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Medical Illustration
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July 23, 2015

Maria Pallante
Register of Copyrights
U.S. Copyright Office
101Independence 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 US Copyright Office:

Thank you for the chance to offer my comments and thoughts about the proposed changes to the US Copyright Laws and the problems that professional artists face in today's marketplace. For the past 35 years I have been a successful freelance medical illustrator having worked for nearly every major pharmaceutical company, newspaper and book publisher in the United States and abroad. I have seen the benefits of copyright protection as it exists, and also how academics, lobbyists and corporations have worked to weaken it to the benefit of themselves and their clients.

I possess a unique skill set- I am both a scientist and an artist. I bridge the world between the two to take complex scientific concepts and distill them into engaging visuals that are both exciting, yet understandable to my audience. I have benefited from my creativity and its protection through the US Copyright Laws. Images that are hallmarks for visual interpretation in my field have been a source of income over the years. I shall give you an example.

In 1986 the National Geographic Society commissioned me to work on a book about the body called "The Incredible Machine". I was asked to create chapter "openers," which would be illustrations of each organ system of the body. They served as body maps for the reader to refer to, as each chapter was another organ system. My solution was an airbrush-illustrated version of acrylic sculpture I had been creating. He became known as the "Glassman." Classically posed, he was a transparent glass figure, constant in pose while with each chapter a different organ system was visible inside of him.

You have probably seen figures like this in magazines, on billboards, in ads and in textbooks. The use of glass or transparency has become a common technique in anatomical illustration. Yet before my "Glassman", the body had not been depicted in this way. It was novel and a product of MY creativity. I retained the copyright to it in an

agreement with NGS, since they had a small budget and I knew I would be able to make future income from resale of reproduction rights. It has been a constant source of income, though often copied. I understood that a style could not be copyrighted, but as for my "Glassman" original artwork, it has enjoyed the protection afforded my as a creative by the United States government.

This is a hallowed right for the creative. It is how we profit from having the ability to create what others cannot. Our artwork draws customers to our clients. It is unique. And with the present law, it is protected. When someone created an animation based on one of my illustrations it was easy to show them how it was a "derivative" work based on my copyrighted artwork. Creativity is one of the last great things this country has going for it. Yet the changes being proposed to the law will make it almost impossible to survive as a creative. Everyone will get to profit from our hard work and ideation except us.

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

The most significant challenge I have seen related to this was the creation of "work-for-hire" contracts. They have been the single greatest enemy of today's commercial artists. We are asked to sign away our rights to our work as a condition of accepting an assignment. Work-for-hire contracts are now "boilerplate" additions to the back of every purchase order in the publishing and advertising industry.

In addition to asking an artist to surrender his rights, he can now no longer created versions of his own artwork for fear of infringing on artwork that he or she created! It would be considered derivative artwork and a copyright violation. Any future source of income from derivative of the work or resale of reproduction rights is now gone. The result has been a drastic decrease in the amount of illustrated textbooks and magazines.

Another challenge would be Stock Houses. They ask artists to use them for licensing, yet there is no way to really track where the artwork is being sold. Especially overseas. The result is artists getting very little income this way.

2. What are the most significant enforcement challenges for illustrators?

Enforcement is difficult and expensive. In the digital age, it is TOO easy to steal artwork. Most of my clients request that my name not appear on some pieces. Or it gets cropped out. Many times the owner of the copyright is not stated, so the work is stolen and re-used. Hard to prove, and lawyers are very expensive. With the Orphan Works legislation much of what I have created would be considered an Orphan Work since so much of it appeared in publications where the attribute was not readily visible or not included. It will be like if I dropped my car keys and someone would be allowed to take my car, use it as they may, then pass it on to someone else to use, while I try to prove those were

my car keys and therefore my care all along. It will be a nightmare for creatives and a license to infringe and profit for everyone else.

3. What are the most significant registration challenges for illustrators?

Copyrighting the volume of work I have created, paperwork, time away from creating would be prohibitive and punitive. Most of my work has been done under the existing law, where I was not required to copyright my creations. The burden is on the infringer, not the creator, to make sure the work is mine, and original. The new proposals would create the same kind of predators as exist with the Internet and those that "park" domain names. They just wait for a loophole to pop up. The protections we have enjoyed as US citizens with a good copyright law will be gone.

4. What are the most significant challenges or frustrations for those who wish to make legal use of illustrations?

It's not much of a challenge to request the right to use an illustration. Of course as an illustrator I expect this. I also waive fees at times when someone uses my work and gives me credit. Especially with graduate students. But this brings another point: Creative Commons, which is just a license for educators to steal. I used to get tons of requests from institutions to legally use my work and they would pay a fee. Or they would hire me to create educational materials. No bothering with that now…they can use whatever they want. Copyrights are not enforceable here, and a very loose interpretation of the law seems to have gained a permanent place.

Either way, there still exists a Universal Right to Accreditation, something that needs to be addressed. If someone asks to use my work, PLEASE at least put my credit and copyright notice on it, and let me know about it. Advertisers and the work-for-hire agreements have taken this away from so many artists.

5. What other issues or challenges should the Office be aware of regarding illustrations under the Copyright Act?

The other big challenge is straightening out the whole reprographic rights issue-people making money here or overseas from our artwork or derivatives of it. It is a huge secondary market going on in the US without the protections that artists have overseas. Money being made from our artwork and no recourse for us.

Thank you for the opportunity to comment.

Sincerely,

Kirk Moldoff

Kirk Moldoff Bio:
I was introduced to medical illustration as an independent study course while studying neuroscience and anatomy at the University of Rochester and the University of Chicago. I returned to Rochester to complete a M.Sc. degree in Medical Education. My background in serial neuronal and embryo reconstruction from microscope images, model making and a keen interest in the visual depiction of transparency led me to create layered acrylic sculptures and later, airbrush renderings of medical and pharmaceutical subjects. I became a full-time illustrator in 1980, and in 1986, created the cutting edge “Glassman” series of transparent human anatomical studies and panoramic molecular “macroscapes” for the National Geographic book ’”The Incredible Machine” which brought my work to a wider audience. In addition to my pharmaceutical advertising, magazine and book illustrations, I have served as creative director for a number of New York medical animation studios, and my work has been exhibited by the Society of Illustrators.