I am writing to ask that you create policy to protect visual authors and their exclusive rights, and support a sustainable environment for professional authorship.

Licensing my rights is how I derive my business income and my copyrights are my economic assets. Copyright is also of the utmost importance to me for creative control of my work to protect its accuracy, integrity and authenticity. The 1976 Copyright Act has enabled me to sustain a professional career. However, I have experienced a substantial and growing loss of rights. I am also facing threats to the integrity and preservation of my lifetime body of work, which is my business inventory and also my legacy. My concerns and experiences are shared by my colleagues and by fellow visual artists throughout this country.

The biggest challenge to monetizing/licensing my work is to keep control of where it appears and who uses it, and to keep my copyright notice and contact information associated with the work. I routinely attach metadata to my electronic image files - that metadata is routinely erased by every website the image appears on. I require that my name and copyright information be included with the image by my client - they will do so, but often the image is appropriated by someone else and that information is cropped off. I always sign my work within the image area, essentially a watermark - but there are multiple companies with software and tutorials instructing users how to erase watermarks.

There is nothing I can do to prevent my work from being ‘orphaned’.

If the Copyright Office is sincere about protecting rights of creators, it should make it illegal to remove a watermark, illegal to remove metadata, illegal to remove copyright information, and also illegal to mass digitize any works not in the public domain without written permission from the creator, all with stiff financial penalties. The Copyright office should make all of its registered images searchable by image, not just by textual data. If Google and Bing can do it, so can the Copyright Office.

In addition, the suggestion of a text-based ‘Notice of Use’ of a work assumed to be ‘orphaned’ would be useless. I personally have several images titled ‘Stages of Acne’ - there are subtle differences among them and I have difficulty telling them apart solely from a text description. The only real protection for creators is to eliminate the concept of orphan works altogether. No work is an orphan, it all has been created by someone, even if a ‘potential user’ doesn’t know who it is.

I have registered much of my work with the US Copyright Office, and have submitted paper published versions, as well as electronic files for work unpublished at the time of registration. The Copyright Office has these records and all of the associated images. If there is to be a clearing house

for image searches, it should be the Copyright Office, with no additional fees or labor required of the

creator. It would be physically impossible for me to re-register, scan or photograph the hundreds of

images I have created over the years. In many cases, I no longer have the published work, or the

original art, even though I own the copyrights. A requirement to resubmit all of my work to a

different registry would be devastating to my ability to claim ownership and therefore license any

work in the future. Even the PLUS registry under development appears to be utilizing metadata and

watermarks - both identifiers that are useless currently to protect ownership information.

I am very troubled by the overall tone of the proposed language that ‘potential users’ rights

are equivalent to those of creators. They are not. If I as the creator do not want my image licensed

beyond the original use, re-used, re-purposed, re-imagined, re-combined, that is my prerogative. If I

want to sell an image once, then let it collect dust, that is my choice - it is not the right of the

‘potential user’ to claim otherwise. If I want to create an image, put it on my website, and never

license it at all, it is also my choice. ‘Potential users’ do not have rights to my images, I do. If a

‘potential user’, individual or company, wants to further their business by using imagery, and can’t

find an image they can legally use, then they can do what individuals and companies have done for

the decades before electronic file sharing - commission a new one, and keep illustrators working.

I'm writing to stress that for me, and for artists like me, copyright law is not an abstract

legal issue. Our copyrights are our assets. Licensing them is how we make our livings.

Except for speaking fees, this has been my only source of income since I was 17.

Although it took me several years of struggle to develop a style and create a demand

for that style in the marketplace, I have thrived since the age of 23. Unfortunately, I

fear that many of the changes now being proposed by orphan works lobbyists would

end that kind of success for me and foreclose it to younger artists.

Sincerely,
Keirsty macDonald