



Ethan F. Geehr, M.F.A.
Certified Medical Illustrator
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October 1, 2015
Maria Pallante
Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, DC 20559-6000

Re: Notice of Inquiry, Reply Comments
Copyright Office, Copyright Protection for Certain Visual Works (Docket 2015-01)

Dear Ms. Pallante and the Copyright Office Staff,

I am writing in support of comments made by the **Association of Medical Illustrators** and the **Illustrator's Partnership of America** regarding the Copyright Office's NOI for Copyright Protection for Certain Visual Works. I am a professional medical illustrator and owner of my own business for the past 24 years. I have created more than 4000 illustrations for textbooks, journals, patient care, biotech, pharmaceutical, and trial support. I am a certified medical illustrator and fellow of the Association of Medical Illustrators, and am a past Chairman of its Board of Governors. I have won awards from the AMI and the Society of Illustrators.

With respect to these organization's comments, I concur with and support their comments regarding the inability of illustrators to receive statutory damages for most infringements. My current experience is evidence in support of this position. I am currently in the early stages of litigation over the unauthorized use of 60 of my illustrations by a textbook publisher. This involves a client who contracted me in 2008 to produce 60 illustrations for a printed text. My license granted them a single edition use for a printed edition only, with a set fee for subsequent printed editions. A second edition was published several years later, and its licensing agreement specifically stated, due to concerns on my part over the publisher's potential interest in electronic versions of the textbook—*and their expressed denial and rejection of an additional licensing fee for those electronic versions*—that the license granted was exclusively for a printed version, with all electronic rights retained by myself. In the summer of last year, I was contacted again regarding a proposed third edition of this very successful text. The publisher now sought full rights to my images but attempted to have me sign those over for no additional licensing fee. During our negotiations, I discovered that they had been selling the second edition *and the first edition* as electronic versions—with my illustrations included—*notwithstanding* having no authorization from me to do so. Unfortunately, I never registered the copyrights to those illustrations.

The publisher has refused to pay me the licensing fee I would have required for either editions and when I insisted on a penalty for their violations, they chose to not renew the license for the 60 illustrations in the 3rd edition. The fact that I cannot recover statutory damages has greatly limited my legal recourse to receive just compensation for their intentional violation of my rights. The publisher knows that the cost of litigation will greatly exceed any amounts I will receive in licensing fees, even if I prevail in my fee structure argument at trial. The lack of statutory damages has allowed a violator of my copyrights to *essentially dictate what they will pay for their unauthorized usage*. Take it or leave it. In early October of last year, after receiving notice of their intention to omit my illustrations from the 3rd edition, my attorney filed the

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Page 2 of 2

registration for the 60 images with the copyright office. Due to confusing instructions on the Copyright Office's e-registration site, the illustrations were not processed and granted a certificate until January of 2015. I have since discovered that the publisher has willfully violated the copyright again by having another artist trace over my illustrations and incorporate them into the new edition. The publication date for the new edition is November 2014, *one month* after I filed for registration but two months prior to the registration date the Copyright Office is insisting on. Again, the statutory damage limitation has left me little to no remedies to recover fees legally due me, even in light of the fact that the publisher willfully violated my copyrights and were warned not to do so.

As it is now, it takes a significant effort to protect my intellectual property and generate business in an environment teeming with clients, many of whom are lawyers, who feel that they can appropriate my work and the work of others without their consent or compensation. Much of my work is litigation support. I have heard countless times from lawyers that they can appropriate illustrations from textbooks and journals for use in their cases because they are "educating" the jury, in clear contradiction to former Justice O'Connor's opinions and established law. I have seen my images, licensed for single use in medical journals, appear in slide presentations available to any presenter over the internet for free or minimal charge.

I have serious concerns as an illustrator of more than 30 years, that changes to the copyright statute are being foisted on creators at the behest of large corporate entities and the "copy left." I have serious concerns that rights guaranteed to me under the U.S. Constitution and that have served to protect my intellectual property for the entirety of my career are being whittled away by an intellectually corrupt judiciary and legislators ignorant of the law and swayed by the vested interests of large corporations and those who would like to see the abolition of copyright. I am concerned for the future of this country, one made great by its great well of intellectual and creative talent, that current efforts to change copyright law will poison that well by foisting the notion that everyone is entitled to exploit the creative property of anyone else; that scanning and creating a database of books or compositing an image of a guitar on top of another artist's photographic essay somehow equates to a "transformative use." Failure to aggressively protect the commercial and moral rights of the creators of visual content will see this nation devolve into a nation similar to China, that excels only at steeling the intellectual and creative capital of others but is incapable of original thought and works.

Thank you for the opportunity to respond to this notice of inquiry. I strongly urge that the Copyright Office urge the Congress to conduct full and fair hearings on these issues. I strongly urge your office to advocate for the full inclusion in those hearings of those individuals who will be most affected by any changes considered to the Copyright Act of 1976 –visual artists.

Respectfully submitted,

Ethan F. Geehr, M.F.A.

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