July 20, 2015

Ms. Maria Pallante
Register of Copyrights
U.S. Copyright Office
101 Independence Avenue, S.E.
Washington, DC 20559-6000

Dear Ms. Pallante:

As a working illustrator, I am very concerned about the effect the new Orphaned Works Copyright Act will have on me and all other illustrators, photographers, graphic designers and fine artists.

I thank you for the opportunity to express my views.

All visual artists depend upon copyright protection because without it our ability to make a living for our families would be compromised. Without that protection our work is there for the taking, made especially easy to do in today's electronic media. And we would not be compensated. And legally defending ourselves against infringement would be difficult and prohibitively expensive.

I have been a graphic designer and illustrator for over 40 years. I have been published by most of my industry's major trade journals. I have received numerous awards honoring the quality of my work, and I am an official illustrator for the US Postal Service.

I'll answer your questions as briefly as possible.

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

The first challenge is work-for-hire contracts. To name two examples, the freelance illustrator or photographer gives up all rights to the work done for a publisher or advertising agency. The second challenge is image banks. After paying them a not-inexpensive image fee to appear on their web sites, illustrators and photographers are promised that signing with these sites will open up new markets for them.

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Quite the opposite is true. Instead of opening new markets, the image banks compete in existing markets against the artists, low-balling prices and selling in volume to exploit their competitive advantage.

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

The high cost of legal fees makes it extremely difficult for artists to challenge infringers, and only those artists who have registered their copyright (a very time-consuming and expensive undertaking) can collect statutory damages, attorney's fees, impoundment, and injunction in a settlement against an infringer. Those who have not registered can collect only actual damages.

Under the proposed copyright act, the artist would be very limited in his recourse, and the infringer would be given the incentive to exploit other uncredited (orphaned) works by artists.

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

Most of my work has been done under the current copyright laws, which did not require me to register work. Under the new proposal I would have to spend thousands of dollars, and months, perhaps years, to register works. I would have to track all of my illustrations and graphic works, scan them, catalog them, add metadata, and fill out registration forms for all registries. In essence my career would become no career. I would have little time to pursue new clients or fulfill obligations to existing ones.

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?

Many artists and illustrators, including me, use photographs and works by other artists as reference or inspiration. If I do incorporate them in my work, I pay for them, which, under the current copyright law, protects them and reimburses the artist. I also take my own photos or rely on my sketches for reference.

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

The Copyright Office reports that there is a visual arts registry connected to other registries throughout the world. This would lead Congress to believe that there is a registry with illustrations and photographics already in place.

No such registry exists. If there were, the watchdog group Illustrators Partnership would know about it and would inform its subscribers.

Experts contend that to load onto a central database all the works of artists done in the US over past decades would be cost-prohibitive, and scanning and cataloging such works would be impossible with existing technology.

The only groups who have the resources to perform such a feat would be the image banks. They could present themselves as credible registries, and works not found in the registries would be declared orphaned works.

I hope this letter helps your office and Congress understand the hardships that will be created for artists if this new copyright act is passed. Many will have to retrain themselves to work in other industries, abandoning a craft that they have spent most of a lifetime perfecting.

Sincerely,

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