



March 25, 2005

Mr. Jule L. Sigall  
Associate Register for Policy & International Affairs  
U.S. Copyright Office  
James Madison Memorial Building, Room-401  
101 Independence Ave., S.E.  
Washington, D.C. 20540

ORPHAN WORKS NOTICE OF INQUIRY

Dear Mr. Sigall:

On behalf of the Art Libraries Society of North America (ARLIS/NA), we welcome the opportunity to present comments to the Copyright Office on this issue, which is of crucial importance to us. ARLIS/NA is a growing, dynamic organization devoted to fostering excellence in art librarianship and visual resources curatorship for the advancement of visual arts. ARLIS/NA promotes the interests of more than 1,000 members. The membership includes architecture and art librarians, visual resources professionals, artists, curators, educators, publishers, and others interested in visual arts information. The orphan works problem affects our members closely—both institutions and individuals—since we are the repositories of the material used in scholarship and creative and academic enterprise, including texts, works of visual art, music, media, and other types of works. We are also frequently the resource to which users of such material turn first in an effort to identify copyright holders.

We write to endorse—and strongly support—the comments filed in this proceeding by the College Art Association, the National Humanities Alliance, and the proposal set out in the comments filed by the Glushko-Samuelson Intellectual Property Law Clinic in response to this Notice of Inquiry. We prefer the approach to this proposal because it provides a broad and flexible definition of an “orphan work,” one that addresses the realities that librarians experience every day in trying to assist researchers. We in the trenches know that an orphan work may be new or old. We therefore view as essential the proposal’s concept of allowing use following a “good faith search” that is “reasonable in light of all the circumstances,” and subject only to very limited remedies should the copyright owner emerge. We believe that this is both a practical and an ethical approach.

We further endorse strongly the proposal’s view that unpublished works may be considered orphaned. We who manage archives know that unpublished works are the

very meat and drink of scholars. To be able to study, publish, and disseminate this important material to the American public is vital to our nation—it is how we preserve and learn about our own history.

The advantage of the approach that we are endorsing is that it would enable scholars, their institutions, and publishers to work and publish important research with confidence that they are respecting the law, and with more certainty than is sometimes available under the doctrine of fair use. We therefore also support the proposal that damages for any later finding of infringement be significantly limited. The key element of this concept is that if the copyright holder should come forward, the use of the work could continue, though the owner would retain the right to negotiate for new uses of the work. In this respect, the proposal balances the rights of copyright owners and users—both of whom we serve.

ARLIS/NA is happy to support the Glushko-Samuelson Intellectual Property Law Clinic Proposal and the College Art Association and the National Humanities Alliance comments, and to assist the Copyright Office further in this matter.

Yours sincerely,

A handwritten signature in cursive script that reads "Jeanne M. Brown".

Jeanne M. Brown  
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cc. ARLIS/NA Executive Board  
ARLIS/NA Public Policy Committee Chair