Christopher MacNeil
PO Box 8616
Long Beach, CA 90808

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US Copyright Office

Comments Regarding Orphaned Works Legislation

Thank you for the opportunity to comment on the Orphaned Works legislation. I am a US citizen. I am a working artist, and live in the USA. I have a BA and MFA in Fine Art, and have been a professional artist since my graduation decades ago.

1. What are the most significant challenges related to monetizing and/or licensing photographs, graphic artworks, and/or illustrations?

The most significant challenge related to monetizing my illustrations, is the sheer volume of work that now, via the Internet, is available to potential customers, and the staggering and ongoing reduction in the price of an illustration.

2. What are the most significant enforcement challenges for photographers, graphic artists, and/or illustrators?

The Internet has made it much easier to present my work to potential clients, but it has also made it far easier for anyone to use my work without my permission or knowledge. My images can be downloaded, duplicated, modified and used without any compensation. Any digital signature or watermark I might try and attach to them, any copyright notice or authorship I might attempt to embed within the image can be stripped from the image and, voila, the image is now an orphaned work.

3. What are the most significant registration challenges for photographers, graphic artists, and/or illustrators?

Cost. The cost to upload a single image is prohibitive. Maybe not for one image, but for the thousands of images an artist creates in their lifetime, it is exorbitant. Say I create 500 images in one year (easily). At $35 an image, that's $17,500 to protect those works. That's a ridiculous amount to upload images to a registry whose primary function, in this case at least, is to put a date-stamp on the images' creation.

I am aware of the possibility of uploading collections of works, but organizing a collection, and dealing with the constraints and conditions to register more than one work at a time makes a difficult task even more onerous.

A simple registration system where the artists pays an annual fee and then uploads as many works as they create in a year would be far fairer, and would lead to many more works being registered. But copyright should not be limited to those that take advantage of the registery.

4. What are the most significant challenges or frustrations for those who wish to make legal use of photographs, graphic art works, and/or illustrations?

Cost. Never in the history of man has so many photographs, graphic art works, and illustrations been available for use. There is a literal sea of work to be had at the click of a mouse. The cost of these works are a fraction of what they once were. A full-color illustration can be had for just a few dollars, where, before the Internet, it would cost hundreds if not thousands. But that's not cheap enough. Not in the new culture of free. Free news—we no longer need to buy newspapers. Free music—we no longer need to

buy CDs or MP3s when music is delivered free over a host of different sites. Free images . . . oh wait, not yet, not until the new Orphaned works act goes through . . .

5. What other issues or challenges should the Office be aware of regarding photographs, graphic artworks, and/or illustrations under the Copyright Act?

Are orphaned works valuable? If they are, then they should retain the full protection of US Copyright law. If they are not, then why are the proponents of this change in the law working so hard to collect these works for their own use? It appears tat they are attempting to create an environment where they can do a form of visual data-mining. They want to get a whole lot of images for nothing. They do not want to pay for the works that they would then monetize. They want to take advantage of the huge wealth of images: the thousands of illustrations and paintings and photographs uploaded by hopeful artists, the millions of personal photographs uploaded by individuals; they see all this and salivate and think that if they play their cards right, they might just be able to finagle a big slice of it for themselves. For free.

Don’t give our work away to them.

6. What are the most significant challenges artists would face if these new copyright proposals become law?

The most significant challenge I would face if these new copyright proposals became law would be a further slide away from being able to maintain control over my work. Allowing someone to use a work on the claim that they tried but could not find the actual copyright holder of that work is wrong. There is no shortage of images available for use. There is an absolute glut of images. The cost of using one of these images has plummeted. The copyright of a piece of work should be retained by the artist. Copyright should only be transferred by contract, not by the inability of the user to contact the copyright holder.

Thank you again. I hope you will realize how much we artists stand to lose if this legislation goes through.

Sincerely,
Christopher MacNeil