July 20, 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 The US Copyright Office Staff:

My name is Jason Piperberg I am an illustrator and comic book artist living in Pennsylvania. Thank you for allowing me the opportunity to comment on the problems which I and the rest of the visual arts community face in the marketplace. As a relatively new visual arts professional who began working in 2012, my perspective is that of an artist who is still at the beginning of their career. I believe my situation and experiences are becoming increasingly common due to the recent surge in number of young visual artists that have chosen the arts as a career path. I may not have as many copyrighted images to my name as do my veteran illustrator colleagues but that does not make my opinions on matters of copyright any less valid. To the contrary, reviving the Orphan Works Act of 2008 and basing future Copyright law on it will substantially hurt my commercial business as an active Illustrator and actually threatens to end my career almost before it begins.

I will answer the questions you've posed as directly as possible using this perspective.

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

As a freelance illustrator, I am constantly on the search for clients and new work opportunities. One of the things that helps to alleviate this stress is the knowledge that any work I create, with or without being hired by a client, has the ability to be licensed and monetized in any way I see fit. This is a crucial part of my business and any attempt to replace the existing copyright laws with a system which would benefit internet companies and other corporations would, undoubtedly, greatly endanger my ability to make a living. It makes no sense to me why the government would choose to favor corporations over artists like myself who actually create new work and need the copyright law intact in order to make a living.

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

As the copyright law stands now it can already be difficult and often expensive to take legal action against individuals or companies who have used a copyrighted work without compensation to the artist who created the material. Currently, if an artist has registered their copyright, they can get statutory damages plus attorneys fees. In this situation they may be able to find a contingency fee lawyer (meaning that the copyright holder will not have to pay the

lawyer out of pocket). In these situations the copyright holder will often get more in a settlement than he is required to pay in legal fees.

However if the artist has **not** registered their copyright then they are usually only entitled to actual damages which means finding a contingency fee lawyer to take their case is almost impossible. Thereby making the pursuit of legal action against the infringer unwise because the settlement received would be much smaller than the cost of litigation.

Changing the law so that giant corporations could get artwork for free from artists and directly compete with them in and for their own markets, would make any legal action by artists next to impossible. A copyright law based on orphan works legislation would essentially make all legal cases of infringement akin to those situations where a copyright holder has **not** registered their copyright. Meaning that any case of infringement could potentially end up being an orphan works infringement. This would then be removing incentive from the copyright attorneys to take infringement cases, unless they were forced by law to take these cases pro bono. Thereby giving a legal advantage to infringers, including bad actors.

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

To put it simply, money and time. If visual artists were required to pay to register all of their images in order to maintain their copyright it would be a huge financial burden and take an enormous amount of time. In addition to that, since the time spent registering works would be unpaid, it would take time away from other paying client work. I personally don't have the money or the time necessary to register every image that I create. Creating work for clients, writing contracts, managing finances and all the other administrative tasks I have to do to keep my small business running is already a full time job. If I were required to register my works with a private registry in order to maintain my copyright, I would essentially be an unpaid employee for the registries who would be getting my work free of charge and under the law I would be forced to spend my time and money processing it for them. All of this time spent on registering images would effectively rob me of time that I could be spending on creating new paid work, or at the very least, time spent searching for clients and promoting my work. Additionally, any images which I can not find the time or money to register will fall into noncompliance and be free for exploitation by anyone who decides to infringe.

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 use photographs and other graphic artworks and illustrations for inspiration and reference for my illustrations. But I never use these images in my work directly. They are only there to help guide me and give me the necessary reference I need in order to create an image.

I do occasionally post images and material from other artists on my blogs and social media sites but these are non-commercial uses and I always credit the original artist and link to their website, blog, or social media sites when they are available.

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

The type of system being proposed, or one like it, would be disastrous for artists. Putting in place a system which gives privileges to private registries and infringers over the creators of the work that those registries and infringers want to use in order to generate profit is absurd. Without the artists creating the work there would be nothing to register and nothing to use in order to generate profit in the first place.

On top of that, even if somehow artists were able to comply and afford the massive amount of time and money needed in order to register their entire body of work it would still likely take decades before artists were able upload the entirety of their works to the registries. Which means in the time that they spend documenting, processing and registering their images they would be at risk of an infringer finding an image or images they'd created but not yet registered (or forgotten to register). Which would then make that image or images vulnerable to being declared an "orphan work". An infringer could then use an image editing software to remove the artists name from the work or somehow create a cheap "derivative" version which the artist would have no way of stopping. Artists would then have to directly compete with these "derivatives", essentially competing at a disadvantage against their own work. This would be a continuous and never ending process for as long as artists create new work. Which is a daunting thought in and of itself.

Creating images or art of any kind takes time and money, and a great amount of effort. Not to mention the years that artists spend in order to hone and perfect their craft. This is time and money that the registries and infringers would not have to spend themselves. They would instead be able to see and use the works for their own purposes without considering the person behind the work, and the amount of effort that went into creating the image. It is true that artwork is extremely relevant to culture and always will be. But the creators of that artwork should still be the owners of that work unless they themselves decide otherwise. They should not be required to spend more time and money in order to maintain the rights to a work which they created. Which is not to suggest that art should not be accessible by everyone. It should be, as long as it is under fair use. The internet has made viewing all kinds of visual art quite easy and I would not want to change that. I however, do not see how making any unregistered work a potential orphan makes finding and viewing art in this day and age any more or less doable. What it does is burden artists with the task of registering their entire body of work and give internet companies and infringers an easy way to use an image created by an artist without proper consent and compensation.

I thank you for reading my letter and allowing me to comment on this important issue.

Sincerely,

Jason Piperberg
Illustrator
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