

February 26, 2013

Re: Orphan Works and Mass Digitization
(FR Doc. 2012-25932; Copyright Office Docket Number 2012-12)

These comments are submitted in reply to the Notice of Inquiry by the U.S. Copyright Office, “Orphan Works and Mass Digitization,” FR Doc. 2012-25932, Copyright Office Docket Number 2012-12, published at 77 Federal Register 64555-64561 (October 22, 2012), and the initial comments submitted to the Copyright Office in response to that Notice of Inquiry.

I endorse the comments submitted to the Copyright Office by the National Writers Union.

As a working writer, I oppose any “orphan works” legislation to permit the use of my work without my permission, merely on the basis that someone claims they were unable to identify or locate me or the person or entity they thought held certain rights to my work. For writers outside the U.S., such a law would violate rights guaranteed under the Berne Convention and many other treaties.

Any such legislation would violate my economic and moral rights.

I am especially concerned that proposals for “orphan works” legislation fail to take into consideration the realities of working writers’ lives, and the many difficulties we face in enforcing our rights and earning a living from our writing. I believe work to which I hold some or all rights would be likely to be deemed “orphaned,” despite the fact I am still attempting to earn money from it. Copies made available under an “orphan works” law – even, and perhaps especially, if they are made available for free by a noncommercial entity – would unfairly compete with, and destroy the value of, my rights.

Proposals for “orphan works” legislation ignore the impracticality and cost in time and fees, especially for freelance writers of short works, of registering each of our works with the Copyright Office or with some new private registry. They ignore the ways writers are exploiting and generating revenues from works that are likely to be deemed “orphaned,” including through self-publication, digital publication, and on the Web. And they ignore the impact of any U.S. “orphan works” law on the livelihoods of writers around the world, whose work may be published in the U.S. (including on U.S. Web servers), but who are likely to learn about a U.S. “orphan works” law or to be able without great difficulty, if at all, to protect their work against being deemed “orphaned.”

Before the Copyright Office or Congress considers any “orphan works” legislation, I urge you to hold hearings to learn from writers and other creators about how such a law would affect us. This issue is important to me and I ask that you provide me a written response as soon as possible.

Sincerely,

James Patterson
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