K. E. Hick ©

WATERCOLORS AND PHOTOGRAPHY

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Comments regarding Orphan Works and Mass Digitization

To whom it may Concern:

After reading the proposed changes to the legislation of the 1976 copyright act I have some grave concerns.

I would like to relate some of my own experiences regarding copyright infringement and how the proposed changes would only make things worse. I was informed that I had until the 23rd of July to submit my concerns and remarks but apparently that was not the case since hearings on the matter have already been gaveled closed, even though the Federal Register Vol. 80 No. 79 Dated, Friday April 24, 2015/Notices/Docket No. 2015-01 stated as such.

- I am a photographer and 2 dimensional artist with over twenty years in the field, who has had numerous copyright infringements over the years. I register my works with the copyright office but that has not stopped anyone. The most common excuse heard was, "I looked but I could not find your name". I do not use my name to register my works; my works are registered to my company which does not appear on any signature line on either my photographs or artwork. What your change would do – Since I use a company to hold my rights if the entity seeking to use the image did not search under the company name but my own, your proposed legislation would show that they had done a "diligent search", when in fact they hadn't. I would be out both licensing fees and penalties.

- I have had large news and online organizations remove both my copyright information and metadata and replace it with their own thereby nullifying my copyright notice contained on and in my photographs as well as rendering my work, "orphan" even

though a valid copyright registration exists on the image. When the news agency is contacted they have no knowledge of where the work came from, (from the actual events). This is from an ongoing legal case involving the largest news gathering organization in the U.S. as well as the three largest news reporting agencies in the nation and others. What your proposed change would do – As a result numerous images would have been made "orphan" by your proposed legislation and giving me no recourse or compensation should the infringements that are ongoing continue which they surely will.

- I have had unscrupulous individuals take my images claim them for themselves and place them in Wiki Commons with attribution to themselves and setting of a common license for all to use to hide their actions of copyright infringement. The result is the belief that the image has no copyright and that someone other than the true rights holder has the ability to grant the permission to use the image. What your proposed change would do – By your proposed standard the infringer would be able to show that they had conducted a "diligent" search. Though it would be far from "diligent", and I again would be without just compensation for the unauthorized use of my images.

- I have had all of the major online search engines take and use my images as thumbnails for numerous searches that have nothing to do with what the actual image depicts but something in the name of the image is close to what the search engine wants the viewer to see. My name is removed from the image and other than an obscure warning about the possibility that image "may be copyrighted" there is nothing to identify the actual owner of the work. This occurs because many individuals and companies take images and alter them to remove the identifying information thus creating an "orphan work" where none actually exists. When the search engines are alerted to this fact I am pointed to the Google v. Perfect 10 case. What your proposed change would do – Since the search engine does not list the correct copyright holder, or no copyright holder at all ***any image*** that is used in the search engines could or would become "orphan works", because you would have no way to identify a rights holder.

- I have used the DMCA with many of the social media sites that are not addressed in your proposed changes, and whom are arguably most likely to create the greatest confusion and create more "Orphan works" than just about every other digital user out there. Many if not all of the social media sites/users strip either all watermarks or metadata or both from images placed on their platform and then hide behind their TOS and place all blame with little or no consequence on their user that abuses the copyright system. I have had Pinterest, Reddit, Facebook and others ignore DMCA requests until I am forced to have an attorney write them a letter threatening legal action. What your proposed change would do – Make it easier for "Orphan works" to be created.

Comments and Observations on proposed changes

Comments in general; the proposed changes do not make it easier on the copyright holder in fact it is just the opposite you have placed the company/user ahead of the rights holder. By leaving the door open for the companies to strip away identifying information from the images on their platforms with no consequences, any work placed into the digital world is sure to become "Orphan" with little or no consequence to the digital supplier of the work. Your solution as seen below favors the company over the creator. No industry will agree to the standards that the professional creators want and vice a versa. But the copyright office recommends choosing the industry/user over the rights holder.

a. Best Practices

- Advocates in favor of fair use as the sole solution to the orphan works problem often emphasize the role of best practices – *i.e.*, documented standards adopted by members of an industry (or group of related industries) for how best to apply the fair use exception to their professional tasks.

Why only "fair use" as the only solution when many if not most of the issues revolve around commercial use?

