

Maria Pallante, Register of Copyright  
U.S. Copyright Office  
Library of Congress

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

Dear Ms. Pallante:

The National Writers Union has submitted reasons to seriously question the notion of "orphan works." As a working writer, I too strongly oppose any "orphan works" legislation or any interpretation of "fair use" that allows use of my work, or the work of my late husband, the internationally acclaimed fiction writer, Raymond Carver, for whom I am the executor, to be used without my permission. I resist any restriction of my remedies for copyright infringement just because someone may use a side door of claiming they were unable to identify or locate me or any person or entity they thought held certain rights to my work, all to gain free use of work my husband died at age 50 to make, and work of my own that I am still in the process of accumulating.

Here's a thought: has the Copyright Office ever conducted research on the market to see whose original printed editions have gone out of print and might be deemed "orphaned"? Any expansion of interpretations of "fair use" which cut back on a writer's ability to gain benefit monetarily from his or her work is grossly unfair. Proposals for "orphan works" legislation and expanded interpretations of "fair use" fail to consider ways working writers earn our living. Under the Berne Convention, an exception to copyright for "fair use" or other use of "orphan works" is permitted **only** if it "does not conflict with normal exploitation" of the work. New norms of commercial exploitation of our out-of-print works, especially via self-publication and digital publication now would certainly bring to question the ways of possible conflict arising, as the internet increases these chances.

"Orphan works" legislation or "fair use" cannot properly be evaluated without understanding writers' new business models that

only writers can provide. If work to which I hold some or all rights (either my own or my late husband's) is deemed "orphaned" because it is not in publishers' or libraries' records, despite the fact that I am currently earning money from it, any so-called "orphan work" would unfairly compete with and destroy the value of my and my husband's rights. I know for a fact that some of my husband's and my own works have gone out of print. I have picked up some of my work in anthologies and the same is true for my husband's work, but these are only partial "catches". One thing evident too is that this new notion of culling a writer's work lapsed-from-publication-work opens a door to asking the writer to police all of this and still have time to do his/her work. We can't afford to do this, nor to really hire anyone to do it for us. Should the government really open the doors to a kind of piracy in deeming works "orphaned" for the benefit of these entrepreneurs of other writers' labor?

Before the Copyright Office or Congress considers any "orphan works" or "fair use" legislation, shouldn't they hold hearings to learn from writers and other creators about how we are currently exploiting our rights to our work and how such a law would affect us? We are the creators of this work. Entities sleuthing to become the beneficiaries of our inattention after the collapses of unviable presses who once published us should not benefit from our labors.

Sincerely,

Tess Gallagher