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22 February 2013

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

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

Dear Ms. Pallante:

I am writing to endorse the comments submitted to the Copyright Office by the National Writers Union regarding proposed "orphan works" legislation.

As a copyright and permissions professional and the author of a book on copyright and permissions, I oppose "orphan works" legislation that would permit use of work without the owner's knowledge or permission merely because someone claims they were unable to identify or locate the rights holder. I know from years of experience that would-be content users are often unrealistically quick to jump to the conclusion that a copyright holder cannot be located, when in fact the person can be found with a little searching.

Such legislation would violate the economic and moral rights of the creator. For writers, artists, photographers, and other content creators outside the U.S., such a law would violate rights guaranteed by the Berne Convention and other treaties.

I am especially concerned that proposals for "orphan works" legislation fail to take into consideration the difficulties that content creators face in enforcing their rights so that they can earn a living from their work. As the holder of some copyrights for my own 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 individual writers and other creators how such a law would affect us. No "orphan works" legislation should be considered unless it respects the rights of creators.

Sincerely,

Elsa Peterson, President  
Elsa Peterson Ltd.

(a.k.a. Elsa Peterson Turner,  
Elsa Peterson Obuchowski,  
Elsa Weide)