July 20, 2015

To Whom it May Concern,

My name is Jonathan Leiter, I am a recent film school graduate, and am currently developing concepts, designs, stories, and other artistic works to further the creation of my independent films, now and in the future. Despite the apparent scope of the newly proposed Copyright reforms only covering photographs, illustrations, and other graphic arts, how do I know for certain that this might not also include and relate to film or video-based works?

From the looks of things, it seems that the intention of these proposed reforms is to allow the least amount of confusion and potential lawsuits to occur when someone wishes to make use of an artwork or photograph that they deem useful to their ends (whatever those may be), but are unable to find mention of or information regarding the creator or owner of the work(s) in question. Understandably, if one wishes to utilize such a work inside of an educational or scientific institution, then they ought to have the ability to make copies of, records of, and restorations of ambiguous or unclaimed works, especially for the sake of posterity and later research. It is also understandable that certain images and works out there may not be easily tracked back to their original owners, and yet may appear to be something that could be either out of copyright, or is now within the public domain. But without proper credits, no one can be sure. However, should this be sufficient evidence and a stable enough argument for why all unregistered illustration and photographic works should be considered "orphan works:" open for use by anyone unless otherwise "properly registered?" No, not at all.

The fact of the matter is, we all have to deal with this sort of concern. Trying to find public domain images or free images that serve our specific needs from time to time and have no known ties to anyone who would claim copyright on them is a difficult issue. But no one's struggle with this problem is more important or dire than anyone else's. If I need to find an image to use as the background of another, more complex image, I have three choices: I can either find a public domain image that suits my needs, purchase an image from a stock website to use, or take a photograph of my own. Some people, however, may choose to simply go online, take an image from a search engine result screen, and use that, without attempting to research the owners of the image, who could literally be anyone: even a stock photo website like I mentioned before. This is not only violating inherent copyright, but it is also lazy, and should be inexcusable, especially if the person now utilizing this image is of an adult age.

Furthermore, if there is truly a "culturally important" need to utilize a photograph or piece of artwork that has become historically valuable in some fashion—perhaps a documentary photograph of a tragic or important event—then there ought to be certain stipulations specifically regarding the copyrightable nature of photographs of specific moments in history. Thus, perhaps certain social and historical events, as they occur, should be added to a list of visual content that are not copyrightable. Or at the very least, that their use by educational

resources, gov't websites, schools, museums, and so forth, should be openly allowed as they are too important to be held exclusively by any one person.

However, if a piece of "artwork:"—that came from the interpretive imagination of an individual—becomes historically and socially important, should these be allowed to be made open to the public? No. Not unless the creators are already deceased, or a fair amount of time has passed since their death. A piece of artwork is also not a photograph.

A photograph is a representation of real, actual, and physical things. And if a photograph is taken of an actual (historically significant) event in progress, then it is a documentary image, and does not hold as many direct ties to its photographer other than their artistic choice to frame and compose the picture a certain way. Photography of objects, nature, common and regular citizens, cultural traditions and reoccurring (weekly/monthly/annual) events, festivals, vehicles, buildings, infrastructure, and so on, **are** alternatively much more dependent on the photographer's artistic choices, sensibilities, and particular interests: and should not be made openly public, as they are not as significant and are far more personally unique to the photographer in question.

Illustrators, painters, and graphic artists on the other hand, create works of art straight from their imagination. Their creations--no matter how inspired by real life or real life events such works may be—come from the artists' imaginations: **their** unique creative understandings. Thus, their artwork is an extension of themselves, and is part of who they are. Anything that is in my head right now could become a piece of artwork in the future. And even though my primary profession is as a filmmaker, almost anything that I create to develop my films and stories is done in an illustrative or graphical format. I draw, I paint, I take still photos, and so on.

However, if the Copyright reforms currently being proposed go into effect in their current state, almost everything I have ever created in my short life-time will no longer have direct ties to myself. I will no longer inherently own the things that I have designed, drawn, or developed with my own mind and my own hands. And I will no longer be able to choose what others do with them. Even photographs taken by and of my family, or even photographs taken of myself, I might no longer hold the likeness rights to. So why would this be a better situation? Why would this truly benefit enough people to make this change a good one for everybody concerned?

If anything I have ever created and anything I will create (unless it is officially registered through a paid service) is suddenly severed from all ties with myself exclusively, then I have no incentive to ever create anything new. I will have no interest or want to share my thoughts and ideas with others, because I cannot choose what is done with them. I cannot choose who reprints them, copies them, or who makes use of them on a private or commercial basis. And even if the argument would be that I should simply pay to have my artworks copyrighted, I think it is clear enough that "inherent copyright" has been around so long that there are far too many creations in the world today to allow mandatory copyrighting to come back into effect.

Just because I allow something to be rendered physical from my own imagination does not mean that the world should automatically own it and be able to do what it wants with it. And I shouldn't have to pay to continue to own the things that used to only reside inside my mind.

This goes beyond "fair use" or "good faith:" this type of Orphan Works reform would be stripping me of my inherent worth as an artist. It would render me useless and powerless to lay claim to the things that I created or will create, and it would give me no opportunity to shape and reshape my ideas until they reach a point where others might come to enjoy them as I do. It allows me no opportunity to cultivate a brand, no chance to entice a fan-base, no chance to make mutual deals with other entities on the use and expansion of my Intellectual properties or other artistic assets, and so on and so forth.

The entire business of art begins with the exclusivity of its ownership to the person(s) who initially created it. There are indeed arguments to be made over certain specific works and how moral or lawful it is to make them exclusive to their creators and be placed behind a licensing wall. But I would imagine that in 95-98% of all of these types of cases and arguments, the artworks and images in question are not culturally relevant or important enough to be made public for the use and exploitation by those in the educational or corporate world, and should remain in the hands of their creators.

Any artist that I am aware of that has a large body of beautiful, fantastic, or attractive artwork can be easily tracked down and contacted through numerous online web services. And these services can also easily be researched as well with just a few optional keywords or phrases through any search engine. So ignorance of the owners and/or failure to track down these owners and creators of such works is not an excuse and should not be accepted as a defense for the open use of their works. If you cannot find the owner, and/or if you cannot contact them, or if they do not answer, then that should also not be an excuse for the open use of their works. Because if (and especially if) it is not being sought after for an educational or archival purpose, then no one should have any real or immediate need of it anyway. And anyone who thinks they need use of such a work (likely for a commercial purpose) is either lazy and unwilling to produce their own, or is unwilling or unable to purchase the rights to use an alternative piece of work.

The current landscape for plagiarism, infringement, and copyright violation is already difficult enough as it is within the platform of the modern internet. But allowing all so-called "Orphaned Works" to be made openly public all of a sudden with no regards for the personal opinions or livelihoods of their potential owners will only make the landscape of infringement more and more ambiguous. And it will take away so much from all artists who create works either for a living, or even for just a hobby. And that does not sound like a better situation to me.

Sincerely,
Jonathan Leiter