COBALT visualizing biomedicine

caroline@costudios.net
www.cobalt-studios.com
(310) 612-1012
Caroline O'Driscoll
214 East Dryden Street #8
Glendale, CA 91207

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Maria A. Pallante
Register of Copyrights and Director
U.S. Copyright Office

Re: Opposition to recommendations made in the 2015 "Orphan Works" Report

As an artist and a small business owner I'm writing about the "2015 Orphan Works and Mass Digitization Report." I strongly oppose the recommendation to adopt a modified version of the 2008 Shawn Bentley Act. The Act is written so broadly that is does not confine itself to orphan works. Instead, it proposes radically new copyright law which would legalize infringement of visual art, including my work.

Under the term orphan works, the report recommends an enormous burden be placed on small business owners. The cost, time, and effort required to register artwork, and to legally pursue every infringement where an infringer claims they conducted a "reasonably diligent search" would put me out of business. Additionally, if any of my work is unregistered, and/or all infringement cases are treated as unregistered, an infringer is only liable for a court-determined "reasonable royalty". In those cases I would have to hire a contingency lawyer, which I would be unlikely to find because the cost of a lawsuit would likely far outweigh any recovery. I simply do not have the resources for a legal pursuit any other way. Should there be any retroactivity in changes to existing copyright law it would effectively repeal protections of the 1976 Copyright Act, jeopardizing work I have created under existing copyright law. I would have to legally pursue any infringement there as well, which I believe to be extremely unjust.

There is absolutely no need for a repeat of the Bentley Act and the other proposals put forth in this report. The statement that orphan works are "perhaps the single greatest impediment to creating new works" is completely ridiculous. It is simply another excuse not to fairly compensate visual artists for their work. If this report truly addressed the orphan works issue, there would be precise definitions of orphan works, with specific steps that must be taken by a user before infringing the work, specific statements that the work is shown to be no longer managed by a rights-holder, elimination of the unrestricted use in "transformative" work, restriction of the use to non-profit, and a full inclusion of remedies for infringement to rights-holders with penalties to infringers.

Sincerely,

Caroline O'Driscoll, M.S.
Medical Illustrator and Scientific Graphic Designer