Why a one size fits all approach rather than the 4 prong approach on a case by case basis?

This one size fits all approach does not take into account that many if not all of the current infringements and arguments about infringement revolve around one party receiving an enrichment at the expense of the rights holder and not wanting to compensate fairly for that enrichment and to claim "fair use" because they believe what they are doing is fair.

Also, as is almost always the case when caught, every one of the infringers wants to be treated as if they did nothing wrong and only pay a nominal sum, thereby having little if any reason not to moderate/change their behavior.

Congress in its wisdom has maintained that there needs to be some form of deterrent, which since most of the laws fall into the civil realm they almost always rely on statutory penalties as the deterrent. When congress wrote and the courts use what is already a 4 prong test to determine what is considered "fair use" it takes all factors into account so why change it to favor the companies/users that continue to push the boundaries and give themselves the right to determine what is fair over the rights holders themselves? "Fair use" is and should be

determined on a case by case basis not a one size fits all basis, what is "fair use" for a library is not the same as for a corporation, nor is it the same for a news agency. It may be "fair use" for a news agency to use an image to report on a breaking event, it is not "fair use" to use that same image two years later under the guise of maintaining a record of the news event for the selling of insurance on their online platform.

Orphan Works

- The Office's current review of orphan works focuses on the challenges that users face when attempting to make use of individual works on a case-by-case basis. The Office concludes, as it did previously, that the orphan works problem is widespread and significant. As a broad spectrum of participants in this study noted, anyone using an orphan work does so under a legal cloud, as there is always the possibility that the copyright owner could emerge after the use has commenced and seek substantial infringement damages, injunction and/or attorney's fees. While some users certainly may have viable defenses on fair use or other grounds, many will choose to forego use of the work entirely rather than risk the prospect of expensive litigation. …..
- Although the Office is recommending a legislative framework that would limit good faith orphan works users' legal liability, it also examined other potential approaches. For example, some stakeholders recommended against comprehensive legislation in this area in favor of reliance on fair use. While current judicial trends may make fair use appear attractive to some user groups at the present moment, the Office found that, in additional to lacking the certainty of specific legislation; a fair use-only approach does little to encourage users to search diligently for copyright owners. That said, users should always have the choice of relying upon fair use in appropriate circumstances, and therefore the Office explicitly preserved that option in the draft legislation. …
- A limitation on liability addresses the needs of both commercial and noncommercial actors alike, and appropriately takes into account global developments. It has the benefit of providing considerable legal certainty to those users who want or need it for certain projects, while being fully compatible with fair use. In sum, the proposed orphan works legislative framework would do the following:

In discussing "Orphan Works", many "orphan works" are created by the very individuals whom now complain about them. In the rush to make everything available on the internet those very same companies gave little or no thought about the consequences of their actions, or perhaps they knew exactly what they were doing. Now that the rights holders have figured out how to do the searches necessary to keep up with the advancing technologies the companies whom created the problems not only scream foul but are the loudest voices demanding reform. While I agree that true "orphan works" are an issue, many if not most works today are not "orphan" and to lump all works that have been either mistreated or intentionally mislabeled as the same is not only irresponsible but takes copyright law and flips it on its head.

While the Office is recommending a framework to limit legal liability that would be akin to agreeing to the fact that now that the companies that have created the "orphan works" and want to use them without penalty or problem they should be allowed a pass at their misdeeds and not to truly have to deal with the issues that they have created. And to the contrary the "fair use doctrine", when enforced properly, which most courts seem to have gotten right, actually does have the deterrent effect to the missuses of intellectual property.

While limiting the liability is good for "both commercial and noncommercial actors alike" as well as other entities that CHOOSE to infringe it does nothing to aid in the deterrence that Congress has always imposed on those individuals. Please note I use the word "CHOOSE" it is always a choice whether to use something that you know you have the rights to and have obtained versus taking the chance that you will be caught using something that you have no right to use or publish.

