I vehemently disagree with the claim at the start of the Orphan Works and Mass Digitization document that orphan works are "perhaps the single greatest impediment to creating new works." That is because the inability to use other people's copyrighted works is not the impediment to creating new works. The lack of creativity is that impediment. The desire to make easy money without doing any more work than collecting and using the works of others is an impediment to create new works.

The biggest issue with copyright orphan legislation is that it is a problem of very narrow scope and the only solutions being offered are broad and onerous for many of the creative people that will be impacted by the legislation. There are far more inappropriate uses for copyright orphans than valid uses that serve the public at large. The fact that only about a thousand requests have been made to countries requiring a license to use copyright orphans is an indication that the "orphan problem" isn't that big. A lot of people simply want to freely use whatever they find on the internet.

The easiest way to pass copyright orphan legislation is to limit it to the specific areas that provide a public service. Most of that involves historical projects and mass digitization. Most visual artists aren't opposed to those limited uses. What they're concerned about is that the legislation is not limited to those valid uses. Visual artists worry about unscrupulous clipart companies farming images from all over the internet and selling them in packages. They're worried about their works being pilfered and used in advertising and website graphics in lieu of companies paying for new work. These are things that happen under existing copyright law, but the threat of penalties keeps it in check. Remove the penalties and the problem only gets worse.

The vast majority of images at risk of being inappropriately exploited for profit by bad actors are personal photos. Photos of people are protected by privacy laws. Orphan copyright law will essentially make all other photos public domain from any practical standard. The photos won't be entered into any database because they were never meant to be commercial. Due to the unpredictable way that images are propagated across the internet, any disreputable commercial user can simply say they found the image through a search and couldn't find any contact information. By the time the image owner finds the commercial use, there will be no trace left on the infringer's computer of how the image was found (that's assuming the infringer isn't sophisticated enough to use a variety of means to ensure that the stolen image is orphaned).

That again gets back to defining in the legislation what uses are appropriate for orphaned works and which aren't. That small effort will make the legislation more palatable