

September 30, 2015

Maria Pallante, Register of Copyrights
US Copyright Office
101 Independence Ave. S.E.
Washington, DC 20559-6000

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

Dear Ms. Pallante and Copyright Office Staff,

Thank you for the opportunity to reply to the initial comments generated by the Visual Arts Notice of Inquiry. I am a professional medical illustrator and I support the comments submitted by the Illustrators Partnership regarding the Constitutional issues raised by the proposed orphan works legislation.

The orphan works proposals the Copyright Office has recommended to Congress as I understand it would abridge my rights to the illustrations I prepare. My illustrations are often used in education without a direct link to make it easy to contact me. If they are placed on a website they can be cut and pasted into unauthorized products without my knowledge and become "orphans" if no one took the time to search for the source. I could not control my work 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. That would be a fundamental change to a Constitutional provision and I do not think Congress can legally alter the Constitution by means of a statute law.

Proponents 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." It is the current copyright system that 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.

Any legislation that voids an author's exclusive right would make it impossible for either creators or their clients to know who or where a particular work will be used by others. It would not only cause economic harm to creators, but to their clients across a broad swath of the economy. 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.

Thank you again,

Marcia Williams, MSMI
marcia@marciawilliams.com