23 July 2015,

RE: Notice of Inquiry, Copyright Office, Library of Congress
Copyright Protection for Certain Visual Works (Docket No. 2015-01)

To Whom it May Concern:

Thank you for allowing artists to comment on the upcoming copyright legislation. My husband and I have been freelance illustrators for the past seven years for a diverse range of clients including book publishers, games, museums, hotels, and private self-publishers, and this is a topic of immense importance to us.

Since I was a student at the School of Visual Arts, working toward my MFA an illustration, I have heard from many established illustrators about the 'good old days' of illustration, when most illustrators could actually make a sustainable living, and there was plenty of work. Unfortunately I have entered the field during a more difficult era in the arts, getting paid rates that have not risen with inflation in years, work-for-hire contracts are becoming more and more the norm, and the internet has made it incredibly easy for artwork to get lost in the system and stolen. But it is still a career I love, and I would not have chosen differently. However, an Orphan Works Act would have a disastrous effect on the careers of creatives, not just in the USA, but internationally. It is already difficult to encourage young future artists that this is any kind of career to survive in anymore, and that is heartbreaking. This would be another nail in the coffin, if not the final one.

Many artists today rely heavily on the internet and social media to share their work and reach a larger audience. Unfortunately the result of this has been the potential for a creator's work to be shared many times over, cropped or edited, and it is impossible to keep track of where the work has been or if it has been changed. Usually, people who wish to use my artwork (if they have not hired me for something specific) ask me for permission to repost it on a blog or if they can purchase a license to use it. But I am sure just as many people never contact me and may use the art anyway. However, this does not de-value my work. Even if one of my works have been published, it still has value within my inventory of work which can be re-licensed or sold as prints. If my work was orphaned and a company claimed they could not discover that I was the original creator, they would benefit, and I, the brains behind the work, would lose needed income. Not only that, but if companies have the ability to use orphaned work whenever they want, because they couldn't 'find' the artist, other artists miss out on those jobs. What would be the point of hiring an artist anymore if you can just take from somewhere else. The unique visions of individual artists will no longer be valued. Instead of discouraging people from stealing artwork, the Orphan Works Act would encourage them to do so even more often.

Another issue, if Orphan Works were to pass, would be what to do with all of the artwork we artists have shared online since we began sharing? Am I to register every single photo I have taken of my work, whether it is a final painting or an in-process image? My work is all over the internet, on Twitter, Instagram, Facebook, Tumblr... just to name a few. It is inconceivable to force creatives to remove or edit their entire internet history of sharing artwork in order to keep any of it from being orphaned. What about young artists who are ignorant of any copyright law, but post their work online for fun? And what about all of the international artists who should never think to register in the USA to begin with? There are millions of pieces of artwork online right now, and they all have value to the creator, whether they are known or not. Also, how can I guarantee to past and future clients that their work will not be reused on a competing product or a product that goes against theirs or my moral values? I would never allow just anyone to reuse my work.

Orphan Works has failed to pass twice, and there is a reason for this. Creatives know this is not in any way a decent replacement for the existing copyright law. We are all incredibly passionate about our work and having it reach an appreciative audience. My work is my livelihood—each of my creations contains part of my DNA, my soul, and I am not alone in my feelings... The thought that we could lose exclusive control of any piece is appalling to us. These are not just scribbles and finger paintings (which, I might add, should not be stolen either!). This is our life.

Thank you for your time and consideration,

Elisabeth Alba

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