

U.S. Copyright Office

**Orphan Works and Mass Digitization
[Docket No. 2012-12]**

POST-ROUNDTABLE COMMENTS OF

PACA, The Digital Media Licensing Association

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Thank you for this opportunity to offer post-roundtable comments on behalf of PACA, The Digital Media Licensing Association (formerly Picture Archive Counsel of America). We support the comments filed by Professional Photographers of America (PPA) and have joined in its response, together with other visual art associations. We will not repeat the comments filed by PPA and limit our comments to those that are particular to PACA.

Founded in 1951, PACA's membership includes more than one hundred companies worldwide that are engaged in the aggregating and distribution of images, footage, animation, and illustration (collectively "images") for purposes of licensing. PACA members either own or represent owners of images. Members maintain databases of images in digital format and offer users search capabilities to locate appropriate imagery for licensing in editorial and/or commercial projects.

PACA members support robust copyright system that encourages proper licensing of works in copyright and an effective enforcement system to discourage the use of images without licensing. PACA's interest in orphan works legislation is to insure that works that are actively managed and licensed are not inadvertently considered "orphans" and used without permission and licensing. Most members manage image databases which allow users to search and license a wide selection of images, or both editorial and commercial use in an e-commerce environment. These images can currently be searched and licensed through standard keyword searches and should not be considered "orphaned" under any proposed legislation.

Moreover, PACA supports the PLUS coalition, an organization that is developing an image registry to assist in finding the owner or representative of images through image recognition technology.

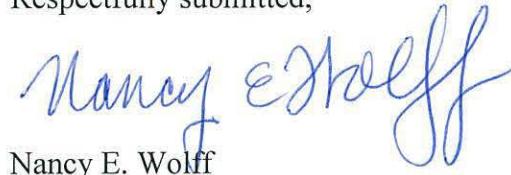
In addition, PACA has worked with the various visual art trade associations in developing best practices in searching for the owner of visual images. PACA also has a

low-tech project, called orphan search in which someone looking for an image owner of a particular image can contact PACA, and PACA will submit the request to all of its members. PACA members may also participate in PACASearch (pacasearch.com) which allows keyword searches of a particular image subject across the databases of all participating members.

In addition to orphan works legislation, PACA is concerned that those that once supported orphan works legislation no longer support any legislation and instead, prefer to rely on court made fair use decisions. We believe that the expansion of fair use by the courts based on an ever expansive interpretation of transformative use, a term not found in the statute, is contrary to public policy and has turned fair use by those seeking to mass digitize works into a rule rather than an exception. Functional transformation, that does not create a new work, but enables new technological functions of existing works, should be based on clear statutory guidance, not on a court's interpretation of the public interest. Any expansion of fair use that can eliminate entire sections of the Copyright Act (for example the preservation exception of Section 108) should be carefully considered by Congress after the interest of all stake holders have been heard and the carefully balancing the interests required by the Copyright Act, and in particular the rights of authors, whose rights our at the core of our copyright system.

We look forward to continuing this discussion and to working with the Copyright Office and other stakeholders to produce an approach to the orphan works situation that is productive for all parties.

Respectfully submitted,

A handwritten signature in blue ink that reads "Nancy E. Wolff".

Nancy E. Wolff

PACA, Digital Media Licensing Association