

November 28, 2012

Dear Copyright Office (and assorted U.S. Senators and Representatives),

I am deeply opposed to the proposed “Orphan Works Act” (currently posted on the Copyright Office’s website for public comment). If the goal of copyright and intellectual property laws is to promote innovation and creativity, this act would do the exact opposite. Furthermore, modern internet search technology has made the act entirely unnecessary and obsolete.

The impetus for this act is coming not from creators but from publishing companies. They (and the Copyright Office) have a fantasy that they can create a comprehensive searchable database of all copyrighted work, similar to the one they’ve created for patents and trademarks. Publishers want to streamline the process by which they search for owners of copyright and license material from them (images, writing, etc). The current process works just fine but necessitates that publishers hire copyright clearance companies or researchers to get permissions for the material they use in their books, textbooks and other publications. This costs them money, but it’s not an excessive amount of money and it’s a cost that they are able to pass on to consumers. More importantly, it puts the responsibility for observing copyright law on the publishers and people who are using or reprinting copyrighted material.

The Orphan Works act would shift responsibility from publishers to creators. Suddenly, creators who fail to register their works with the US Copyright office could risk having their work deemed “orphan work” and lose control over it and/or lose compensation when it’s reprinted. The act would create a whole new layer of litigation as attorneys for creators and publishers fight over what constitutes an “Orphan work” and what constitutes “Due Diligence” when it comes to searching for creators. Publishers, with more money and better access to legal representation would have the upper hand in these battles. Many freelance creators (and most creators ARE freelancers) lack the resources to hire an attorney to monitor and defend their copyrights. Also, unlike the basic copyright law itself, there would be no mechanism for creators to recover attorney’s fees from a protracted court battles over whether one of their works was in fact “Orphaned” or whether a publisher/infringer did “Due Diligence” in trying to find and contact them.

In addition to publishers wishing to make more money (by steam-lining their copyright clearance processes), The copyright office and tort reformers want to encourage people to register their work, thinking that this will reduce litigation in other areas of copyright law. If registering work with the US Copyright office and searching it was free and easy, then one might be able to make a half-hearted case for requiring registration. The reality, however is that registering work is a long, expensive, bureaucratic and tedious process, full of clerical errors and Copyright Office incompetence. Copyright applications (and copyrightable material) far out-numbers Trademarks or Patents by a magnitude of hundreds of thousands or millions. As a result, the technological and bureaucratic organizational processes that would be necessary to create a comprehensive database of

copyrighted material and actually process all the applications for copyright would be so huge and complicated as to be impossible (assuming that everyone who created work filed for copyright protection). Given current realities, it is laughable that the copyright office and US Government think they could actually accomplish this goal.

What are current realities of filing for copyright? I am a regularly published freelance cartoonist, and typical of many freelance creators. On average, I make about \$20,000 per year from my work (and get health insurance through my spouse). Early on in my career (1992), I was infringed by a right-wing political publication. Because I failed to register my work, I was unable to collect attorney's fees and damages and thus was unable to hire an attorney, even though I had a good case. Ever afterwards, I have registered my published work using form VA and multiple GR/CP forms, registering about 80-100 cartoons at a time. When I started doing this in 1992, the fee was around \$25 and it took the copyright office just 3 months to issue me a certificate. In the last 10 years (from 2002 to the present), it takes the copyright office TWO YEARS to issue me a certificate and they lose half to three-quarters of the deposit material submitted to them. When two years go by and I still haven't received a certificate, it requires that I call the copyright office, learn that they have (again) lost the deposit material, apply for "Special Relief" and resend copies or photocopies of all the material. No matter how carefully I arrange the material, mark pages with post-its, and bind it up (with the application), this keeps happening. It means that I have to copy everything ahead of time, before I send it off and that I must send it all certified mail, return receipt requested. Between, copying 80-100 items, going to the post office (often two times, after my first submission is lost), and waiting on hold to talk to people at the copyright office, I spend nearly two full work-days per year just to submit one copyright application (plus a \$65 fee). Thus, in fees and lost work time, I'm spending over \$500 per application. Given my income, this is barely affordable. (If you doubt my story, I have all the letters, mailing receipts and documentation to prove it.) My story is not unique but has been experienced by many other freelancers that I know (who bother to register their work). The Orphan Works act would mean that anyone who doesn't go through this bureaucratic hell, might be ineligible for compensation or an injunction when their copyrights are infringed.

Why are publishing houses proposing this act? Not only do they want to streamline their copyright clearance processes, cut costs and make more money ...but they are TOO CHEAP to hire NEW cartoonists, artists or writers to create new, original content for them. This cheapness and worshiping of profits above all other business and creative considerations has resulted in a decline in American arts and creativity. Newspapers, magazines, card companies, book publishers, websites and everyone else who uses writing, images or other creative material would rather license existing material than have to pay someone to create new stuff. This has greatly reduced job opportunities for writers, illustrators and other creative professionals and has reduced the amount of original creative content found in these various outlets. A newspaper in Saint Paul, Minnesota looks exactly like one in Portland, Oregon because most of the content in both papers is syndicated or re-licensed from the same sources. Increasingly, the only outlets that have unique creative content are free, self-serve platforms like Youtube, blogs or aggregation sites like the Huffington Post, none of whom really compensate creators for their work. If

the goal of copyright is to promote creativity and innovation, we should be making it HARDER for publishers to license work because this might give them incentive to commission new or unique works and provide more jobs for creators.

Finally, internet search tools like Google have made searching for authors or artists absurdly easy. If a publisher types my name—andy singer—and the word “cartoon” into Google, they can instantly find my work, my website and my contact information. This is true for practically any artist or writer in America or around the world. The idea that we even need a centralized searchable copyright registration database to aid publishers in finding creators is laughable. We already have one! It’s called the internet and “Google,” “Bing” or some other search engine.

To summarize, the Orphan Works Act is totally unnecessary, would harm creators in multiple ways and is beyond the capabilities of the U.S. Copyright Office to successfully and fairly implement. I urge you to scrap this proposed legislation.

...And while you’re at it, I have two outstanding Form VA- GR/CP applications that were submitted over two years ago for which I still have not received certificates. I called your office a month ago and was informed that they found the applications and materials and would issue me certificates shortly ...but a month later I still haven’t received anything. I guess I’ll have to call your office again tomorrow.

You can’t even chew what you have ...don’t try to bite off more!!!

Sincerely,

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