Thomas Marsh

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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

Dear Ms. Pallante and the Copyright Office:

Thank you for a chance to comment on the challenges artists deal with in today‟s visual and digital arena. I have been a professional illustrator/designer for nearly 30 years with 24 years in the newspaper industry. I recently left that position and am now focusing exclusively on my freelance illustration and networking for colleagues and clients.

I am writing to ask that you protect the existing copyright law from the revised legislation now being considered.

My work has appeared for years in newspapers, periodicals and books as well as earned praise from civic leaders, journalists, sports figures, actors/musicians and public/private entities.

I have earned numerous awards and recognition for my creations and have been recognized for excellence and public journalism by state and corporate organizations and by the National Press Club.

So as a backdrop, consider the following. The current copyright law has its flaws still. It allows "work-for-hire" contracts that deprive me of the rights to my own creations and allows a company/ organization to side-step its responsibilities to give me the proper benefits typical for a "regular employee" such as retirement and insurance coverage for me and my family. I have to cover those needs myself. Secondly, in that I would already be stripped of authorship to my work, I gain no benefit or compensation from my providing time and materials used to create, a space or dedicated area to render these works, the large investment I made in training my skills, the education and experience necessary for providing the specialized skill and ability I have to offer.

Other than "work for hire" negotiations, the copyright of anything I create is currently mine and is part of my long term earnings inventory. These are not on-shot deals, where I create for a specific use and give up all rights. Those deals are at a higher set price and may seem excessively high, but keep in mind, I have to make my earnings from the image now, rather than a lower initial fee with royalties over several years. My work has to feed me and my family over many years. Free reign of image banks, third-party potential users for no other reason than corporate profit and greed, rips the food out of my family‟s mouth.

And that having been said, regardless of how I choose to use my images, I am currently protected from others, or other termed "potential users" from hawking in and trying to profit from images they did not create and do not own rights to. If I choose to give the rights, that‟s under my terms and my business.

There is no such thing as an „orphaned work". A work has always been created by someone and the usurper of such a work, even after attempting and failing to determine the original author to possibly seek permission or give credit, should not be allowed to just say "oh well, finders keepers" and steal the image anyway. The arts community as with many industries operates under an unspoken rule of respect… If you can‟t find the author of a work you wish to use, leave it alone and find another image. Or better yet, come up with your own image or commission a new one like businesses used to do in the pre-electronic file access days.

Besides, how does one know if an effort was an actual "good faith" attempt? For a person to even entertain the notion of pirating another‟s work, it is far more likely that this person is either just plain lazy or so greedy that the idea of getting caught is worth the risk of stealing. The new copyright proposal would make such a scenario far more easy and convenient for these usurpers.

There is little risk in getting the hand caught in the proverbial cookie jar. An concurrently, legal penalties against infringers, in what would be small claims court, are so insignificant that for most, it would seem more advantageous for one to steal another‟s work -- and even get caught -- than to pass on stealing the work in the first place. And with technology being as rampant these days, it is so easy to pilfer works. I only use imagery for my own inspiration or as reference and never follow another work closely. Like most artists, I find what I admire in others work and instill those qualities into what I do – That makes it mine and all my own creation of my own vision, mind and hands.

From the proposed "orphaned works" designation, the burden to register all my images would be on my shoulders; my cost; my time, for everything I created past and future. That is a ponderous proposal and burdens me with comparatively administrative tasks rather than allowing me to create freely, which is where my efforts should be in the first place. The issue of registration should be done away with entirely and allow the U.S. to join the rest of the "no registration required" world market.

Art collectors around the world own valuable limited edition prints created by artists. As a Limited Edition Print, the work‟s value is designed to increase as its rarity increases. This areab of the industry is a valuable after-market for thousands of signed and numbered limited reproductions. These limited prints are legally bound with Certificates of Authenticity which guarantees buyers that there will never be another fine art edition of the work. If copyright law no longer honors the creator‟s control of copyrights promised, it will be impossible for artists to guarantee the integrity of the limited edition print.

For tax purposes, artists by law, are unable to claim more than mere physical costs of materials used in donated art, because the monetary value of time and exercise of talent are not accepted as donations by the IRS as deductions. If this revision is allowed, the artist, who receives no compensation for this donation to the government, to retain the copyrights – and their inherent commercial value – in his/her inventory. By retaining this valuable source of potential income, artists have been able to replace lost earning time spent creating donated works, these residual license fees are crucial income for artists.

I am very much opposed to the phrased notion that „potential users‟ rights are equivalent to those of creators. Shamelessly untrue. If I as the creator do not want my image licensed beyond the original use, re-used, re-purposed, re-imagined, re-combined, that is in my bailiwick. If I want to sell an image once, then let it rot, that is my right as creator - not the right of some random „potential user‟.

My collection of work is a valuable resource that I am going to need to rely upon for the rest of my days as it brings in earnings in a variety of ways for me and my family. Any attempt to replace the existing copyright laws with a system that favors internet companies would again stifle my ability to make a living. And why would the government favor that?

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