The simplest test is to "follow the dollar", almost all if not all companies that run the internet searches have monetized their platforms to pay the salaries of their employees, they sponsor advertising coupled with images that suit the advertiser from the internet companies vast library of culled images that they neither own nor have permission to use, they provide images to anyone at the click of a mouse whether they have permission to do so or not, they provide enough excerpts from books that you can piece the majority of the book together and not have to purchase it and they do all of this under the guise of "its best for society", when in actuality it is what is best for their pocket book and all of those examples do not fall within the "fair use doctrine". Many times it is the end user that ends up paying for these misdeeds not the entity that created them. The reality is they are caught up in a trap of their own design and now want you to craft legislation to be released to continue to abuse the legitimate rights of the intellectual property holders.

I would like to point out the flaws in what the Copyright office has proposed as a "good faith effort" and I will use my own actual experiences to do it, not hypotheticals.

- Establish a limitation on remedies for copyright infringement for eligible users who can prove they have engaged in a good faith diligent search for the owner of a copyright and have been unable to identify or locate him or her; - Problem; When copyright information has been striped by either the search engine, news agencies, various social media sites, unscrupulous individuals claiming the work etc. how then do you determine what is a "good faith effort" especially if the works are registered? There is absolutely no way of identifying the owner. It guarantees that all works on the internet will eventually be "orphan works" and the rights holders have lost all control of their property.

- Define a diligent search as, at a minimum, searching Copyright Office records; searching sources of copyright authorship, ownership, and licensing; using technology tools; and using databases, all as reasonable and appropriate under the circumstances; Problem; Since all identifying information has already been stripped a search of the Copyright office is meaningless.

- Require the Copyright Office to maintain and update Recommended Practices for diligent searches for various categories of works, through public consultation with interested stakeholders; Problem; To define stakeholders and to whom the most weight would be given, the rights holder or the user.

- Permit a U.S. court, in its determination of whether a particular search qualifies under the statute, to take into account a foreign jurisdiction's certification that a search was in good faith and sufficiently diligent, provided the foreign jurisdiction provides similar treatment to qualifying U.S. searches; Problem; Copyright office has already determined what a minimum is.

- In addition to a diligent search, condition eligibility on a user filing of a Notice of Use with the Copyright Office, providing appropriate attribution, and engaging in negotiation for reasonable compensation with copyright owners who file a Notice of Claim of Infringement, among other requirements; Problem; How do you determine proper attribution since the work is "orphan" and who determines what is "reasonable". The copyright office has no metric to judge "reasonable" by, the Copyright office has no way of knowing the rights holders costs to create the work.

The whole scheme relies on the rights holder finding his or her work being infringed and having to contact the Copyright office who then becomes sole arbiter over the courts. Thus making the Copyright Office superior to the courts of the United States.

- Limit monetary relief for infringement of an orphan work by an eligible user to "reasonable compensation" – the amount that a willing buyer and a willing seller would have agreed upon immediately before the use began; Problem; What if the rights holder had not wanted his or her work used in the manner that it was used in? Where are the penalties to discourage this type of behavior from happening again? What if the rights holder disagrees with what the Copyright office determines is "reasonable compensation"? No one size fits all approach works in the field of licensing, how one party wishes to use intellectual property will be different from another party and billed accordingly.

- Bar monetary relief for infringements of orphan works by eligible nonprofit educational institutions, museums, libraries, archives, or public broadcasters, for noncommercial educational, religious, or charitable purposes, provided the eligible entity promptly ceases the infringing use; No Problem

- Condition injunctive relief for infringement of orphan works by accounting for any harm the relief would cause the infringer due to its reliance on its eligibility for limitations on remedies; Problem; The infringer CHOOSE to take or use without permission there should be no relief for ones choice of action. This would be like granting an accomplice to murder relief because he/she didn't understand the consequences. This is neither fair nor equitable to the rights holder and places the infringer in a superior position over the rights holder because of the infringers chosen actions.

- Limit the scope of injunctions against the infringement of an orphan work if it is combined with "significant original expression" into the new work, provided the infringer pays reasonable compensation for past and future uses and provides attribution; Problem; Again the Copyright office wishes to limit what may be placed on the person who chooses to do wrong, assumes that the rights holder wishes to continue to do business with the entity that stole its property and believes that attribution is a cure all. There is already within copyright law a mechanism that does all of the proposals contained above it is one of the prongs of the "fair use doctrine" if

the infringing individual meets its test then that individual is not required to pay or provide anything to the rights holder.

