I am a professional artist and art educator and am submitting comment in response to the Copyright Office's Notice of Inquiry on Copyright Protection for Certain Visual Works. It is with serious concern that I learned, just within this week, of the fact that Congress has, for about a year, quietly been holding hearings for the drafting of a brand new US Copyright Act and that a core feature of the proposed new law is the return of Orphan Works. Similar laws such as the proposed "Orphan Works Act" have failed in Congress more than once, probably because artists have voiced strong opposition because such a law would negatively impact their ability not only to make a living from their work on their own terms, but also, more importantly, negatively impact the ability to retain the rights to their own work. After reading through the *Notice of Inquiry* and scanning the much larger *2015 Orphan Works and Mass Digitization Report*, it appears to me that this newest permutation under consideration is no better than its failed predecessors, for mostly the same reasons, and in some ways, is far less protective of our rights as artists than the laws currently in effect. Further, it is my understanding that this law would not attach to existing copyright protections to artists, but would replace all now-existing copyright law. It is obvious to me that I have to voice my objection to this proposal, especially regarding the issue of the return of "Orphan Works".

As I have indicated above, I have been a professional artist for about 40 years, including working for a while as a free-lance graphic artist. The overarching heart of my work over as an artist is being a painter. I hold a Bachelor's degree in Studio Art and a Master of Fine Art degree. Additionally I have supplemented my work in the studio with working as an art educator since the 1970s and continue to do so presently as an Adjunct Professor of Art at a local community college. I also hold juried membership in several fine art organizations locally and nationally.

My primary concern includes the fact that, for me, copyright law is not an abstract legal issue, but the very basis upon which my art and its attendant business is built. It appears that the proposed "Orphan Works Act" would negatively affect my primary focus – my work (paintings and any licensing product agreements- *my* copyrights - I make) and how my work is representative of whom I am as an artist. I have had works accepted and awarded at innumerable national exhibitions and I sell my work on a regular basis. It is this last point that connects to my serious reservations of what I understand to be the core of this proposed new law.

I have worked hard over the years to make sure that my work is a vehicle for my artistic "voice" and "brand" – my very identity of myself as an artist. I am very skeptical about what I read regarding this proposed overhaul to current copyright laws because I see it as a threat that undermines a lifetime of work in this regard. The work I create in my studio is mine from concept to sale and beyond, and it is not an inexpensive thing to produce because I use archival quality materials. I do not work collaboratively, nor does anyone else purchase the materials I use in my work for me. I work hard to earn the money to afford them. I believe that if it is worth spending my creative energy to make the work, it is worth doing well with the finest materials I can afford, for the sake not only of the quality of my work, but also for the purchaser of the work. The threat I sense in this new copyright law proposal is that it both reinvents the definitions of authorship and ownership and transfers some of the rights of the author/artist to the owner/purchaser of the work. Ownership and authorship are two different things and always will be. As I see it, both my work and I should always be "first" copyright protected simply because I am the author of it. This is a basic right that has not been earned by any other party.

Consider, for example, that just because the Sistine Chapel ceiling was commissioned and is

owned by the Vatican, and just because its restoration was paid for by the Japanese does not, in either case, transfer the ceiling's authorship to either of these two parties and away from Michelangelo Buonarotti. This new law would erode this distinction based upon a "good faith" argument by an infringer or the power of money.

As I understand what I have read, under this sweeping replacement of the present copyright law, my Constitutional rights regarding the exclusive control over my own work – something that should be a virtual no-brainer, would be essentially voided. In 1971 had a sold painting stolen within 24 hours of delivery to the paying collector. In 1974 my intellectual property was stolen when I answered a classified ad in the newspaper for a free-lance graphics job. The art director asked if hold my work overnight for "further consideration and review". I did not get the job, but within two weeks, I found it used in an ad campaign of a large (now extinct) department store splashed across major city newspapers. When I called on that same art director to inquire about the turn of events, he would only say, in a cavalier manner, that the decision was made to not work with free-lance artists after all, and that he did not consider my work's theme and style "very similar at all" to the work his firm published for the department store's ad campaign. I still recall how violated I felt and, more importantly, powerless to do anything about it. Laws changed not long afterward and I became less vulnerable to this sort of piracy of my work. I view the proposed overhaul of the existing law as a step backwards in time to 1974. Infringement of my work is then informs my read of how this proposed copyright law could easily rob me of an income from a body of work that I have built over a lifetime and that I have worked hard to earn for myself.

