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

RE: Notice of Inquiry, Copyright Office, Library of Congress
Copyright Protection For Certain Visual Artists (Docket No. 2015-01)

Dear Ms. Pallante;

I am writing with regard to the proposed new copyright law and want to express my views on how the new changes would adversely affect the livelihood of artists like myself.

I have been a free-lance illustrator and painter for over 40 years. A career in art is not an easy one but I have managed to earn a living at it, support my family and put our two children through college. I have done work for many of America's largest corporations over the years and have designed quite a few stamps for the US Postal Service. Other clients have included the NFL, the PGA Tour, Major League Baseball, the America's Cup and the Kentucky Derby. I have also exhibited in many galleries across America. I regard my ownership of the copyright to my works as one of my most valuable assets.

You have posed the following questions which I would like to address:

1. What are the most significant enforcement challenges related to monetizing and/or licensing artwork?

   The biggest challenge for me would be "work for hire" verbage which many clients insist on including in contracts for projects. I have no choice but to agree to this if I want to do the assignment even though it means that I essentially give away my rights to the image to the client who then, legally, becomes the holder of the copyright. Frequently such clients simply want to be assured that my work for them would not appear in print for a competitor. They do not need to own the copyright to insure this as I would gladly agree not to resell to their competition. Artists are independent contractors but in work-for-hire are treated as employees. We, of course, receive no employee benefits - ever. My suggestion would be to simply do

away with the work-for-hire provision in the current copyright law. That would enable all artist to be able to retain copyright to their works by just signing them. This is what most other countries allow and it works very well.

2. What are the most significant enforcement challenges for artists?

   For me to enforce my copyright when someone has re-used my work without my permission I first have to hire a lawyer. I have had to do this in the past on more than one occasion and it quickly becomes very expensive. If I also had to register each of my works with an agency, as the new Orphan Works proposal would require, it would not only become more than most of us could afford but would also be a huge expense in time. To devote my time to trying to do all the work it would require to register each of the hundreds of works that I have done over the years would likely put me out of business. This would all be non-income producing time and would make all of us unpaid employees of the registries. It just does not make any sense.

3. What are the most significant registration challenges for artists?

   Again, it makes no sense to me to require all artworks to be “registered”. The enormous volume of paperwork, filing fees and time that this requires makes it impossible for an artist such as myself to do my work. I know of no other artists who have a staff of people to take care of all that work. As artists are then not able to keep up with registration of their works they then become open to massive commercial infringement by all kinds of companies. If companies are then able to freely pick from the tree of existing unprotected art then they will naturally not have a need to commission new works - further tightening an already difficult marketplace for all artists. Other counties in the world do not require registration of artwork - and for good reason. I believe that the United States should do away with any requirement to have works of art registered. It is simply not feasible 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 know that it can sometimes be difficult to locate the creator of a particular piece of art or a photograph. Most companies, unlike independent artist, have staffs that devote time to this sort of thing. And the Internet today makes it possible to locate the creator of thousands of photographs and works of art. It also makes it very easy and inexpensive to locate thousands of choices on any subject through various stock agencies online.

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

I have enumerated above the true difficulties that changing the current Copyright law under the Orphan Works proposal would cause for all artists like myself. I have no doubt that the proposed “registration agencies” would see this as a whole new opportunity to profit from artists and photographers who struggle in today’s economy to earn a living. There would be fees that most artists could not afford. And the time commitment for me to register the hundreds of illustrations and drawings I have done over the years is a nightmare to consider. I simply do not have the time or money to accomplish a task that large.

I am very concerned about the affect that all this all of this would have on all artists, illustrators and photographers. I fear that it would open the gates to massive infringement of the rights of all of us to protect our works from those who would use them for their own gain and frequently in a way that would demean our creative intent.

I would suggest that you consider these three things:

1. Do not allow any form of required “registration” of current or, as yet to be created, works of art or photographs. You might think of requiring all artists and photographers, in order to protect their copyrights, to have their names filed with the Library of Congress. And, in addition, they could then be required to have a personal website (which most already do) so that they can be easily contacted by anyone wanting to use one of their works.

2. Do away with the current “work-for-hire” provision in the current Copyright Law. I have stated my reasons for this in my answer to Question #1 above.

3. Allow artists and photographers to protect their copyright by simply signing or identifying their works.

Sincerely,

Bart Forbes

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