NAPA COUNTY HISTORICAL SOCIETY

July 22, 2015

Maria Pallante
Register of Copyrights
Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

Dear Ms. Pallante:

I write to you today to convey my opposition to the new Copyright Act proposed by the US Copyright Office for Congressional approval. I understand that though there is no official bill yet, if the proposals currently in circulation are put into effect it could prove detrimental and devastating. The recommendations hurt not only archival institutions such as Napa County Historical Society (NCHS), but all creators – including artists, writers, and photographers.

In short, the proposed orphan works and mass digitization solutions will do nothing to help archivists provide access to our shared cultural heritage. *They may, in fact, hurt these efforts.* Currently archivists rely on fair use to digitize their collections. Even if this proposal were to become law, they will have to continue to rely on fair use because the proposal fails to present viable alternatives for archivists. Although a fair use "savings clause" is proposed, the danger is that many may consider the Copyright Office's proposed solutions represent the extent of acceptable legal practice.

The proper solution to the orphan works and mass digitization program is a simple one: The cost of combatting the problems caused by the lack of formalities in copyright and its increasing duration should be borne by those who benefit from copyright's grant of exclusive privileges. Placing part of the burden of preventing works from becoming orphans on rights holders by requiring them to make their intentions known in a registry (and then making a search of that registry the standard for a diligent search) is a much more reasonable and balanced solution than those discussed in the report. The cost of search should be low enough that repositories would be more willing to make our unpublished heritage available online. As a consequence, copyright law would no longer impede - but instead foster - historical research.

Furthermore, the Copyright Office suggests that even where fair use may be a defense, "many will choose to forego use of the work entirely rather than risk the prospect of expensive litigation." The Copyright Office fails to recognize that its proposed burdensome legislation that requires extremely time and resource intensive searches as well as notice of use requirements, could also cause users to forego the use of the work. Additionally, where legislation appears overly complicated, while institutions and corporations may make use of it, individual users may find compliance difficult.

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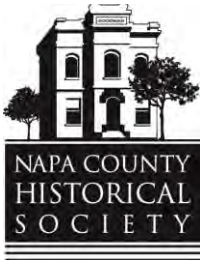

The order to pay reasonable compensation does not apply to nonprofit educational institutions, museums, libraries, archives or public broadcasting entities where 1) the infringement was performed without any purpose of direct or indirect commercial advantage; 2) the infringement was primarily education, religious or charitable in nature; and 3) the infringer ceases to use the work after receiving notice of the claim of infringement and having opportunity to conduct a good faith investigation of the claim.

The draft legislation has significant problems including overly burdensome and complicated requirements. The requirements for a reasonably diligent search and limitations on injunctions are highly problematic. Finally, the notice of use provision is as poisonous now as it was in 2008. If it is included in an orphan works provision, it will ensure that the provision is rarely, if ever, used.

With sincere regards,

Nancy E. Levenberg, Executive Director, and Alexandria Brown, Research Librarian

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