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illustration

July 22, 2015

Dear Copyright Office Staff,

I am a freelance illustrator, graphic artist, and photographer. My primary source of income is as a freelance illustrator. I have been doing so since 1994, since graduating from the Kansas City Art Institute with a degree in illustration. As a freelance illustrator, I have worked for many publications, magazines, books, advertising and design firms, including: Major League Baseball, The Recording Academy, The Wall Street Journal, and The University of Chicago. My work has been featured in the New York and Los Angeles Society of Illustrators Annuals, the American Illustration Annual, and the Communication Arts Illustration Annual.

I wish to voice my personal concern about the importance of copyright protection of my work, which is my livelihood.

To answer your inquiries:

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

To me, one of the most significant challenges is that the internet has made content creation so huge. So many can and do create it, for various reasons. It is hard to make a living when an image can be had at a cut rate fee, by a hobbyist. But, more directly, this practice is employed by large stock houses, like Corbis and Getty, whose terms are unfavorable to artists supplying the content. Pennies on the dollar and all-rights grabs take the leverage away from the artists. Since the large stock houses are the place to be, an artist can feel like they have no choice but to submit to these unfavorable terms on the gamble of making a living.

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

One of the most significant challenges is in the public's misinformed idea that fair use allows them to use an artist's work, in any way, as long as they give credit. This is often seen on people's blogs, even on news websites. I ran into a situation where my illustration was being used, without permission, on a news site, not in a fair use basis. They claim to be not profiting on any content, relying on a misinterpretation of fair use. The reality is, they were infringing. I sued, and won, as a textbook case. This sort of thing is rampant, with blogs and social media calling for content. I'm afraid it will only get worse.

Related to this, keeping tabs on where one's work is being infringed, is another challenge. The world wide web is so large that it can be a huge task to police the unauthorized use of one's work.

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Lastly, the fees of legal action can be prohibitive, particularly, if a large entity is doing the infringing.

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

The fees can be a barrier, as are the paperwork, and simply working the process into one's workflow. Defining what is considered published vs. unpublished, in the world of emerging technology, is another challenge. This is particularly challenging when it comes to needing the grace period of being able to register a work as unpublished, when it is not always clearly defined what constitutes being published.

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?

A challenge for those people can be in understanding that they are not entitled to use work without permission. Tracking down the author of a work could be a challenge. There has been talk of creating a database to help solve this problem. Nothing has been truly enacted, that I know of. A problem will be making this happen, if it is financially feasible to do so, and putting exclusive leverage into the illustrator's hands, to be able to license their own work on their own terms.

Another problem is in who decides what constitutes a thorough search for the author?

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

Image use is turning into a slippery slope, where people who want to use art or photography as part of their website, blog, social media, publication, etc. are assuming things are fair game — fair use, to be exact. It is very important, in my opinion, to make sure artists and image creators are able to maintain a leverage to protect their art and their livelihood. It's all they have. Without it, they, and their heirs, aren't left with much; certainly not a reasonable opportunity to make a living, as has been allowed, prior.

In short, image creators do not need further barriers toward earning a living with their art. They also don't need rights taken from them. I feel it is vitally important to place exclusive protection firmly in the hands of the creators. Copyright has been our protection. It should be strengthened, not weakened. As an illustrator, I require the right to license my work, under my terms, to whom I wish, to earn a living.

Furthermore, a work can certainly have equal or greater value, after first publication. It all depends on how the work is used. In the world of content-hungry technology and opportunities for secondary usage, it is impossible to say a work is automatically

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devalued after any use; particularly with the option of derivatives, which needs to remain in the artist's hands. I've created a work, only to have a magazine request a derivative to be used for their cover. I've since created prints of this work, as well as other uses, to cite one example of the growing value of a work after first publication. Orphan Works legislation and revised copyright legislation could throw a wrench into all of this, taking leverage away from the artist, and money out of their pockets.

Thank you, very much, for your time.

Sincerely,
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