Michele Phillips
ILLUSTRATION ART

Jul 22, 2015
Maria Pallante
Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, DC 20559-6000

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

Dear Ms. Pallante & U.S. Copyright Office Staff:

My name is Michele Phillips. I have been employed in illustration, graphic design and the visual arts for 24 years - full time since 1999. I've worked in the fields of illustration, design, a combination of the two, and in the fine arts both in the corporate capacity and as a self-supporting freelance artist, creating works ranging from product and character development, home decor, textile and surface pattern design, toy and craft design and packaging design, logos, book illustration (from children's picture books to middle grade chapter to adult), greetings and gift market, and corporate branding and marketing materials.
Clients served include; Plaid Enterprises, Michael's, Hobby Lobby, Wal-Mart (US and overseas), Cracker Barrel, Emory University Behavioral Health Department, City of Decatur, GA , Booklogix, as well as many other local businesses, organizations and small publishers.
I'm a member of the Society of Children's Book Writers and Illustrators, [SCBWI] and the Decatur Arts Alliance, and an active member of my local arts community.

I'm writing you today to address the many serious problems that the potential upcoming changes to US Copyright Law would cause for myself and many, many artists just like me. As a freelance illustrator, I've been able to join several communities across the country in online (and 'offline') groups and organizations (like SCBWI) where we collaborate, discuss our business, our work, our challenges, and support each other. I've learned through these communities that there are *so very many* Americans working just as I do, so I truly believe I'm speaking not just for myself, but for an entire large community of professional artists like me.

As a professional visual artist, I'd like to address the questions the US Copyright Office requested answered:

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

To be competitive in illustration and design, we always need to create fresh, original work, and we need to get it 'out there' to be seen. The more unique a work is, the more valuable it can be, as that deems it more 'special' in the marketplace. An artist's personal style takes years of work, study and practice to evolve, and as unique as our signature. That uniqueness is our greatest asset to gaining monetary compensation - and conversely, can become a our greatest Achilles heel in the face of potential 'image piracy'. Working as an artist blends creativity of a highly personal nature with making a living - that is a challenge in itself, because the more personal and unusual and unique the work, the better it often does financially - but it carries that personal stamp of its creator with it, and the exchange is more than time - we are also putting our souls out there for critique, , for possible ridicule, and hopefully for others' enjoyment - enough so that the market will pay for our time and efforts.
Probably the largest challenge for me in monetizing and/or licensing my work (I sell outright, commission, and also license) is being visible and memorable in a highly competitive market while also keeping my work protected from image grabbing.
In recent years, the internet has become a double-edged sword for my business—providing a world-wide platform for artists like me to promote our work, but also putting us at increased risk for our work to be pilfered

and used by others without permission or compensation. It's costly to create. ***My time is my money, and creation takes time.*** Certain companies and individuals (in the US and also overseas) are digitizing work without permission nor compensation nor even acknowledgment of the creator. Many of us - *myself included* - have been dismayed to see our own original work 're purposed' on products without notification or permission or payment. Legal battles over these infringements are very expensive, drawn out, and are yet another expense that bleeds any income from our labor. The time I spend protecting my work and/or defending it and/or trying to get compensation for work used without permission is not only costly, it is time I am not making money, because I'm not creating. I've learned this the hard way.

I choose to divide my work between licensing and outright purchase, so I have a balance of money for my time spent and some padding of passive income stream to even out the less steady work times. Many visual artists work this way, because it helps us survive better on our work. The proposal under consideration which includes a form of socialized, extended collective licensing also poses a serious threat to this necessary balance of work to income ratio.

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

The very proposals the Copyright Office has made to Congress that contain a revised Orphan Works (OW) bill quite frankly terrify me. The Orphan Works bills have been fought and defeated for a decade- with good reason. Reasons that are more pertinent now than ever. A copyright law with the foundation of the orphan works law would open the door to internet companies siphoning off revenues from our labor to fatten their bottom line. This would have the potential of destroying our means of living - not just harming, ***destroying***. It's no secret that individual artists (nor even arts collectives) couldn't possibly fight giant corporations (and win) in the instances of their profiting from works they did not purchase- we already have a tough battle with companies trying to do this even without such proposals in place. But at least at the moment, we have a little support from the US Copyright Offices and the law. Should these proposals pass, OW will crush the independent creative community. And the independent creative community actually feeds the larger economy - make no mistake, a great many of us do work for a great many large markets and huge corporations in addition to our smaller work (my client list is only a small example - again, there are so very many like me).

