support Congressman Jerrold Nadler's American Royalties Too (ART) Act of 2015. It may not be a perfect solution to the current black hole that is reprographic licensing in the US, but it contains a provision that would create an honest visual arts collecting society that would begin returning lost royalties to artists. This would at least start to bring transparency, accountability and justice to artists' secondary licensing rights, and I thank the Copyright Office for recommending this bill to Congress."

Sincerely,
Karen Whitworth

Biography:
Karen Whitworth has spent her entire life enjoying nature and its vast sources of artistic inspiration. At a young age her family moved to Alaska where her passion for the outdoors was nurtured and her drive to capture it through paint blossomed. For the next 20 years she painted the rugged landscapes and beautiful animals that resided there. Her original paintings have received several awards, are exhibited across the U.S., and can be found in collections around the world. She manufactures several lines of gift items featuring her artwork for sale with nearly

100 retail stores and licenses her art to multiple manufacturers for use on their many products. Karen resides in Carnation, Washington with her husband and 2 young children.