

## Comments re Proposed Changes to Copyright Law/'Orphan Works'

This proposal has no mechanism for a rights holder to stop a user once an infringing use is found. Rights holders would be compelled to enter into a license with the user. This could cause a rights holder to breach a separate exclusivity contract they may have previously entered into, with the current offerings of millions of images via microstock at \$1 or less, there needs to be some mechanism for defining "reasonable" fees that a rights holder must accept. \$1 is certainly not acceptable to me and being forced to accept such a fee would be criminal.

There needs to be a neutral, not-for-profit registry that will be the best solution to implement whatever results in a law. Neutral means one that is owned and controlled by its users and not subject to a takeover or buyout by a Google or a stock agency. An example would be the PlusRegistry which was inspired by the last register of copyrights, Marybeth Peters.

There needs to be protections written into the law so that someone doesn't create a stock photo agency of images for which a "diligent search" has been done and documented, and then these images are sold/licensed, or a "service of convenience" fee for access to these images, is created. If this is not expressly forbidden, it will become a business model where the rights holder not only can't stop it (and must accept a small fee to permit it) but also could find themselves competing to license their own work against that of an organization set up to aggregate orphan works.

As it seems to be drafted at present, this proposed orphan works concept would permit others to make use of my work that has already been registered with the copyright office without my express permission, consent, or entering into negotiation with me. This would seem to be what the Supreme Court has termed "unlawful taking" when applied to the concept of eminent domain (seizure of land for the public 'good'). There is no public good to be identified here in terms of orphan works, particularly when the works may have clearly been registered with the Copyright Office, identified, and expressly not available for commercial use without consent.

Sincerely,

Waring Abbott [wa@waringabbott.com](mailto:wa@waringabbott.com) PO Box 1256, Greenwood Lake NY 10925