From Delia Higgs Weikert
Well Rock Designs

To the Copyright Office;

I am writing this letter to you in response to the discussion on whether our current copyright laws need to be reformed and or replaced in consideration of new orphan works legislation. Let me begin by stating that I am a full time freelance self-employed artist. I have been earning my living as a graphic designer for 36 years. I hold a degree in visual design from the University of Massachusetts/Dartmouth and have taken many continuing education courses in design, the business of design and copyright law from the Rhode Island School of Design. I have many awards for my design work and have been published many times.

Prior to starting my own design business 16 years ago I had been a full time designer for Hasbro Industries, and then a creative director for Procorp Inc. and later an art director for Goodwin Graphics. Currently I have a full customer list and am designing footwear for several manufacturers who hold national licenses and I design packaging and tradeshow graphics for several national food companies. I also sell fine art photography, textile designs, and custom designed scarves. I remember the copyright reform that took place in the 70's and have been grateful for it, my business as a graphic designer has benefitted from the current copyright laws.

I mention all of the above to let you know that I am well educated, as well as talented, and am running a business that just happens to sell my talent as it's main product. As a result, copyrights are something i deal with on an every day basis. The decision to change our copyright laws is something that will alter how i do business, how much money I can make in my business, and seriously damage my business and my long term profits (and therefore my ability to continue supporting myself and save for retirement).

It is very disappointing to me that the value of my talent is so disrespected by my government that you are considering legislation that will make it legal for individuals and companies to steal the copyrights to my artwork (and therefore future profits from those copyrights). Let me put it another way...since everything I produce with my talent becomes the product that my business sells, you are making it legal for individuals and corporations to steal my products and claim them and then register them as their own.

I will explain why I feel so strongly about this issue and am so vehemently against any orphan acts legislation. First of all, the word "orphan" is a misnomer. Every piece of art has an author. Simply because the artwork finds it's way on to the internet (or in to other areas of public view) without an authors name attached does not mean it is without authorship. It could never have been created without the combinations of intelligence, experiences and talent that were unique to the artist who created it and that "uniqueness" deserves the respect that our current copyright laws afford the artist. An "orphaned work" is only without attached authorship because the artist did not place it in to public view or on the internet themselves, did not give permission for it to be put on the internet, and does not know that it is there, and therefore does not know to look for it and claim it as their own. But not knowing it has been placed on to the internet or in to the publics view by someone else is a far cry from not being the author and not needing the ownership of the copyright. The author should not lose ownership or the copyright to the art simply because they cannot be found. As an artist I have the right to make decisions about the products i create but if someone makes a decision that affects my artwork and I am unaware of this, I should not have to worry that i've lost ownership of the copyright of my creation. Losing the ownership and copyright means that i have also

lost the ability to earn money from my art, the ability to license my creation for future royalties, to sell reproductions and the right to leave my creation (artwork, product, image - whatever I've created) to my heirs so that they may continue to earn money from my talent & creativity.

As an example of how easily a piece of art can find it's way on to the internet without the artists knowledge, I once had a piece of fine art scanned and placed on facebook without my knowledge. It was only through chance conversations that i discovered what a friend had done, and that her friends printed out the image from facebook, framed it and gave it as gifts instead of buying my framed prints from our local gift shop. I was never asked permission to put my artwork on to the internet and yet, I lost sales and income. Under the new legislation, if my friends transgression led to my artwork becoming an "orphaned work" i might lose the copyright to my original art as well. I still own the original art, but losing the copyright to it, means that i cannot license it for prints or as a surface design for use on products, or as a textile design, or reproduce it and sell it as framed prints. I can leave the artwork to my kids, but it will have no value as it cannot be sold for any use. But remember, I did not know that my artwork had been placed on the internet, i did not give permission for this, and yet under the proposed legislation, i could lose my ownership of the copyright of the artwork that is unique to me and my talent. No one else can produce the same piece of art, so why is the copyright so easily acquired by other individuals or corporations? Especially if it arises from a situation that the artist does not even know about? I am too busy running my business, creating my products (designs, illustrations, photographs, etc.) advertising myself, finding new business, to be searching the internet for my artwork in order to prevent it from becoming an orphaned work, especially when I don't know which of the thousands of art i"ve created might be put on the internet by a friend or customer. How do I prevent my work from becoming an orphaned work, when I don't even know it's "out there' somewhere. How do I look for that one piece of art that might become "orphaned" when I create thousands of images a year and don't know which one(s) to look for? And yet, as the creator of the art that i don't know has been "orphaned" on the internet, what if I try to license it and someone else has already registered it as their own and is making a profit from it? How is that fair? I'm the only one who could create that piece of art, I did not know it had become an "orphaned" work and yet, I lose the ability to sell my own "product".

Do you know that yesterday I created 10 pieces of salable art....that was in just one day....now it's up to me to choose whether i'm going to publish any of it, but right now i own the copyright on these new pieces of art even if i don't publish them right now. But what if i choose to show them to a customer who posts them on their blog, and somehow they find their way to other areas of the internet without being attributed to me....do I now have to search the internet on a daily basis for all the art i've ever created to make sure that none of my art is on the internet as an "orphan"? Yes, under the proposed legislation it would be up to me to prevent my artwork from becoming an orphaned work and yet, with all the artwork I produce, how am I supposed to have the time to do that search when I create several pieces of art a day? How am I going to afford to register everything I do, even before i choose whether i'm going to license or publish it? I'm already working long hours to create my art, sell my art, find new customers, write my invoices, support my business with an online presence, and now somehow, I also have to find a way to protect my art from becoming an orphan work-the very definition of which means that when my artwork becomes an orphan work, I won't know it. it will happen because someone other than myself has placed my art somewhere public without my

permission, and yet I will be punished by something i did not do and will lose a part of my business and product line and future earnings as a result. I work hard, why does the copyright office find so little value to my creative uniqueness & my hard work, that you think copyright reform, and/or orphan works legislation is necessary or even a good idea? Only I can create my artwork, only I own the copyright to it, only I have the ability to sell that copyright. Please do not create new copyright laws that allow my copyright and/or my artwork and future profits to be stolen from me.

Also, has it occurred to you that the large corporations who want to have access to what they consider to be “orphan works’ want this access because they won’t have to hire me to create new artwork for their needs? They will find it quicker and cheaper to do a “diligent search” for unsigned works on the internet. So not only will changes to our current copyright laws allow the copyrights to my original art to be stolen from me, but it also means that there will be fewer jobs coming from corporate clients, and fewer artists being hired in the corporate world. Why do you want to reform the copyright laws so that work can be taken away from us?

Please, please do not change our copyright laws and do not put any “orphan works” legislation in to action. There is no such thing as an “orphaned work”. It’s a phrase coined by people and companies who want to avoid copyright infringement, because they know they are infinging on an artists’ copyright. The current copyright laws are working for me and all the artists I know. Please do not create a legal way for copyrights to be stolen from me. I cannot earn a living without the protection the current copyright laws afford me.

Sincerely,
Delia Higgs Weikert