

Maria Pallante, Register of Copyright
U.S. Copyright Office
Library of Congress

Submitted electronically at www.copyright.gov/orphan/comment-submission

Re: Orphan Works and Mass Digitization
(FR Doc. 2012-25932; Copyright Office Docket Number 2012-12)

Dear Ms. Pallante:

I fully endorse the comments submitted to the Copyright Office by the National Writers Union.

As a working writer, I oppose any "orphan works" legislation that permits use of my work without my knowledge or permission merely because someone claims they were unable to identify or locate me or any person or entity that they thought held certain rights to my work. Any such legislation would violate my economic and moral rights. For writers outside the U.S., such a law would violate rights guaranteed by the Berne Convention and other treaties.

As a woman who changed her name upon marriage, and who moved overseas for 10 years to work as a copyeditor in the United Kingdom, I would like to point out two particular concerns regarding the weak definition of 'diligent search' in the proposed legislation.

First, the great majority of American women writers still change their names upon marriage, assuming our husbands' last names. Our published writing from the years before our marriage is particularly susceptible to being judged 'orphaned' – after all, unless the corporation or library wishing to republish my works for their own profit goes to some considerable trouble to track down marriage registries in the state where I lived, I have essentially become invisible. This is particularly true for journalists – newspapers and magazines fold and sprout up with increasing rapidity – but even book authors could find their work 'claimed' by a publishing conglomerate that has gobbled up the small imprint that brought out their work many years earlier.

Second, I myself would have been one of the writers affected under the Berne Convention, had any published works of mine been usurped during the decade I worked in London. Again, the weak definition of due diligence would harm writers who are not on American soil to defend their copyrights – simply because we are not here to be easily found.

I am equally concerned that proposals for "orphan works" legislation fail to take into consideration the realities of working writers' lives and the difficulties we face in enforcing our rights so that we can earn a living from our writing. I believe that work to which I hold some or all rights could be deemed "orphaned," despite the fact that I am still attempting to earn money from it, including in ways that are not reflected in publishers' or libraries' records. Copies of my work made available under an "orphan works" law - especially those made available for free by a noncommercial entity - would unfairly compete with and destroy the value of my rights.

Before the Copyright Office or Congress considers any "orphan works" legislation, I urge you to hold hearings to learn from writers and other creators about how such a law would affect us. No "orphan works" legislation should be considered unless it respects the rights of creators.

Yours truly,

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