July 21, 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

Dear Ms. Pallante and the Copyright Office Staff,

Thank you for the opportunity to weigh in on this important matter. I was a professional graphic designer for about 12 years. I created works for a few large US corporations including but not limited to packaging, print ads, and product design. Recently I have been working towards creating more fine arts. I sell some of my work through print-on-demand web sites that pay me a small royalty when my work sells. I do not yet make a living from this as the sales are infrequent, and I am not very well known, therefore I am somewhat stuck in a hobby phase of my art career. That being said, I value my copyrights tremendously. They are the only leverage I have to continue building my career. My portfolio is the only way I am able to work in the industry. I will answer your questions to the best of my ability and experience.

1. What are the most significant challenges related to monetizing and/or licensing photographs, graphic artworks, and/or illustrations? (What's the biggest challenge to licensing or selling my art?)
Getting hired to do graphic design work under a license agreement is unheard of… maybe illustrators can do it? Designers can't. If you're the person arranging the photo or the art with the text on a page… technically, your layout isn't yours. It belongs to the company. Designers are always 'work for hire' employees or contractors. You are flat rate. Even if you are designing typography, an art form in and of itself, it doesn't count as yours. There is very high competition of artists which contributes to the strong arming by corporations to only offer 'work for hire' scenarios to potential artists. For every artist that declines that deal in an effort to preserve artist integrity and authorship over their work, there are X more artists hoping to just get a foot in the door and are willing to accept a bad deal just to get work. In accepting these bad deals at the start, many artists, myself being a good example, end up doing more and more creative work under these same contracts. I have been hired to be a graphic designer and ended up being an illustrator, art director and beyond without any renegotiation of the former agreements, simply under the pretense and fear of losing out on the work in general and potential of damaging the relationship. This, non-option, non-choice situation led me to losing out on the ownership of my own characters created for a line of products that went on to be produced only once. I have no recourse and no rights. Had I been able to negotiate a license agreement instead, I'd have been able to shop my idea around to other manufacturers or even produced my own line of products once the license term expired. As I move my way more into fine art and illustration, including surface design and print on demand sites that produce product with my art on it, I am finding it difficult to avoid having my art stolen and used by unauthorized vendors or manufacturers.

2. What are the most significant enforcement challenges for photographers, graphic artists, and/or illustrators? (Enforcement of the copyright, Enforcement of payment/monetary compensation?)
Biggest challenge would be tracking down the malicious as well as the naive infringer and being able to collect any compensation from either. Typically, it is well known in the industry as I have read on various blogs/facebook posts, the naive infringer will simply pull the infringed piece from

their use or in rare cases they may work something out. But the thief… I'm currently dealing with one, and for now, it's a cat and mouse game of takedown requests. This individual/company has unlawfully used some of my art on some of their products and are offering them for sale in direct competition with the print-on-demand site of which I do have a licensing agreement. This infringer is offering the product at a third of the cost of my authorized seller. I am competing with my own design which was stolen from the very site I've authorized to reproduce my work. The site I have authorized pays me a small, 10% royalty on the rare occurrence I happen to sell. Therefore, without significant sales, any profits do not cancel out the damage done by the infringer, so I am compelled to stop their activity. It's frustrating. I don't see a solution. I cannot afford legal council as I mentioned before, I'm not currently making a living from my licensed works. I am small-time.

3. What are the most significant registration challenges for photographers, graphic artists, and/or illustrators?
Any mandatory registration would inflict an undue burden on to the author/creator of any body of work. While I may be 'small-time', I do possess an extensive collection of works. I've been creating nearly my entire adult life (I'm 42). Having to register every piece I've ever made, would be incredibly costly, in time as well as monetary expense, and would result in simply not getting done. I would not be able to move forward and create any new works, it wouldn't make financial sense. Copyright needs to remain automatic. My creations need to be protected as soon as they are created. Copyright must be assumed to exist on every piece ever created and to be the property of the author. Licensees need to remain sheer borrowers of the art. And if an author chooses to relinquish the reproductive rights to another, that would be the choice of the author.

4. What are the most significant challenges or frustrations for those who wish to make legal use of photograph
The only challenge I can see in making legal use of someone's photograph, would simply be the will to actually pay for it's use. While spending money on anything can be a challenge, I feel it is not unreasonable to pay a photographer for the use of their property. I keep hearing about how hard it is to track down an author of a work however, authors/artists have no problem using 'Google' and reverse image searches in tracking down the thieves of their works. This ability should work in both directions, thus reasonably leading a potential user directly to the author with a reasonable amount of effort.

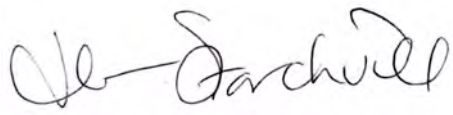
5. What other issues or challenges should the Office be aware of regarding photographs, graphic artworks, and/or illustrations under the Copyright Act?
Perhaps it is not known that, not all artists/designers/photographers have agents representing them. I certainly don't and most don't start out that way either. We all have to start somewhere and usually we simply represent ourselves. I think at some levels it is assumed if you're a professional, you are so at the maximum level. I think this is an unrealized reality that is overlooked in assuming all artists could simply register all their works at their own expense and let the money start rolling in! This is far from reality. All of my employment has been based on existing work relationships and person to person networking.
Another misguided assumption would be that image banks are there to help artists find potential clients. Which sounds like a great idea until it's realized how they are actually used in the industry. My experience with image banks has been to search for images to use in client work as long as they were the cheapest ones available, the 'royalty free' set. If no suitable cheap images could be found, under my 'work for hire' agreement, I was then assigned the work of creating new works, inspired by the more expensive licensed works they preferred but did not want to pay for the rights to use. I had to find a way to avoid infringing on the desired pieces yet create something the company would accept. I would try to use multiple images as research to create something entirely new and unrecognizable to any of the researched works. Knowing this about companies

and how they use the image banks, I have had no interest in submitting my own work to them.

6. What are the most significant challenges artists would face if these new copyright proposals become law?
This is an added question supplied by the other concerned artists and my thoughts regarding the issues in general are as follows: The interested user's ability to create new works is in no way impeded by tracking down the owner of an existing copyright. Either you are creating something new, or you are trying to use something that is already in existence. Copyright should remain inherent to the creation process. Mandatory registration of all created works would place an undue burden on every creator of visual media and would not be limited to individuals that identify as artists or photographers. The casual personal snapshot, shared on social media would become fair game (re: an Orphaned Work) thus susceptible to uncompensated use in commercial products. I see that 'Orphan Works' is simply a marketing term corporations and some individuals would use to lay unlawful claim to that which is not theirs. It would be a means to dodge payment of the artist or other creator for their hard work so they may profit at the creator's expense. Artists don't need any help in being ripped off and taken advantage. Also, the insertion of such a technical formality (mandatory registration) would discourage the creation of new works and have very little benefit to the artist. The current system, while not perfect, where the author owns the rights until they are sold outright or while they control licensees is much more profitable and much more fair to the author.

Thank you once again for taking this matter seriously and hosting this inquiry. I hope the information I have provided as well as that of other authors is helpful in understanding our field of challenges.

Sincerely,



Jennifer Starchvill
ghennah@gmail.com