

September 30, 2015

Maria Pallante, Register of Copyrights
US 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 Copyright Office Staff:

Thank you for the opportunity to reply to the initial comments submitted to the Visual Arts Notice of Inquiry. As a working artist/illustrator, I support the comments submitted by the Illustrators Partnership regarding the Constitutional issues raised by the proposed orphan works legislation. I believe Article 1, Section 8 of the Constitution grants artists the exclusive rights to our own work. Your proposal has to ignore this fact or twist language into knots to try and get around it. The proposal offers a method for infringers to confiscate our work without just compensation. The possible hoops proposed for keeping infringement from happening do not appear to reflect the real world. As a number of the comments show, the artists can think of numerous ways to avoid them.

Conversely the vast majority of the comments indicate an economic and time expense burden that is not possible to meet in the real world while remaining in the business of making images.

The 2600+ comments are 10 to 1 against these proposals, which seems to put the lie to suggestions in your proposal that there is a large need for reform.

The organization of the comments by your staff, into those that respond directly to your request and general comments on the proposal, seems to be very haphazard. I found many comments directly addressing your questions in the large group of general comments. I hope you will fix this before making any characterization of the comments.

There seem to be a large number of comments on the burden placed on artists in the current system of copyright, if they hope to fully protect their art with real world enforcement of their economic rights. All negative comments seem to foresee even larger economic burdens under the proposed changes. Including the inability to make enforceable contracts and potential liability and cost in the courts for protecting those contracts in the free-for-all of an internet-based market where rules are routinely ignored.

The comments suggest that inverting the marketplace dynamic, placing the burden of stopping infringement on the artist/owner (even

inadvertent infringement), means much higher expense and legal exposure. In essence you are proposing to kill the marketplace that generates the thing copyright law is meant to protect and encourage.

The comments suggest that the artist community does not place a lot of trust in the potentially large private firms that would be heavily intertwined in a new copyrights identification system. They feel a conflict of interest will likely exist, or that they will be forced to pay even more exorbitant fees than currently exist. Many comments suggest that the Copyright Office should properly fund and develop a public system for visually finding/matching visual images. And that this should be a opt-in system that allows the owner to control copyright use, as the Constitution requires.

Some comments point out that current Fair Use law and court rulings covers the needs of most anyone who is using images in commentary or archival purposes. This leaves only those who are interested in profiting from the work of others without fair compensation. If they are unable to identify the owner of copyright, or determine it is public domain, they are free to commission new images that they can profit from. So there is not a significant block to the Market for those interested in fair play, as suggested by your proposal.

The current practice of Work-for-Hire also seems to get a fair amount of comment as another example of curtailing the artist's ability to have negotiating power in the marketplace, similar in process to your proposal (another reduction of artist's market power to negotiate fair compensation). The visual marketplace is already one to the most capitalistic free-enterprises in the whole country, and artists have suffered from lack of negotiation power for a long time (as evidenced by a lack of inflation in pricing). If you are to get visual copyright owners onboard with a change to the law, you need legislation that re-balances this market power and marketing expense to reflect a real world improvement to our ability to run a business and make a profit. This is done by respecting the rights of ownership to the things we create, and not twist law to give advantage to those that want to take it from us.

Thank you again for the opportunity to express these thoughts.

Sincerely,

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