

03/05/13

Dear Copyright Register Maria Pallante,

This letter is in reply to Initial Comments submitted in response to the Copyright Office's Notice of Inquiry (NOI: Oct. 22, 2012) regarding orphan works. In particular, I wish to address comments submitted by Google, Inc. However, I do not wish to single out this company, as many other large corporations have similar aspirations and means.

Google's counsel made recommendations which I will address, point-by-point.

Google wishes to *limit* the remedies available to a copyright holder if a qualifying search fails to reveal the owner of a creative work.¹

- In my letter regarding the NOI², I requested consideration that statutory damages remain intact. This would send a clear message that orphan works are not in "open season." The uncertainty surrounding the legal and monetary risk of using orphan works is a *powerful* incentive to compensate either the holders of known works or the creators of new works, promoting, "... the Progress of Science and useful Arts."

Google would like for orphan works provisions to cover *for-profit* enterprises like itself.³

- For-profit corporations and businesses would have a profit windfall if they could use any orphaned photograph (or other creative work) for commercial purposes after completing a few cookie-cutter steps using computers to automatically conduct trillions of searches.

Google recommends amending Section 412 to *prevent* copyright holders from having the ability to fight for statutory damages and attorney fees if their registration records with the Copyright Office do not contain up-to-date contact information⁴.

¹See page 5: http://www.copyright.gov/orphan/comments/noi_10222012/Google-Inc.pdf

²http://www.copyright.gov/orphan/comments/noi_10222012/Croxton-Matthew-David.pdf

³See footnote #1

⁴See page 6 of the URL in footnote #1

- If the owner of a copyright moves or changes address and does not change his contact information with the Copyright Office, it seems punitive to throw out the option of fighting for statutory damages. Moreover, a rights holder may wish *not* to exploit his protected works for commercial gain for a certain time and allow his contact information to lapse. Or, the true commercial value of a work may not be realized for a period. Should a hiatus from vigilance mean that corporations and other entities get a free lunch? Google's recommendation would increase the burden on the copyright holder.

Google requests elimination of Section 506, *removing criminal liability* for the copyright violator described in the previous point.

- Google seems to be requesting immunity from prosecution for stealing the creative works of others, simply because the owner cannot be located under terms which are favorable to Google. This shifting of onus back to the creator to prove that he is who he says at all times would seem to stifle, rather than promote, "...the Progress of Science and useful Arts." Please keep Section 506 in place.

Google would amend Chapter 7, compelling the Copyright Office to make the contact information of copyright owners publicly accessible online in a machine-searchable format.

- Some creators seek copyright protection merely to assert ownership and keep a work from entering the public domain. Whether they provide up-to-date contact information is immaterial to their motive; they may not be actively trying to sell or license their work. Thus, notifications and queries, as automated by corporations, would be a nuisance to the rightsholder. Please do not amend Chapter 7.

The modifications and considerations that Google requests are likely to *decrease the number of copyright registrations*, because all of the requests made *diminish the protections and value of copyright for creators*. As a photographer who sells his creative services and his work, I am concerned that allowing orphan work uses by corporations will lead to bolder affronts against the personal property of creators.

Because of its profit motive and accountability to shareholders, Google cannot be an independent and democratic arbiter of the world's knowledge. That it has "opened up" some obscure works through mass digitization projects is interesting, but does not justify granting it rights to any orphaned works. If the law changes, so will the scope of Google's advertising and other businesses, along with the practices of its peers in the internet service market. Please leave the responsibility of curating the world's knowledge to not-for-profit libraries, who should be granted reasonable and clearly-delimited access to older orphan works. Please do not allow Google and similar companies to subvert an "exclusive Right" into an inclusive one.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Croxton". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Matthew David Croxton, M.S. (Forest Resources and Conservation)

PHOTOGRAPHER AND PRINTER

514 Sandalwood Dr. Plant City, FL 33563