Jul 21, 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 and Staff

My names is Prescott Nathan Hill. I have been active in the graphic design and illustration industry since 1980. I have been providing illustration on a freelance basis for a number of well known children's toy, game and publishing companies since 1999. My list of clients include; Hasbro, Spin Masters, Readers Digest, and Scholastic, as well as many other studios, and small businesses. I am also the Illustrator Coordinator for the Southeast region of the Society of Children's Book Writers and Illustrators, [SCBWI], where I facilitate over three hundred fellow illustrators members.

I'm writing you today to address the problems I see facing visual artist in an increasingly complex digital environment.

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

Our product comes from within our own minds and hearts. It is a very personal thing to create and it has great value when we are able to control ownership and create an income from what we produce. Our approach, our visual style is part of who we are and how we see, and as unique as our signature.

In the past few years, the internet has become a two edge sword—providing a world-wide platform for artists to promote their work, and making it increasingly difficult to protect their own creations from being pilfered and used by others without permission or compensation. It's costly to create. Certain companies and individuals are digitizing work without permission and compensation. It's the equivalent of "smash and grab". Many of us have been surprised to see our own work repurposed on products without notification or permission. Legal battles are yet another expense that bleeds any income from our labor.

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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 deeply concerns me. The Orphan Works bills have been fought and defeated for a decade. A copyright law with the foundation of the orphan works law will open the door to internet companies syphoning off revenues from our labor to fatten their bottom line. This would have the potential of destroying our means of living when we are up agains large corporations that are compete us for our own share of the market. OW will crush the independent creative community.

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

Reintroducing the registration will become another financial burden for artists. Even if the fees are low in the beginning, the registries have no reason to not to raise the fees once that gain marketshare advantage over freelance artist. We will be paying though the nose for someone else to profit, and we will be priced right out of our own market.

I have produced decades of images that I would have to dedicate huge amounts of time, effort and income just to register, or loose it because it would be deemed non-compliant. A lifetime of images created at my sweat and expense, fee 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?

I use photos, graphics and illustrations for reference only, when I'm working on an illustration. Nearly every illustrator I know does. When I was an art director, I negotiated with artist and worked out an agreement on fair use and ownership between us. The same with designers and photographers. It's how we did business and it worked to everyone's benefit.

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

I feel the system the Copyright Office has proposed to Congress puts an undue burden of proof on artist and studios, with no guarantee of protection. Registries will be bought up and merge with larger corporations. If this act were to go forward, I would insist that no artist group that supports this legislation be allowed any financial benefit for the creation of copyright and/or notice of use registries.

Here is a list issues that I feel endanger my livelihood as an independent artist under the proposed act:

It would void our Constitutional right to the exclusive control of our work.

It would "privilege" the public's right to use our work.

It would "pressure" us to register our life's work with commercial registries.

It would "orphan" unregistered work.

It would make orphaned work available for commercial infringement by "good faith" infringers.

It would allow others to alter our work and copyright those "derivative works" in their own names.

It would affect all visual art: drawings, paintings, sketches, photos, etc.; past, present and future; published and unpublished; domestic and foreign.

Thank you for your time reading my concerns, and I ask you to recommend that visual arts be excluded from any orphan works provisions Congress writes into the new copyright act.

Sincerely yours,

Prescott Hill