- Allow a court to impose injunctive relief for the interpolation of an orphan work into a new derivative work, provided the harm to the owner-author is reputational in nature and not otherwise compensable; Problem; See above

- Condition the ability of state actors to enjoy limitations on injunctive relief upon their payment of any agreed-upon or court-ordered reasonable compensation; and Problem: State actors by their nature enjoy/have immunity.
- Explicitly preserve the ability of users to assert fair use for uses of orphan works. Already exists in present law.

All of the above is conditional on "orphan works", yet if we stopped allowing the companies and individuals who are creating these so call "orphan works" to continue to do so the proposed changes suggested by the Copyright Office would be superfluous.

Mass digitization

I see no issues with most of the Mass Digitization plan other than this:

- Require the CMO to collect and distribute royalties to rightsholders within a specified period and to conduct diligent searches for non-members for whom it has collected payments; Problem; The CMO should not enter into or agree to any use of any intellectual property for an entity for which it has no negotiating authority.

Regarding "Orphan Works" and any proposed legislation, if a name can be attributed to any work, than that work **IS NOT** an "orphan work" period. That person or their heirs most likely exist and have a right to just compensation for the use of their property.

- This from proposed legislation in 2008 - The Shawn Bentley Orphan Works Act of 2008, by unanimous consent. That bill would have limited remedies where the infringer had performed and documented a good faith reasonably diligent search before using the work; the infringing use of the work provided attribution to the copyright owner, if known; and the infringing user included

an appropriate symbol or notice in association with any public distribution, display, or use of the work. The legislation also would have required any search to use methods and resources that are reasonable and appropriate under the circumstances, including a search of Copyright Office records not available online and resources for which a charge or subscription may be imposed.

I have highlighted the issue that the internet search companies, individuals, social media networks and others have all striven to create. All of the entities I have listed go out of their way to remove or alter any identifying names or ownership, therefore creating, on purpose, an "Orphan Work", and now want relief from their actions.

I agree that there are problems with some of the works out there, but most of the issues that have been brought to the forefront are the mass usurping of the intellectual property, "for the good of society", or the "if it's on the internet it should be free", as well as numerous other beliefs out there that intellectual property does not belong to anyone.

1. **Limitation on Liability Model: The Copyright Office's Recommendation**
   a. Applicability to All Categories of Works

- The Copyright Office recognizes that there are special concerns with regard to pictorial, graphic, and sculptural works. Notably, advocates for illustrators and textile manufacturers have been persistent since 2006 in pointing out that, because their works are rarely made available to the public with copyright information attached – either for business or aesthetic reasons or because the information is nefariously stripped out – a search, no matter how diligent, is unlikely to be successful. Thus, they argue, orphan works legislation, if applied to commercial uses, will create a loophole for bad actors to exploit, without any benefit to visual arts creators and owners in terms of increased licensing. Furthermore, the Office believes that many features of the proposed legislation, such as the rigorous search standard and the Notice of Use provision, make it less likely that bad actors will find an orphan works limitation an attractive shield for their activities.

My own personal experience with my copyrighted material shows that bad actors and infringers due not check with the Copyright Office now, why would the proposed change make things any better, there are no statutory enhancements, in fact just the opposite has been proposed a weakening of the one thing that has any detrimental effect the statutory minimums as noted in the title.

- Additionally, developments since 2008 have helped to reduce the obstacles facing visual artists in an orphan works context – most notably the development of credible visual art registries and a major report and legislative proposal from the Copyright Office regarding a small claims mechanism. As orphan works legislation goes forward, the prospect of its enactment may spur increased support for and investment in visual arts registries.

My works are already registered with the Copyright Office, having to pay another registry makes no sense, either what I pay the U.S. Copyright Office is sufficient or it is not, and since the bad actors and infringers already do not check the Copyright Office why would they check elsewhere? Since the small claims mechanism is only a proposal at this time it has had no visible effect on the theft of my works. The Copyright Office notes that the storage of visual records on the PLUS registry is a nominal cost, but in this economic environment that cost can increase the cost of your license to the point that you are no longer competitive. From the PLUS registry "Basic PLUS Membership is free, and includes a free listing in the PLUS Registry (if you want one)", even the contributing membership which cost a "small annual contribution", cost not listed, would not have stopped what I point to as my real world experience, all my data and information being stripped from my intellectual property, what good would the registry be? I am not alone in the experiences I have related many, many photographers and artist experience what I have gone through, am going through only for them it is to a much greater extent. The internet is full of similar stories.

