jonathan hunt | illustrator • author • designer • educator

July 20, 2015

Maria Pallante
Register of Copyrights
U.S. Copyright Office
101Independence 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:

My name is Jonathan Hunt and I have been a professional illustrator, author, and designer for the past 27 years. I make a living by creating and licensing images to clients. The Copyright Act of 1976 has allowed me to establish and sustain a viable career in illustration. The current Copyright law enables me to license selective rights to a work to multiple clients, thus creating a revenue stream based on existing as well as new works created for specific clients. As a professional in the field of illustration, the ability to own and control the use of my images is not the subject of high-minded academic philosophical debate— it is my literal bread and butter. If I cannot control the use of the works I create, I cannot make a living.

Visual artists have been asked by the Copyright Office to respond to specific questions and my answers can be found below:

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

More and more publishers have been demanding that illustrators sign away all electronic and other unspecified future rights to their work as a precondition for being hired for an assignment. If the illustrator wishes to retain these rights to use as a valuable stream of income (as we are able to do under the 1976 law), they will not get the job. Bear in mind that the rights these publishers are demanding are not needed to make use of the art for the specific job that the illustrator is being hired for. In actuality, the publisher may never utilize these rights. However, once the artist has signed those rights away, the artist will never be able to benefit monetarily from the work that they have created.

These "work-for-hire" agreements that deprive artists of authorship and designate the publisher as the creator are never favorable to the artist. Essentially, the artist is being treated as if they were an employee of the company but without any of the benefits such as vacation time, pension or insurance. Ultimately, as publishers build massive image banks of visual works that they can license with no further compensation to the original creator (as many comic book publishers have been doing for decades), illustrators will find themselves competing with companies licensing the artist's own images for far less than the artist would have to charge for a new work. The irony of this is that publishers try to get artists to agree to giving up all their rights by telling them that the work has no real value beyond the first use. If that were the case, then why are so many large corporations demanding the full rights to artist's work? The answer is simple. Works of visual art do indeed have extensive measurable monetary value in the marketplace otherwise the publishers would not be so desperate to control it.

As proof of this, I recently licensed the right to a painting I had done almost 20 years ago to be used as a book cover. Had I not put my name on the painting and retained control of the rights to it, the author would never have had the opportunity to use it on her book and I would have

missed out on valuable income. With the recent expansion of self-publishing, I have had many authors contacting me directly to produce new art as well as license older works for their books. If I had given up all the rights to my past work, this income stream would not exist for me.

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

Under the current laws artists have a difficult time being able to find an attorney they can afford based on the (usually) very small damages that would be awarded to artists whose work has been infringed upon. Even when a work is registered with the copyright office, these cases tend to take an inordinate amount of time away from the artist being able to work in the studio and continue to make a living. Under the terms proposed in the Orphan Works Act, it appears that most or all of the burden of proof to determine an infringement would be on the artist, while the infringing party merely has to claim to have made a "reasonable search" for the owner of a work. No lawyer in their right mind would defend an artist in cases like this since it would be nearly impossible to win.

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

On the surface, it seems simple to register a piece of visual art with the copyright office. An artist also has the ability to register multiple pieces as a compilation or collection. However, by grouping pieces together, it is possible that any statutory damages awarded based on infringement of one piece in the group may count against damages to be awarded to other infringed images in the same collection. So any cost or labor-saving benefits to registering a collection of works is effectively negated. The creation of "registries" by the private sector (as proposed with no plan for implementation in the Orphan Works Act) would not solve any of these problems since artists would not be considered protected unless they registered their work with every single registry. This would be an impossible task which would cost thousands of dollars and thousands of man hours to compete yet would still not guarantee protection for the 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 have never had a challenge making legal use of the visual work of another artist. I have often used photographs or other images by others as "inspiration" but I do not copy the images owned by others or utilize them in collage or "photo bashing ". I take my own photographic reference when needed and do not rely on the images of others to create my own work. Sometimes I will use an image by an artist on my blog or social media pages to announce a show by that artist or to direct users to that artist's page and I always include a bi-line or credit to the artist and a link to their website if possible. I have never had an artist ask me to remove any of these images, but if an artist asked me to, I would remove it immediately. I also have given permission to others to post my art for similar non-profit uses. It is not difficult to follow the law and give proper credit and compensation to artists when it is due. Unfortunately it is also way too easy with modern digital technology to steal an artist's work.

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

The biggest issue I can think of is the insidious and widespread belief in the public and corporate sectors that "If I can copy it, then it is free". It has taken the efforts of musicians and

bands like Metallica, Radiohead, Taylor Swift, and Neil Young among others to drive home the point that music is not free unless the artist wants to give it away. The same goes for art. Unfortunately, art on the world wide web is very easy to copy and save. Yet if an artist is afraid to post his or her art on the internet, then they have lost a huge portion of the marketing they need to do to establish a presence, a brand and a reputation. However, posting high resolution images on the internet invites stealing since with a simple click, anyone can download the image and "re-purpose" it to their needs with no compensation to the artist. It is the ultimate "damned-if-you-do, damned-if-you-don't" scenario. This amoral and callous attitude toward the illegal appropriation of creative works needs to be challenged by educating the general public on what it is to be a professional artist. Simply put: It is a job— just like the one they go to everyday to feed their families. Like the plumber who comes into your house to fix your toilet. And although everyone gripes about how expensive it is to hire someone to clean up their flooded bathroom on a Sunday evening, no one would ever consider not paying the plumber.

6. What are the most significant challenges artists would face if these new copyright proposals become law?

Plain and simple, the new legislation that I have seen will make it much harder for illustrators and other visual artists to make a living. It will also adversely affect the rights of artists who reside internationally and have clients in the US.

It is my hope that the Copyright Office will fulfill its mandate by proactively working for the benefit of visual artists by affirming our right to control the rights to the works that we author. By creating and enforcing clear and fair guidelines (many of which already exist) it will not only help artists, photographers and the like to continue to be able to make a living wage and pay taxes, but it will also benefit the public by continuing to ensure that beautiful, unique and useful works of art are accessible to them via fairly compensated creators.

Thank you for your time,

Jonathan Hunt
illustrator / author/ designer / educator
www.huntillustration.com

bio
I have been working professionally since 1988. I work in both traditional + digital media for book jackets, storyboards + concept art, collectible card games, role playing manuals, music videos, + magazines. I am the art director for Frombie where I work with a talented group of young artists designing collectible toys, comics, pins, posters + more. In addition to my freelance work, I have developed my own line of creepy character pins called eep. I also write a bi-monthly column about art and illustration called "Art Drone" for Art Hive Magazine