the Medical Illustration Studio

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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

Dear Ms Pallante and the Copyright Office staff:

Thank you for seeking comments from creators of visual works as you deliberate changes to the current copyright laws. I appreciate your willingness to listen to the perspective and concerns of those of us who would be devastated by such changes.

I am a self-employed professional medical illustrator doing business as The Medical Illustration Studio in Nashville, TN since 1984. Prior to that, I was employed in the Biomedical Communications department of the State University of NY (SUNY) in Syracuse, NY where I was a staff illustrator and supervisor of the department. I left to start my own business in 1979 in Syracuse, then Watertown, NY and New Haven, CT before settling in Nashville.

The textbooks I illustrated remain classics in the field and the illustrations have been reprinted in subsequent editions and in other publications. Over the years, my illustrations have been used to educate doctors, patients and juries. One series on prenatal development is on permanent display at the Adventure Science Museum in Nashville, TN.

I have registered the copyright to most of my medical illustrations created over 36 years, since establishing my self-employed business in 1979.

But let me back up a bit. I hold a Bachelor of Science degree in Medical Illustration from the University of Illinois Medical Center in Chicago, one of five accredited programs in the country at the time, and a Master of Fine Arts degree from Syracuse University. I am Board Certified through the Association of Medical Illustrators (AMI). In addition, I am an elected Fellow and Past Corresponding Secretary of the AMI, having served on the Executive committee of the Board of Governors and an Associate Editor of the Journal of Biocommunication. I was awarded the AMI Outstanding Service Award in 1998. I was also honored with an award in the SAMA-EATON competition of excellence in medical illustration.

My 5 year B.S. curriculum included two years of medical school courses including gross anatomy, neuroanatomy, pathology, histology and embryology. I take yearly continuing education seminars to maintain my certification and to keep up with current developments in medicine, art and ever-evolving software media.

After graduation, my job at SUNY involved illustrating medical textbooks, journals and presentations for doctors doing academic and clinical research as well as creating illustrations and medical models for educational films we produced. Since then, in my own business, I have expanded to working with lawyers to create medical legal exhibits for personal injury and medical malpractice cases, working closely with their medical experts. In addition, I create illustrations for the health sciences such as proprietary medical devices and patient education.

The medical illustrations I create are original works of art that communicate very specific points. The reason I am sought out is because my illustrations communicate visually an innovative surgical procedure, someone's specific injury, or a point of view that has not previously been visualized and requires a new understanding.

This has made me appreciate the value of my illustrations both to my clients and to me. That I have registered the copyright to most of my illustrations allows me to do two very important things that are critical to my continued success and ability to make a living from being a medical illustrator.

1. To use my original illustrations as a basis for creating new illustrations or variations thus saving me time and making it possible to generate new art from my work. The ability to create derivative works from my own work is crucial for maintaining the success of my business. This right is protected by the current copyright law.

2. To license the use of my illustrations. I may have created the original illustration for a book or a talk or legal case. However, it has great value beyond the payment I received the first time it was published or displayed. I am currently able to license my illustrations for use by others for a negotiated fee. Therefore the artwork continues to generate income for me.

Both of these current rights are in jeopardy from the proposed changes to the copyright law. As it is, my work has been infringed by unauthorized use. It has been pulled from my website, copyright notice and all and posted on other websites. These are the just the infringements that I can see. I have no doubt there are many more. I have heard lectures about how to take an Image or Screen-capture and sharpen it for use without ever contacting the illustrator. It takes a lot of time to pursue this abuse. On top of that, software that removes identifying copyright notice, credit and metadata, gives people the excuse that the art is in the public domain, an "Orphan Work" further reinforcing someone's perceived right to use it with no compensation to the artist. As the art continues to be stolen in this way, there is less of a need to call me to license it. Why pay for art that can be grabbed for free, willfully or not? This has a serious impact on my ability to make a living.

