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Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

February 4, 2013

Re: Copyright Office Notice of Inquiry: Orphan Works and Mass Digitization, Federal Register (October 22, 2012), Vol. 77, No. 204: 64555-64561. [Docket No. 2012-10]

Pro-Imaging sees the problem of Orphan Works as two-fold. In this comment we will only be addressing images, including illustrations and related visual arts. In this regard, we understand that copyright is not a one-size-fits-all issue, and our concern is with the protection of image authorship and moral rights.

Existing Physical Images in Collections for Digitization

First, there are the physical image documents existing in libraries and universities who wish to digitize their collections. A small change in “Fair Use” to allow only legitimate libraries and universities the right to publish those images online in a limited dimension via an archive for public display and education would serve that requirement. In no way should these images be used commercially or have their access restricted for view or research by the collecting bodies holding them.

Orphaned Images Created by Online Publishing and Social Media

Secondly, there are the hundreds of thousands of orphaned images being created yearly by social media sites that strip metadata or otherwise obscure ownership by allowing easy downloading/sharing. This is a significant problem. Under no circumstances should ‘orphaned’ images be allowed to be used commercially. If ownership cannot be determined, such an image’s use should be prohibited.

Addressing the problem of the increased growth of orphaned images, as mentioned above, is of vital importance. Providing relief to this should be a requirement that all social media sites and web delivery systems never strip metadata of any image in any dimension for any reason. In addition, image software vendors should incorporate embedded metadata as a default with an easy interface to allow any user to embed their contact info in images they own and distribute. The same should be true for website creation software and image upload tools. To complete the process, browsers should have provisions for reading this metadata for the purpose of allowing a viewer to contact image owners for permission to re-use. This would serve to greatly reduce the number of orphans.

Copyright Registration and Moral Rights

We strongly believe registration for copyright should be free to all. Copyright is the only constitutionally protected right that requires a separate fee to guarantee its enforcement. In the same spirit, US moral rights are very weak and should be the equal or better than those mandated in the UK.

In sum, photographers, as small business owners, have suffered greatly because of the lack of effective rights protection in the digital era. We see an urgent need for the following:

1. No commercial use of orphaned images ever
2. No fee for copyright registration
3. Strengthen moral rights to be a respected world standard

We look forward to continuing this conversation and clarifying our position to all concerned parties.

Sincerely,

Don Schaefer

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