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

July 23, 2015

To Whom It May Concern:

Thank you for the opportunity to comment on the problems visual arts and artists face in the marketplace. I'm a professional artist and have been one for several decades full and part-time. I'm writing to impress upon you that for me, and for artists like me, copyright law is not an abstract legal issue. Copyrights are our assets. Licensing/selling them is how we make our livings. With copyright as it is, I and many other artists barely eke out a minimal living. I fear that many of the changes now being proposed by orphan works lobbyists would end the limited success I have had and shut it down completely for younger artists.

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

Publishers who demand that artists sign away their digital and other secondary rights as a condition of accepting work. Existing copyright law has opened the door to abusive business practices by permitting work-for-hire contracts. When these agreements are imposed on freelance artists, they deprive the artist of authorship and designate the commissioning party as the art's creator. The artist becomes a de facto “employee" for the sole purpose of forfeiting copyright, but receives none of the benefits of "legal" employment. The artist is treated as an independent contractor in every other way: covering overhead, supplying his or her own tools of the trade, workspace, training, and covering his or her own liabilities, retirement, insurances and other costs of business. Work-for hire undermines the very principles of authorship embodied in Article 1, Section 8 of the Constitution.

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

The two major challenges to copyright enforcement are a.) the high cost of legal fees in an infringement lawsuit; and b.) the orphan works policies now being proposed again to Congress.

a.) Currently, the only way most illustrators can afford to sue an infringer is to find a contingency fee lawyer. In small market areas like where I reside and work that can be nearly impossible.

b.) By limiting remedies, the orphan works proposals would essentially create a “no fault” license to infringe. Without the deterrent of statutory damages and attorneys' fees, and without a permanent injunction against repeat offenses by the same infringer, this would act as an incentive for the infringer to exploit any uncredited (as some publishers are wont to do), and therefore effectively orphaned, images by other artists. In effect infringing artists’ work would be a rational, lucrative business decision.

3. What are the most significant registration challenges for photographers, graphic artists, and/or illustrators? Expense, paperwork and time. Over the course of a career, a moderately prolific artist will produce thousands, or tens of thousands of works. To register those images, the artist would have to take thousands of hours to find, catalog and scan the works. And all this non–income-producing time would have to be taken from time that the artist would otherwise be using to create new work. To comply with the kind of provisions proposed in the Shawn Bentley Act, I would have to spend so much time and expense that the effort would effectively end my creative life.

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?

Like most artists, I sometimes use photographs and works by other artists as reference or inspiration. Regardless, my final, published work has always been the work of my own hands and distinctly my own style. I believe that recent legal decisions expanding fair use exceptions are all I and other artists need for our purposes. If so, then the original justification for orphan works legislation is unnecessary and the cause becomes simply a drive to permit the commercial infringement of copyrighted art by working artists. I believe that the orphan works crusade should be dropped and copyright law strengthened to "promote the useful arts."

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

I am concerned about the claim in the Copyright Office's 2015 Report that there is already a "credible" visual arts registry that "functions as a 'hub' connecting registries in eighty-eight countries, and provides both literal and image-based searches." From what I can reasonably find, there is no such thing. Even if there were, the time and expense necessary to scan and catalog my works is prohibitive as noted above.

I thank you for the opportunity to state my concerns. I hope they will be taken into consideration as future legislation is discussed regarding copyrights and artists’ rights.

Sincerely

Rob Davis

I am a freelance artist having worked “for hire” in the comic book and publishing world for publishers like Marvel Comics, DC Comics and lesser known as well as illustration and design work for the gaming and niche publishing industry.