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To whom it may concern

I am writing to express my serious concerns with the proposed legislation regarding changes to the current copyright law, in particular the area of “orphan works”.
My qualifications to write this letter are that I have been a professional illustrator for 35 years, and worked for every major publisher in the United states, as well as most magazines, advertising campaigns, and motion picture design. I also teach professional practice at the California College of the Arts, where I am an Associate Professor.

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

In the digital age, infringement is a problem for creators of original art such as myself- but this problem would be far outweighed by the problems created by the proposed legislation, which would make it very difficult or impossible to sell reproduction rights to clients with a guarantee of exclusivity of use. My business involves creating custom made imagery for clients. I then license reproduction rights to them, while retaining the rights that I do not sell. Sometimes this involves future sales of the work to third parties, in my own case it more often involves additional sales to the original clients, for example, I may be hired to make a cover for the hardback cover of a book, later I would sell rights for the paperback, large print edition etc to the publisher. All of these would be severely impacted by the proposed legislation.The current law makes it possible to sell these rights to clients with a reasonable assumption of exclusivity, because the penalty for infringement deters infringers from using my work, which in turn gives a reasonable assumption to the client that the work is not being used elsewhere.

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

I have not had a serious problem with infringement because of the penalties currently associated with it, which act as a deterrent. The proposed legislation would be an enablement for infringers, both the occasional good, and the unfortunately much more common bad actors.

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

Under the current system, registration works well. It is easy and a streamlined process.

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 experience these frustrations are minimal, and certainly not significant enough to warrant the proposed changes. If I need to use a photo for reference in my work I generally shoot my own, or pay for use of a stock photo, or obtain permission for it’s use.
Clients often seek out professional artists like me when they cannot find exclusive rights to an existing image. Weakening the deterrents to infringement to payment for use would simply

inspire clients to infringe and pay later. The proposed legislation would potentially decimate my business.

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

This proposed legislation would in effect force me to compete with a virtually free version of my own work. My work is currently all over the internet, and could easily be infringed by a bad actor who could claim a good faith effort was made to find the author. Artists such as myself could find it virtually impossible to compete with artwork that could be freely infringed with a penalty that would not act as a deterrent.

Furthermore, the deterrent prevents an artist's work from being used in ways that one might not approve. For example, if a tobacco company infringed ones work under the proposed legislation, one might only be able to recover payment (eventually) but the work would be used for something that the artist would have never agreed to. Infringement penalties need to be harsh for this reason- as a deterrent. Please also note that we are talking about significant fees here- because I work in mass communication, most of the fees would not be able to be handled in a small claims court.

There are currently hundreds, perhaps thousands of working illustrators, and thousands more studying to become illustrators in college. The proposed legislation could devastate the future careers of both groups. I urge the copyright office to balance the position of those, such as myself who create original intellectual property, against the desires of those who want to decriminalize infringement. Please understand that the future of the visual culture and the lives of thousands of visual arts professionals are in your hands.

Thank you for your time
Sincerely

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