- In the unlikely but unfortunate event that a work of visual art is erroneously claimed by a user to be "orphaned" and a cognizable damages to the owner result, a small claims tribunal of the sort recommended by the Office should provide a suitable forum for hearing the resulting complaint. Photographers were one of the primary constituencies advocating for a small copyright claims system, and the Office believes that such a tribunal would be a particularly apt venue for determining whether a qualifying search was performed by the user, and other questions of compliance with the remedy limitation requirements of an orphan works solution.

I was one of the ones advocating for the small claims system, it was not proposed at the time, as a part of the "orphan works" issue. The scheme above does not take into account that most infringed upon visual work is not done so, "erroneously", but it is done intentionally.

The reason that many if not most visual artists advocated for the small claims system is the cost of litigation to enforce their copyrights is very expensive, and the bad actors know it.

There are websites out there that advocate the ignoring of copyrights to effect change or overload the system. I am not talking about having to enforce against small companies and individuals though I as well as many others have to do that as well, we are talking about the large companies with resources numbering in the hundreds of millions of dollars that are a major part of this. They know and fully understand that they can, for the most part, outlast and outspend a small businessperson like myself when it comes to litigation.

Again, there is no delineation between a work that is registered and protected and then is made orphan by the digital system through all of its machinations and intent, and a true orphan work, one that there is or was truly no identification method ever attached to the work to begin with.

a. Applicability to All Types of Uses and Users

- Several stakeholders have commented in the recent round of written and roundtable participation that they would be comfortable with orphan works legislation *only* if it applied solely to noncommercial uses (*e.g.*, preservation and education) by noncommercial users (*e.g.*, libraries, museums, archives, and nonprofit educational institutions). We appreciate that such a restriction might provide a level of comfort for rightsholders, but maintain that it is essential to include commercial users and uses for two primary reasons.

Simply put we as the rightsholders determine where and how our property is used as guaranteed by the Constitution of the United States. There has never been an exception for the illegal or unauthorized use of intellectual property and there should not be. A commercial entity will always include the cost of research and the cost of the license to obtain the use of the intellectual property in the cost of the sale of their goods. Why would any exception be granted to allow a commercial entity the ability to enrich itself over the creator, or make the creator subservient to the user?

- The first is that, simply put, nonprofit entities are not the only source of public benefit in the creative sector. To realize the full potential of an orphan works

> system, commercial users such as authors, musicians, documentarians, and others must be able to enjoy limited liability for their uses – post-diligent search – of orphan works. As one stakeholder put it, "most documentary and independent filmmakers are, of course, commercial users, but that does not diminish their important role in our democracy as journalists, storytellers, and historians documenting the American experience". The second reason is that in many cases a use that begins as noncommercial – say, a public television documentary – may become commercial – the selling of copies or streams of that documentary after it airs. In other words, while it might be legislatively feasible to limit orphan works legislation to noncommercial uses by noncommercial users, this distinction is quite likely to break down in practice.

Why in this explanation does it appear that the Copyright office has become an advocate or agent for commercial interests that will find it easier to state that they did a diligent search and after they are caught, then let the Copyright Office protect them. Why is it assumed that the person or entity whose work is to be deemed "Orphan" wants it used in the first place? At no time should anyone including the Copyright Office presume to think for another party, yet here we have the Copyright Office doing that for the betterment of a commercial entity.

Anyone in the world of filmmaking today understands the importance of a license, and the licensee understands that they need to be truthful when representing what they intend to do with someone else's intellectual property. In what the Copyright Office represents above the entity utilizing the intellectual property of another due to "orphan work" status which may be the case or not has been granted a right that is superior to the creator of the intellectual property. This will eventually lead to a very chilling effect and suppress the creators, not encourage them. All filmmakers or documentarians know that after a program has aired and they are approached to commercially license the product that they will need to get further permissions from other rights holders involved and they do so, it should not change because someone has used someone else's intellectual property and then when it has commercial value claim that they should be allowed limited liability when they broke basic copyright law to begin with, that of not getting permission for use from the rights holder.

