July 22, 2015

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
Copyright Protection for Certain Visual Works (80fr23054)

Dear Ms. Pallante,

I write as an early career emerging artist. I have been an illustrator for two years and was a portrait artist for two years before that. I began showing my work as a part-time artist in 2000.

I am writing because I feel the proposed "Orphan Works" revisions to current copyright law are too broad and will create unintended consequences.

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

Reputation: Building an audience and having my name associated with my work. Public ignorance of copyright and fair use standards.

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

These days it is easy to strip identifying information from images, whether deleting metadata or erasing the artist's signature. But the worldwide web is so vast, it is impossible to track infringers until they've already made a big splash and harm has already been done.

The proposed Notice of Use registry, being text-based, does not make it any easier to trace infringement of visual works. For instance, how would I describe the Mona Lisa if it weren't already famous? "Portrait of a young woman with shoulder length hair, hands clasped in front of her, landscape in background, brown lowcut dress" etc., which could as well describe a stock photo. The Notice of Use relies on the amount of detail a potential infringer is willing to include, his judgment on what details are relevant, and on a copyright owner's stamina in combing through pages of text and then finding the related images (which are not included in the Notice).

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

Time and expense: For me as a beginning artist, it is a significant expense to register works that may not be financially successful until after I've built a following. Copyright registration costs $35 each, which is a significant amount for me. But if I don't register every work, an infringer could register and claim ownership, excluding me from using my own work product.

At least as current copyright law stands, the default assumption is that an artwork or photograph is copyrighted. The proposed Orphan Works amendments are so broad, covering both commercial and noncommercial works, that the default assumption would effectively be that an image is orphaned. If I posted a vacation photo on a personal website and found it repurposed for a hotel ad, the infringer could simply claim that he "found" it without any metadata. In case it's not clear, I would be opposed to such a repurposing.

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?

It is so easy for identifying information to be stripped from an image, and images are so widely and commonly passed around, that it becomes impossible to trace the creator of the image. I once tried to find the name of an artist not to re-use his/her artwork, but because I admired it and wanted to learn who the artist was. Although a Google search turned up that artwork on a many fan sites, none of them listed the artist's name, nor could I find it in the metadata.

As an illustrator my main challenge has been to learn and understand the intent and degree of fair use, but my aim is to create original works, so I have not personally experienced difficulty in making legal use of photographs, graphic art works or illustrations.

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

The proposed Extended Collective Licensing (ECL) arrangement is troubling because membership in a Collective Management Organization (CMO) is opt-out, not opt-in, yet the CMO's are allowed to negotiate and license works whether the rightsholder is a member of the CMO or not. This creates a conflict of interest between the CMO and the rightsholder. Any company could claim to represent me, competing with me in licensing my own work, without notifying me--in fact, its incentive would beto keep me ignorant of its actions. Even email newsletter subscriptions are double opt-in, yet it is proposed that CMO's be allowed to license my work and collect money in my name whether I authorize it or not.

Very truly yours,

Suzanne Yee