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

Reintroducing the registration would be one more financial burden for artists. As independents, we usually don't employ staff to take care of 'administrative work' outside of creating, and those successful enough to do so must include the cost of supporting that into their fees - and keeping fees at a rate the market will bear is critical to our survival. We would be paying though the nose - and taking *more time* (time spent not making viable work), and we will be priced right out of our own market.

Additionally, I have produced decades of images that I would have to dedicate huge amounts of time, effort and income just to register, or risk losing it because it would be deemed non-compliant. A lifetime of images created at my sweat and expense, free to be exploited by others.

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?

In my work as a designer, I've often purchased images - photographs, graphics, and other artists' illustrations - for use, or had clients purchase them for me to use in their works. Sometimes, I've found an image my client wanted to use that isn't available on one of the many professional sites that make images available for purchase (where the creator is involved and compensated). It's been easy enough in those instances to do minimal research, find the creator, and ask their permission for use of the works. If I haven't been able to locate the creator, I find a similar suitable image the client is happy with, that we can purchase for legal use with compensation to creator. In the

instances I searched and found the creator, everyone was happy with the compensation and the recognition. ***There's simply no reason any individual nor company could not find sufficient legal imagery for their purposes and offer compensation to the creator.***

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

As a freelance illustrator, I - and many like me who share this field of work - it's critical that I maintain a variety of revenue streams to support myself and my family. Resale and/or licensing of my past images is a vital component to that varied revenue stream. ***Just because an image has been used or published or even purchased does not mean it has lost its viability as a marketable piece.*** I believe this is often misunderstood when it comes to visual artist's livelihoods. More often than not, a client or company will purchase an image (or an entire line/collection) with specific contracts in place to use in one limited fashion that suits their limited purpose. This is more cost effective for the company and manufacturers, and also simultaneously allows for the artist to legally offer the same image - or parts of the image/collection - tor other, non-competing, dissimilar purposes to other potential buyers.

However, if an image is used without permission or compensation, it can be used on a competing piece, and render it useless to a potential buyer who could have purchased that image from the artist.

For example, I and many other artists sell images on host sites like Society6 that print and deliver products with our images, and we are compensated a percentage of each sale. Images are often taken illegally (from online viewing images) and produced on similar home decor items on another competing site, for a lesser price, and no compensation to the artist. That renders the original item that the artist could profit from fairly useless, as the consumer will buy the cheaper product, often not even realizing it is not benefiting the artist.

Often, I find myself explaining what I do to friends and family - 'what exactly do you DO?' is a question I'm used to hearing. It's a frequently misunderstood field, and I appreciate that the Copyright Office wants to hear about what we do and understands that maybe there are ramifications of these proposals you don't know about**.**

This surprises most people - we get used to seeing it around us and it becomes part of the fabric of life - ***my work is everywhere. Our work is everywhere.*** From the backpacks and clothes on your children's backs, to your favorite patterned curtains, to the greeting cards you send (online AND offline), to the inspirational quotes you forward in your social media, the tote bag you load your groceries into, the jewelery handed down for generations, from the holiday decorations you put up for special occasions to the games you like to play online and the books you read (Kindle or analog!)- all of that was created by visual creatives, like me. It's so much more than art on the walls. In fact, the proposals in question will affect artists that create all of these things and more, much more-so than artists who are only in local galleries - because we are the ones who create for the marketplace at large, and we are also the ones who must make our work visible online to be 'found'.

I do appreciate the opportunity to be heard, and have a voice for myself and my creative community. We are more of a lifeblood than many people realize - not just to the arts in a traditional sense, but to art in everyday life, on everyday items. I do this because it's who I am, and also because it is a contribution to life.

It is my deepest hope you will choose to create policy that protects us and our creative marketplace as a whole in the US.

Sincerely,
MIchele Phillips