July 22, 2015

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

Dear Ms. Pallante and the Copyright Office:

Thank you for your Notice of Inquiry on Visual Works. In learning about the proposed new U.S. Copyright Act involving orphan works and mass digitization, I am expressing my dismay and objection to this proposed legislation.

As a visual artist, my livelihood depends on the images I create. I have been a professional illustrator for 35 years and illustrated over 55 books for children plus thousands of other artworks for publications. I have a MFA in illustration and teach at Milwaukee Institute of Art & Design.

I am commissioned to create artwork for a single use but these works do not lose their value upon publication. Everything I create becomes part of my business inventory to be sold and resold for new purposes. In the digital era, inventory is more valuable to artist than ever before. There are many more ways for artists to sell their work online. Currently the Constitution gives artists the right to exclusive control of their work. I have depended on this law for protection from someone using my work without my permission. This new Copyright Act would take that away. Others will be able to publish and benefit from my work without my knowledge, permission or any payment. For me as an illustrator, my artwork is my income and this infringement is like stealing money from me. It is important and necessary for my business that I be able to determine voluntarily how and by whom my work is used.

If illustrations are monetized and/or licensed by anyone other than myself, how could I ever hope to make a living selling prints or in any other way sell my work online? Licensing would make it legal for others to do this without my knowledge or benefit. We already have a problem with giant image banks promising royalties and new markets to artists who register. This has not been advantageous to artists in the long run, making them compete with giant image companies allowing anyone to procure images fast and cheap.

Early in my career the norm was to sign a contract for one time use. This worked well for artists. There were many images that I sold again and again and continued to profit from secondary rights. Now work-for-hire contracts are the norm for the large publishers. I am forced to sign them just to have enough work, This has really eaten away at my profits. There are types of children’s books that were royalty based that are now work-for-hire. I see the proposed copyright law only adding to this problem for freelance artists like myself.

Enforcing copyright law for me would be very costly. I don’t have the money to hire a lawyer and finding a contingency fee lawyer would be my only hope. If the orphan works legislation goes into effect, all infringements might be considered orphan works. The law would most likely side with the infringer not the artist who created the artwork.

If artists are required to register each one of their works this would soon become a financial burden and extremely time consuming. Worse yet, noncompliance would mean anyone would be free to exploit and profit from my artistic property.

For those wishing to make legal use of photographs, graphic art works and/or illustrations, the current law is clear that due diligence is required in finding the copyright holder and asking for permission. Isn't it better to leave this to the individuals involved instead of creating more bureaucracy with licensing and third parties making a profit from an artist's work?

As you debate this issue, please take into consideration the many visual artists, like myself, who work very hard to make a living. More often than not I work for little pay considering the many hours a painting takes to create. Having less control over how my work is used will only make it more difficult to continue to make a living in my profession.

Sincerely,

Carol Schwartz

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