This scheme will also breakdown and blur the clearly delineated lines between commercial use and non-commercial use. Once that genie is out of the bottle there will be no putting it back in again. This truly appears as if it is meant to remove all barriers between the two in favor of the commercial entity not the creator/rights holder.

a. Eligibility for Limitations on Remedies

i. Conditions

- Users must: (1) if sued for infringement, prove to the court by a preponderance of the evidence that they performed a good faith, qualifying search to locate and identify the owner of the infringed copyright before the use of the work began; (2) file a Notice of Use with the Copyright Office; (3) provide attribution to the legal owner of the copyright, if reasonable under the circumstances; (4) include a to-be-"orphan works" symbol with any public distribution, display, or performance of the work; (5) assert eligibility for such limitations in the initial pleading in any civil action involving the infringed work; and (6) state with particularity the basis for eligibility for the limitations during initial discovery disclosures.

First, I would like to point out number (3) above, if a person or entity is to "provide attribution to the legal owner of the copyright" how can the work even remotely be considered "Orphan"? In this day and age just about anyone or anything can be searched out and located via the internet. My own experience shows that organizations and individuals will go so far as to alter ownership, change the status of copyrighted works to place them in the public domain, and out and out claim ownership of images without permission. Any person or entity coming along after those acts have occurred could easily claim and probably prove that they did what would be considered a good faith effort.

Secondly, who appoints the Copyright Office the arbiter of another person's personal property and to engage in granting permission to use it? All this does is give the user a free pass, the Copyright Office is well aware that for every image, book, audio recording and so on out there that is copyrighted and identifiable there are hundreds more that are not, the ones that are are usually more expensive to license, the commercial entities/users all know this as well, therefor it is in the commercial/user entities best interest to find one not registered and seek the permission of a third party, to wit the Copyright Office, on an "Orphan works" claim rather than track down the actual owner and get permission. This smacks of an end run around the very heart of copyright.

By the way we already have a mechanism in the current copyright law that protects individuals or entities that are deceived in such a manner and that is called the "de minimis" defense that allows the individual to in essence plead that they meant no harm in what they were doing or did and the court to recognize it. There have been a number of decisions over the years that clearly point that that defense is used and has been upheld.

I can go on regarding the problems that exist in both the reality of what is being proposed and the reality of copyright in the real world. I do not want the importance of this issue to be lost in a long and boring recitation of facts and counter facts that have been argued for over 9 years. The real world implication of what is being propose here will take over two hundred years of copyright law and turn it on its ear.

I believe that there is a legitimate concern regarding true "orphan works", but not works that are artificially created or caused to be "orphan" and that has been going on intentionally by many individuals, companies and corporations. Too much has been made of the users and protection of the user, but what about how much is being and has been eroded from the creator. Yes, the copyright laws of this country are meant to foster and engender creation and as the Constitution states, "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Nowhere in that clause does it grant the user exclusive rights to use a creators work at all with or without permission.

At every juncture and major decision the Supreme Court of the United States has held the interest of the creator over that of the user, what has been proposed here moves to turn that on its head.

I believe that Congress can address the issue of 'Orphan Works" without rewriting the existing laws, and I do not believe that the Copyright Office should be granted the expansion of the authority it seeks, one need only look at what has occurred with the FCC to see where a grant of that authority will end up.

Only it will be worse, the small creators that do not have the financial means or cannot organize to create a union for lack of a better term will lose out and be left out of the discussion much like they have been here. Very few small business owners like myself can afford to travel to Washington D.C. to take part in the discussions that were held, we cannot afford to hire the lobbing firms that companies like Google, AP, Yahoo, Bing and many others hire to advocate their positions and the Copyright office takes their testimony and lists it as a stakeholder agency over the many hundreds of thousands of small business who have seen their livelihood either ended or eroded and feel that they no longer have a voice.

Maybe it is best if we remember what copyright ownership is,

- Subject to sections 107 through 122, ***the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:***

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission. Emphasis added.

I welcome the opportunity to further discuss this if you would like.

Very Respectfully,

Kevin E. Pack
K.E. Pack Watercolors
K.E. Pack Photography