July 21st, 2015

Maria Pallante
Register of Copyrights
U.S. Copyright Office/Library of Congress
101 Independence Avenue S.E.
Washington, D.C. 20559-6000

Dear Ms. Pallante,

My name is Jonathan Twingley. I am an artist, writer and educator living in New York City. I write you today regarding Copyright Protection for Certain Visual Works (Docket No. 2015-01).

A brief background: In 1998 I earned a Master's degree from the School of Visual Arts here in New York City and have been working as a professional illustrator ever since. My paintings and drawings appear regularly in many of the most prominent publications around the country. In 2009 Scribner published my debut illustrated novel, *The Badlands Saloon*. As well as mentoring graduate students at my alma mater, for the past eights years I've served as Senior Lecturer at the University of the Arts in Philadelphia. I have dedicated my life to the arts, and I thank you for this opportunity to respond to the proposed changes to existing copyright law, changes that would effectively strip professional illustrators of their ability to earn a living.

Under current copyright law, the work I create is protected upon completion, whether or not the work is registered with the Copyright Office (though in the case of infringements, recovery of statutory damages and legal fees may not be sought unless the infringed work has in fact been registered). It is my understanding that the proposed implementation of a private collective management organization system to manage extended collective licensing situations would *compel* me to register every painting, drawing, sketch, doodle or any other visual remark I may make or else those paintings/drawings/sketches/doodles/visual remarks/etc become "orphans" in the eye of the law and would become, in effect, public property.

The majority of illustrators I speak with are at best lax in registering their work with the Copyright Office. Part of this may be the cost of registering an on-going lifetime worth of work, but the greater reason is likely the amount of time and documentation registering a large and ever-expanding body of work takes. Compelling professional artists to register their ever-growing life's work with private CMOs would de-incentivize the creation of the work in the first place. And a society whose culture is supplied by amateurs is not a society for long.

Until 2008, when the Orphan Works Act was brought before Congress, I'd never heard the term "orphan works." None of my very successful, award-winning colleagues had heard about "orphan works" either. The works we've produced over the course of our careers are hardly "orphans." This work is a revenue-generating inventory that many of

us depend upon for our livelihood. Every professional illustrator I know makes their work as conspicuous as possible, in order that they may be "found." We are all easily "found" in the Digital Age.

The secondary rights to the work we as artists produce are extremely valuable to us, particularly in the digital age where deadlines are often short or immediate and Content (with a capital "C") is constantly in demand. Indeed, Bill Gates and the Getty family saw the value of the secondary rights marketplace or they wouldn't have invested millions of dollars acquiring and licensing illustrations and photographs. Artists and photographers understood this a long time before people like Bill Gates came along for their (ever-increasing) slice of that pie.

> *"It is a principle of American law that an author of a work may reap the fruits of his or her intellectual creativity for a limited period of time. Copyright is a form of protection provided by the laws of the United States for original works of authorship, including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. "Copyright" literally means the right to copy. The term has come to mean that body of exclusive rights granted by law to authors for protection of their work. The owner of copyright has the exclusive right to reproduce, distribute, and, in the case of certain works, publicly perform or display the work; to prepare derivative works; in the case of sound recordings, to perform the work publicly by means of a digital audio transmission; or to license others to engage in the same acts under specific terms and conditions."*
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> -United States Copyright Office/A Brief Introduction and History

The burden and responsibility of registering one's entire life's work with private registries on an on-going basis, as suggested in the proposed legislation, would benefit *users* rather than the *creators* of visual art, and defies the original spirit of Copyright Law. The current law allows for fair use exceptions, which was one of the selling points of the original Orphan Works legislation. The implementation of CMOs to authorize ECLs would be simply an unnecessary bureaucratic addition to the existing copyright law. If anything, the existing copyright registration process should be streamlined to accommodate busy, prolific professional artists (lower registration fees, all on-line registration, etc).

In our digital age, copyright laws should be *strengthened* to protect the work of professional creatives, not weakened. Thoroughly policing how my work might be used *globally* is an impossibility. The only deputy I have in that endeavor is the *possibility* that if one of my works is in fact used without my expressed permission the infringing party might be held accountable with *serious* penalties.

In closing, I'll quote Rudyard Kipling, whose friend Mark Twain in 1906 was lobbying for an extension of copyright duration: "What I saw with the greatest clearness was Mark Twain being forced to fight for the simple proposition that a man has as much right to the work of his brains (think of the heresy of it!) as to the labor of his hands."

Respectfully,
Jonathan Twingley