Teri Farrell Dittus Illustration
tfgillustration.com / shootsandblooms.com /310-210-7305

July 22, 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 the Copyright Office Staff:

Thank you for the opportunity to comment on the problems that visual artist face in the marketplace. I graduated from Art Center College of Design in Pasadena in 1992 and have been a professional artist ever since. As a freelance artist I have worked on many types of illustration projects. My art has been used for computer games, magazines, newspapers, children books, the personal collector, and now I am looking into licensing. As a result I feel I have a solid understanding of how the copyright law works in the business world. My work is VALUABLE and the current copyright law enables me to determine how and where my work is used; which companies to work with, and what products I want my art work to be on. Not to mention, allows me control over what I charge companies and individuals to use or purchase my work. I in no way welcome someone monetizing my work without my knowledge or consent. I hope the U.S. Copyright Office takes the needs of visual artists into consideration when drafting this new legislation.

I have answered the questions you've posed in hopes that they will be helpful in coming to a Copyright Law that will serve everyone fairly.

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

Works-for-hire and on-line stock image companies offer the most significant challenges because they create a way to take advantage of my work and other creative's work without proper compensation.

For the first decade of my art career I created work-for-hire as a freelance artist, and have had no other choice in many cases. I've had publishers demand that I sign away my digital and other secondary rights as a condition of accepting assignments, with new pressures to give up more of my rights with practically every job offered. Under the work-for-hire agreements the artist becomes an "employee" for the sole purpose of forfeiting copyright, but receives none of the benefits of "legal" employment. Not only am I NOT payed for secondary rights, I must cover all my own overhead; supplying my own tools of the trade, workspace, training, and covering my own liabilities, retirement, insurances and other costs of business.

Also during the last several years, large on-line image banks have cropped up, persuading many of my colleagues to register their work with them on the promise that they would open new paid markets. These image banks are hurting our creative businesses. Instead of opening new markets for artists, as promised, the image banks take over visual artists existing markets, undercutting prices and selling in volume to exploit their competitive advantage. In the end the artist literally receives pennies to nothing in compensation. How can visual artists create a living on pennies?

2. What are the most significant enforcement challenges for photographers, graphic artists, and/or illustrators?

The two major challenges to copyright enforcement are the high cost of legal fees in an infringement lawsuit; and the orphan works policies now being proposed again to Congress. Currently, the only way I and most image makers can afford to sue an infringer is to find a contingency fee lawyer. That's because under an orphan works scenario, ANY infringement might turn out to be an orphan works infringement. So unless all copyright attorneys were forced by law to handle such cases pro bono, they would have no incentive whatsoever to take ANY infringement case. In effect, orphan works law would be delivering a decisive legal advantage to all infringers.

3. What are the most significant registration challenges for photographers, graphic artists, and/or illustrators?

I've been a professional artist for 20+ years. Most of my work has been created under the existing copyright law, which dose not require me to register anything. However due to the ever growing concerns regarding online infringement and theft of my work, It has been suggested that I register my work every 3 months for extra security and proof of my ownership. This is a lot of work, yet with the kind of provisions proposed in the Shawn Bentley Act, It would require even more work and take me several years and lots of money to comply with the law. This effort and added expense would end my creative life. Under the Shawn Bentley provisions, there would be no way I could stop infringers from harvesting my "orphans" and Photoshopping them into cheap "derivatives." I and every other artist in the world would then have to compete at a disadvantage against commercial infringers licensing ghosts of our own works.

The 1976 Act was a definite improvement for artists. The new proposals technologies available to infringers would be worse for artists than the pre-76 law. The best solution for artists would NOT be to re-introduce registration, but to do away with it entirely, as has been done with copyright registration in the rest of the world.

4. What are the most significant challenges or frustrations for those who wish to make legal use of photographs, graphic art works, and/or illustrations?

Like most artists, I sometimes use photographs and works by other artists as reference or inspiration. However, as rule I rely on my own sketchbooks, photos I take myself, and my own imagination. My published work has always been the result of my own hand and creativity. Like me, most artists are very sensitive to infringement of copyrights, and work hard to respect and not infringe on others creative work.

However, for several years now I have noticed an increase of unauthorized use of other artists images. And many reports within my on-line art communities where their images have been stolen and used without compensation or even knowledge that it has been used. The current law at least is working as intended, compelling a certain rigor regarding the use of work that I fear will be lost entirely if the laws currently being proposed are liberalized to permit massive commercial infringement.

Libraries and museums, of course, would probably require more latitude than I should be given, for archival and preservation purposes. But it is my understanding that in their most recent filings with the Copyright Office, they believe that recent legal decisions expanding fair use exceptions are all they need for their purposes. If that's the case, then the original justification for orphan works legislation has vanished and the cause stands exposed as simply a drive to permit the commercial infringement of copyrighted art by working artists. And since there can be no just excuse for that, I, like most of my colleagues, believe that the orphan works crusade should be dropped and copyright law strengthened to "promote the useful arts."

5. What other issues or challenges should the Office be aware of regarding photographs, graphic artworks, and/or illustrations under the Copyright Act?

The claim that there is already a viable visual arts registry that would benefit artists; and the black hole that is reprographic and other secondary rights licensing in the US.

The Copyright Office's 2015 Report that there is already a "credible" visual arts registry that "functions as a 'hub' connecting registries in eighty-eight countries, and provides both literal and image-based searches." Being a working artist very concerned about my rights, creative works (products), and my lively hood, I assure you, I would know of such a registry. I am, of course, well aware that there are many wannabe registries, beta sites, etc., including some that I believe to be well-meaning. But non of them are even close to being ready to start licensing work to the public. And even if someday they develop the necessary technology, it would still take many years for artists to load up their works. And that’s if they could afford to.

Most artists are unaware, or only vaguely aware, of the massive secondary licensing already taking place for 30 years, in the reprographic rights markets. With combined revenues of roughly $300,000,000 annually! In other countries where royalties are distributed to artists, surveys by the International Federation of Reproduction Rights Organizations show that visual arts royalties average at least 15% of total collective fees. Yet in the US, neither I nor any of my colleagues were ever informed about this potential revenue stream by anyone involved in that licensing, nor by a couple of rogue organizations who have subsequently claimed the royalties as their own "found money."

With the growth of digital licensing, royalties derived from these secondary licenses are growing dramatically. So unless something is first done to correct the current system, I fear that the creation of an extended collective licensing program will only serve to lock artists out of their secondary rights income forever.

Instead, I support Congressman Jerrold Nadler's American Royalties Too (ART) Act of 2015. It may not be a perfect solution to the current black hole that is reprographic licensing in the US, but it contains a provision that would create an honest visual arts collecting society that would begin returning lost royalties to artists. This would at least start to bring transparency, accountability and justice to artists' secondary licensing rights, and I thank the Copyright Office for recommending this bill to Congress.

Sincerely,

Teri Farrell-gittins

Teri Farrell-Gittins

Because I could not write my thoughts any better on this matter, parts of my answers have been cited from http://www.drawger.com