I have just started pursuing legal action on an egregious infringement of my copyrights to two medical illustrations. Both appear on a website with my copyright notice on the images. No attempt was ever made to contact me. This website sells multiple services and is using my images to promote their business and make a profit. If the orphan provision is instituted, there would be no way to even know that I was the artist. I am noticing other infringements and will have to decide whether to take a substantial amount of time away from my work to pursue them. I would rather be productive in creating new illustrations than

spend my remaining career pursuing infringements. But I may not have a choice. Currently, I rely on the availability of statutory damages, attorney fees and cost recovery, as well as injunctive relief to enforce and protect my copyrights.

I am deeply disturbed that the Copyright Office would invalidate copyright registration certificates by their own orphan works policy. If the Copyright Office believes that our work should be in a searchable database, why doesn't it construct and verify the database from our visual art registration deposits?

In response to your specific questions:

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

The most significant challenge is the ease with which an image can be taken from an online source and reused without any attempt to contact the illustrator for permission and negotiated fees for a license. Allowing cheap or free access to our illustrations results in several other consequences. People expect to get superior quality illustrations for next to nothing. It is impossible to make a living creating a complex effective illustration that requires research and understanding and hours of skillful execution for $25 or $50.

I have produced my original illustrations by the labor of my mind, spirit and hands. Since I am self-employed, they are my property. Licensing the rights to them is how I derive my business income whether from initial use or from reuse. That is why my copyrights are economic assets

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

Time and Cost. It takes a lot of time to make frequent searches of the Internet, even using available tools such as Image Raider and WayBackMachine, followed by demand letters and negotiations, often through lawyers to confront infringing parties. It also gets expensive paying a lawyer. A corporation knows that a lone illustrator doesn't have those kinds of resources and may feel intimidated if up against the legal department. The aggravation and anxiety further reduces time to actually work and create new illustrations which serve the public interest.

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

Registration of copyrights is really very efficient once you've done it online several times. Again, it's a matter of taking the time. The challenge is how long to wait to batch a series of visual works as collected unpublished. When you register a group, the cost isn't prohibitive.

The requirement for two copies of a book or journal however, once published, is a hardship as publisher won't give out an extra two copies over the one complimentary one. At $350-450 for a medical book, the cost is too much for an illustrator to purchase to for submission.

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?

Seeking out the holder of the copyright to the image if it is not clearly posted on the image and if they don't know that they can drag it into Google search to find the owner. Cost of a license may be a

challenge to some. However, that is all the more reason to make absolutely sure that copyright notice is clearly seen on each image making it easier for someone to contact the illustrator and negotiate a reuse fee. You can't just walk into a parking lot and decide to steal a Mercedes Benz and claim that it was ok because you couldn't tell who it belonged to. It's not ok to take the car because it's frustrating and expensive to go buy one. That's what Orphans Works would do.

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

It's important to remember that the reason exclusive rights are constitutionally granted to me isto protect and control the integrity of my work and its market is because it serves the public interest.

This guaranteed protection sustains *professional authorship* for those of us who would devote ourselves to a life of creating original works that benefit society.

Orphan Works legislation will invalidate exclusive rights and automatically devalue every work by 2/3rds. Furthermore, Orphan Works legislation will throw me into breach of contract with every client to whom I have licensed an exclusive use

I am very concerned that I will lose creative control of my work. It is critical to my livelihood, my legacy and the continued service to medical and public education for me to be able to protect the integrity of my work, it's accuracy and to ensure that it is not misused by political or adverse parties. I need to maintain the right to exclude or reject an insufficient payment offer, or no payment, to protect the market value of my work. Last but just as critical I have to maintain the right to control and own all derivatives of my work.

The Copyright Laws were enacted to protect the artist to create works for the public interest. It seems to me that the Copyright Office is constructing policy that gives special interests priorities over the copyrights of visual artists. I beg you to please not allow this to happen. It will serve no one.

Sincerely,

Delilah R. Cohn, BS, MFA, CMI

Principle and Owner of The Medical Illustration Studio