



The Association of Magazine Media

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The Magazine Publishers of America (MPA), the national association for magazine media companies, appreciates the opportunity to offer comments on the Copyright Office's docket 2012-12 relating to the issue of orphan works.

MPA, established in 1919, represents close to 200 U.S. magazine media companies with approximately 1000 titles, about 30 international publishing companies and more than 100 association members. Our members are multi-platform publishers who create content for print, online, and mobile platforms. MPA members publish some of the nation's best known and most loved magazines, many of which are responsible for producing some of the most memorable and iconic images of our time.

In the Notice of Inquiry (NOI) the Copyright Office asks questions about two distinct issues related to orphan works.

With regard to the first question – that of the occasional or isolated use of an orphan work – as creators and users of copyrighted works, MPA is supportive of the Copyright Office's efforts to review the issue of orphan works. On many of the specifics we associate ourselves with the comments of the Copyright Alliance and others, who have underscored important aspects to consider in any effort to “resolve” the orphan works issue. Notably, this would include the process of defining standards for what constitutes a diligent search as well as the issue of accommodating an eventual use of the work should such a standard be met. On these points (and others) should a Copyright Office or legislative effort on orphan works advance, we would appreciate the opportunity and look forward to being an active participant in the process.

As for the case of orphan works used in a mass digitization context, we would encourage the Copyright Office to proceed cautiously on, and with separate deliberation of, the issue.

We most certainly understand the social and policy goals and values at play in the issue of mass digitization, many of which have been carefully and appropriately reviewed by the Section 108 study group, which members of ours have participated in. In continuing to evaluate what is “fair

to authors and copyright owners as well as good faith users”¹ in the context of mass digitization of orphan works, we would suggest that the Copyright Office continue to remain mindful of the distinctions between issues of fair use and the accommodation of orphan works. To consider dismissing the need for a reasonably diligent search for the owner of an orphan work in the mass digitization context is a question of great import, and one that should be considered very carefully, as it represents a significant departure from the existing balance struck by copyright law and jurisprudence between the interests of users and rights of authors and owners. Given the complexity of the issue, as well as the differing policy considerations, it seems clearly appropriate (and perhaps necessary) to consider the question of mass digitization distinctly from the issue of orphan works at large.

We very much appreciate the opportunity to provide comments on this important issue, and look forward to participating in the conversation as it moves forward.

¹ Notice of Inquiry, *Orphan Works and Mass Digitization*, 77 Fed. Reg. 64,561 (2012).