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February 3, 2005

Jule L. Sigall
Associate Register for Policy & International Affairs
U.S. Copyright Office
Copyright GC/I&R
P.O. Box 70400
Washington, DC 20024

Re: Orphan Works – Comment

Dear Ms. Sigall:

Thank you for the opportunity to comment on the issue of “orphan works” in the realm of copyright. It shows great forethought and responsiveness on the part of the Copyright Office to address this problem as such.

As an attorney I have had occasion to counsel a number of individuals who desired to work with older or “vintage” creative works – music, poetry, literature – in performances, recordings, or derivative works. These individuals frequently faced significant difficulty ascertaining the copyright status of these works. While licensing bureaus such as The Harry Fox Agency can often “rule in” the copyright status of a work, they cannot help “rule out” with certainty whether a copyright claimant exists somewhere.

I support a proposal to require registration or renewal of works to maintain current copyright rights. This would help reduce uncertainty for people desiring to use such works in new creative enterprises. In this day and age, the uncertain prospect of an intellectual property lawsuit has been shown to deter people from using older works in new productions. Removing this uncertainty would free older “orphaned” works from this legal purgatory. In so doing, it would encourage the revival and re-use of significant artifacts of our culture. In this manner, a registration/renewal requirement would actively promote your Office's Constitutional injunction “ To promote the Progress of Science and useful Arts”.

As a legal practitioner, I also support the basic premise of the Berne Agreement that copyright rights should accrue to a creative work without registration. This is a significant protection for creative individuals who may lack the savvy or financial wherewithal to protect their own rights. However, I do not believe that unrecorded rights should necessarily extend to the same scope as rights attached to registered works. A five or ten year period of exclusive copyright rights for unregistered works would achieve the

policy aims of the Berne Agreement. If a creator truly values a work, it does not seem unreasonable to require registration to extend that person's rights beyond that initial ime frame.

The Constitutional wording “*To promote the Progress*” and “*securing for limited Times*” must be read together in order to achieve the Framers' intent. They establish a financial incentive for authors and inventors by securing the value of their creations. The time must be *limited* because eventually the incentive to create reaches a point of diminishing return. The Constitution does not seek to secure mere financial gain. Rather, it intends to *promote progress* in the arts and technology. The ultimate beneficiaries of this progress is the public. As I noted above, uncertainty over copyright status *deters* such progress.

A later registration/renewal rule is also consistent with established rules of equity in our legal tradition. One who sleeps on his rights eventually forfeits them.

The initial absence of a copyright registration requirement promotes progress in the arts by securing the value of their work without effort on their part. A later registration requirement imposes only slight burdens on creators. The creator must recognize the value of his or her work and desire to protect it, and the creator must undertake a very simple registration process. The creator has the opportunity to preserve the value of his or her work. If the creator chooses not to register, that value is transferred to the public. This serves the needs of the creator and the public as the Constitution intends.

I hope that the Copyright Office finds my comments useful in its evaluation of our copyright policy. Please feel free to contact me if I can be of further assistance

Sincerely,

/signed/

Thomas A. Beckett
Attorney