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Re: The Next Great Copyright Act

14 July 2015

Dear Madam or Sir,

Thank you for inviting comments from the visual arts community. I've worked as a graphic designer and illustrator since 1985. I've spent the last 21 years working here in the United States. I'm a graduate of Art Center College of Design in Pasadena, California. I'm a nationally and internationally recognized practitioner with numerous awards to my name. I speak on design and illustration at conferences and schools across the United States and abroad.

Creating intellectual property and licensing it to clients is my one and only business. Clients and bystanders often misunderstand what I'm paid for. "It's how much? But this only took you a few hours to draw!" But it's not about the manual labor or billable hours. I charge by project, because it's about usage. Moreover, as I've become a more prominent artist, it's also about who gets to claim that they're using my art. That needs to be my decision, and my decision only.

Of course, I realize that the new rules demand a "good faith search," but I've seen how carelessly corporations and their agents operate in an environment where I can sue them for big wads of cash. I shudder to think how they'd operate when the worst that can happen is that they'd have to pay merely market rate, but after the fact and without the pesky step of having to secure my agreement first.

It's like you're establishing rules that let car thieves claim that they looked far and wide for the owner of the car—"Boy, we *really* looked everywhere! Honest!"—and if they're caught, they get to pay market rate for a non-stolen car and be on their way. That's a great deal for car thieves.

You may say that the analogy doesn't hold up, because artists can license other copies of the piece, but any art buyer will tell you that an exclusive license is far more valuable than any non-exclusive arrangement. Few clients want used goods. Furthermore, what if my Daily Monster characters suddenly appeared in cigarette ads or on packaging for hemorrhoid cream? This damages my entire portfolio. Making strategic decisions about who gets to be a client is a major part of how my business grows and evolves. The Next Great Copyright Act takes that ability away from me.

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Sadly, I lack faith in the "good faith search." Having brought a copyright infringement suit against a company recently, I was stunned by the level of obstinacy and obfuscation, and by the amount of money and effort it took to clear each new hurdle. Having to challenge a company's assertion that they've undertaken a good faith search adds another significant barrier to fair treatment for artists—particularly independent artists finding themselves face to face with a corporate legal department. It's a battle of attrition few of us are equipped to survive.

Follow the money. I suspect that the pressure to pass these rules isn't coming from independent artists looking for legal clarity. Who benefits from these changes? They are structured to disenfranchise artists to benefit large-scale infringers. Involuntary mass digitization will make it infinitely easier to harvest supposedly orphaned works, and these rules will make it infinitely easier to claim an innocent mistake, and it will make it harder for original artists to get justice.

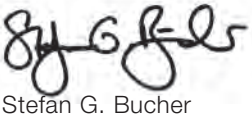
This problem will only get more accute as management positions pass into the hands of people who have grown up in the age of BitTorrent and Spotify. All their life they've been told by peers and by infringers that "Information wants to be free!" Artists can make money giving concerts or selling T-shirts. Please don't underestimate your moral leadership. Don't feed the idea—cynically nurtured by interested parties—that intellectual property is trivial.

Based on 30 years of professional practice—as a graphic designer, as an illustrator and writer, as a former art director at a famous advertising agency and at a record label—as somebody who has seen how things work on both sides—I urge you in the strongest possible terms to maintain and defend the rights of content creators against those who would have you further enable and effectively legalize their callous and often rapacious conduct.

Of course, there are many more good actors in the world than bad—people who proceed with honor and integrity, people who seek fruitful cooperation with artists. The laws are not for them, in the same way that I don't need a law to tell me that stealing is wrong. The laws are to constrain those whose moral compass is out of alignment, and to get justice for those they've harmed because of it. And that is what we're talking about here. Let me end where I began: Creating intellectual property and licensing it to clients is my one and only business. Please protect my life's work and that of others like me.

Thank you for your time and care. We're all counting on you!

Sincerely,



Stefan G. Bucher