

PRO IMAGING

Maria Pallante, Register of Copyright
U.S. Copyright Office
Library of Congress
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

May 21, 2014

Submit electronically at www.copyright.gov/orphan/comment-submission

Re: Orphan Works and Mass Digitization
(FR Doc. 2014-02830; Copyright Office Docket Number 2012-12)

Dear Ms. Pallante:

I am writing on behalf of Pro-Imaging.org, an international organization of professional image creators, and the Artists-Bill-of-Rights.org, an educational campaign of Pro-Imaging.org promoting the adoption of ethical standards for competitions and appeals where creative works are submitted. Copyright protection is key to our members and supporters.

The mission of the U.S. Copyright Office is to "promote creativity by administering and sustaining an effective national copyright system". Any discussion of reform, we feel, should originate from and sustain this point of view.

That said, we hope to be assured that the current discussion will be much more transparent and accessible than the 2008 effort. We request that extra caution be afforded for the protection of the vast majority of individual content creators. Each proposed solution should be considered in light of any additional burden it would place on those content creators to comply. We believe any imbalance should tip in favor of the protection of individual artists (as small business owners) and the general public (as social media participants).

We ask that any discussion be limited to the possible solutions for specific research, educational, and preservation concerns and not to relieve commercial interests of liability for exploiting this currently un-attributed part of our culture.

We request that any proposals under serious consideration be published in detail, including identification of all parties advocating those solutions, along with a further opportunity for public comment and open debate around the validity of each proposal; in other words, transparency of the process.

We ask that representatives for independent artists have a voice.

As discussions proceed, we ask that, rather than considering sweeping, one-size-fits-all changes, that the needs of those wishing to publish orphan works address and consider solutions for each concern on a case-by-case basis. Consider, for instance, how Fair Use might be conservatively expanded to address each need.

When and if the above approaches prove insufficient and there exists the need for approaches beyond granular Fair Use exemptions, it should be agreed that commercial use of orphan works not be allowed. This requirement, naturally, would necessitate formulation of the precise definition of what constitutes "commercial use", a determination sorely lacking in today's world.

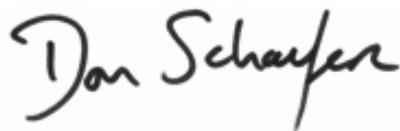
Furthermore, we do not believe an orphan works registry is needed or practical. Any diligent search should originate with what is already registered with USCO. Currently, that would be too costly and impractical for most. We hope that can change. However, creating a parallel registry for countless "so-called" orphan works seems pointlessly ineffective and a burdensome task for both the copyright holders and the general public, not to mention for the budget of the Library of Congress. You must remember that tens of millions of orphan works are created each month by the lax practices of social media and content delivery platforms. Requiring everyday social media users to register every bit of their visual content so as to prevent exploitation would be universally unpopular, to say the least.

It makes sense, then, that a major part of orphan works reform should revolve around how to prevent works from becoming orphaned in the first place. A discussion to achieve that end should be initiated forthwith, one that needs to result in a significant educational effort and the cooperation of the social media and tech sector.

One immediate, mitigating solution for rights holders who desire to be located would be to consider solutions offered by the PLUS Coalition.

Finally, we hope the purpose of copyright reform in the area of orphan works is not to open up vast troves of content for commercial and social media enterprises, but to offer some reconciliation and integration of, as yet, unattributed works with our common cultural heritage. We believe any other approach to be ethically inappropriate and contrary to the Library's mission. Facilitating free or low-cost content for commercial or non-profit exploitation is not promoting creativity.

We thank you for this opportunity to comment.



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