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RE: Notice of Inquiry, Copyright Office, Library of Congress  
Copyright Protection for Certain Visual Works (Docket No. 2015-01)

Dear Ms. Maria Pallante and Copyright Office Staff:

I appreciate the opportunity to reply to comments generated by the first Visual Arts Notice of Inquiry. As a self-employed board certified medical illustrator and practicing veterinarian, I support all the creators who have voiced their concerns over legislation that seeks to destroy copyright law and their Constitutional rights, as well as the submission by the Illustrators Partnership surrounding the Constitutional issues raised by proposed orphan works legislation.

**Article 1, Section 8 of the Constitution grants artists the exclusive rights to our work.** I understand that those rights cannot be abridged except by a Constitutional amendment. Yet the orphan works proposals the Copyright Office has recommended to Congress *would* abridge those rights. I could never again enjoy the exclusive right to any work I create if anybody anywhere is allowed to exploit it at any time, for any reason (except fair use), without my knowledge or consent. Because "orphan works" legislation would not be limited to true orphaned work, it would convert every artist's exclusive right to a non-exclusive right. I understand that Congress cannot legally alter the Constitution by means of a statute law.

**The Fifth Amendment to the Constitution states that no citizen's private property "shall" be taken by the government for public use without "just compensation."** As stated in Article 1, Section 8, the work I create is my private property. If government lacks the right to confiscate it without just compensation, how can that right be granted en masse to the public?

**The logic behind the Constitution's Copyright Clause should be self-evident:** no individual can enter into any agreement to sell or license property - or dispose of it in any other fashion - unless he or she owns it. To make the public part owner of every citizen's intellectual property would make all contracts regarding the disposition of that property essentially meaningless. Orphan works infringements would therefore nullify my private business contracts with my clients, as well as the agreements between millions of creators and the clients they've licensed work to.

**The US government would be the "interfering party" engaged in tortious interference.** Legislative immunity would, of course, exempt lawmakers from lawsuits for tortious interference. But, by what right can they permit the public to

interfere en masse with the contractual business affairs of each other on the slender premise that certain infringers may be ignorant of the economic or personal harm they're causing to strangers?

Supporters of the proposed legislation have stated that "good faith" infringers must be given "certainty" that if their infringements are detected, they will not be subject to penalties. And I agree that certainty in the markets is essential to the promotion of "Science and useful arts." ***However, the current copyright system provides certainty: where creators exercise exclusive control over their rights and enter into voluntary agreements with known clients there is certainty all around.*** All parties understand the terms they've agreed to and with whom; and all parties are in a position to monitor mutual compliance.

By contrast, any legislation that voids an author's exclusive right would make it impossible for either creators or their clients to know who, where, or on what terms any particular work is, has been, or will be used by others. This would inflict total chaos in commercial markets. It would not only cause economic harm to creators, but to their clients across a broad swath of the economy.

On pages 50-51 of its 2015 Report on Orphan Works and Mass Digitization, the Copyright Office states that it "takes [such] concerns seriously, but does not believe that they outweigh the benefits of comprehensive orphan works legislation..."

These certainly are NOT benefits for creators, who would lose their rights, but for infringers who would gain those rights. This is a sure way to squelch creation, innovation, and the economy rather than fuel it. Who wants to work for free? Who can? And let's be frank: there are very few "good faith" infringers. But, there are plenty of willful infringers - individuals and corporations alike - that will hide under the guise of "good faith" and, therefore, reap the proposed "benefits" of orphan works legislation. The "benefits" being a change in copyright law that allows stealing to be legal. What a fantastic, unethical new business model! If this legislation succeeds, our moral integrity as a society has been dangerously violated.

For the sake of guaranteeing certainty to infringers in the secondary rights market, the proposed legislation would create perpetual uncertainty for creators and their clients in the country's primary markets. How is that fair and legal? This would be a total reversal of the principle of copyright as expressed in Article 1, Section 8 of the Constitution. And a Constitutional provision cannot be reversed legally except by means of a Constitutional amendment.

Thank you again for reading my comments and considering my concerns.

Sincerely,



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