It is a poorly guarded secret that the Federal government is not good at administering electronic programs such as this, and the sheer inundation of images "out there" in this digital age makes "registering" them all in any meaningful – and more importantly to the artists – affordable way is intimidating. This, I assume, is the reason for auxiliary companies that would do so instead of the Copyright Office. While it is laudable that there is some attempt by the Copyright Office to bring both the process and the need for it into this digital age to a place that at least tries to keep pace with the unique problems all of this presents, my fear is that the price of such "registration" of my work with outside companies will be for me, as an artist, cost-prohibitive.

It appears to me that I would be pressured to register my work with commercial registries (the cost of this "service" yet to be determined), and my work would be considered "orphaned" if I failed to do so. This would effectively "privilege" the public's "right" to use my work by effectively undermining my rights as the its author. This would result in making my newly reclassified as "orphaned" work available for commercial infringement by "good faith" pirates who would be free to use and/or alter my work without my permission or payment of royalties to me because they could argue that they were unable to find the author of the work to make these remunerative arrangements after really, really trying very hard to do so. I'm not buying this one little bit. This begs the question of what criteria would need to be met to actually prove beyond reasonable doubt that all reasonable means to find the author of the "appropriated" work were exhausted, and who's doing the checking? What happened to my rights? Once my work somehow is found to be considered "available" for the purposes of infringer(s), my work might be somewhat reworked for commercial purposes – or not - and the pirated work, based on and/or directly "appropriated" (a.k.a. "stolen") and repurposed for the profit of the infringer(s). To make matters even worse, this proposed new copyright law further appears to allow infringers to do all of this and their own names and claim authorship without consequences. To see this as right on any level is just wrong.

In this digital age, it is not uncommon for persons familiar with graphics software to replace pixels in a work of art that has been digitized. This includes the digital replacement of a signature by the original author of the art and followed up with the later claim to be a “good faith” user. This is both unethical, immoral, and the last time I checked, theft is a crime all over the world – including that of art. In this age of digital images and artist websites (an expensive process for the artist, who is the one in the food chain of images least likely able to afford to subsequently have his/her artwork used for profit through theft) and gallery websites in large numbers, the exposure that is afforded to both artists and galleries by the Internet is a double-edged sword, to be sure, because the exposure makes the images and the artists behind them, vulnerable. It will become, for my purposes, a case of catch them if you can, then prove they are in the wrong. This does nothing but take more of my money to address what I see as a crime someone else committed. In this game, nobody wins but lawyers.

It appears that virtually all visual art: drawings, paintings, sketches, photos, etc.; past, present and future; published and unpublished; domestic and foreign are targeted by this proposed overhaul of the copyright law. One way or another, many-to-most of these sorts of works find their way to the Internet, even if the artist/author of the work was not the one to post it or even be aware of its posting. The concept of having to deal with the ramifications of having my work considered “orphaned” and therefore offered less protected under the proposed copyright law is a frightening prospect and a frightening déjà vu moment for me. In a more recent incident I emphatically told a person (in person) to take down the use of my image that he acquired from my then-New York City gallery’s exhibition website, which he felt was his for the taking to use to illustrate a poem he wrote and placed on his website/blog. I had sent the gallery the image for the exclusive use of the gallery to further my work, not for this individual to appropriate and publish without either my permission or credit me with the work on his website/blog. He knew I could be contacted through the gallery, but simply disregarded the laws currently on the books and couldn’t be bothered. Perhaps he believed the erroneous concept that a work of art loses value after it is published, so where’s the problem? Easily acquired does not equal valueless in this digital age. He was totally wrong. The image is mine – made with materials I bought, using my time and expertise, my expense in framing and all of the other expenses that goes with putting work into a New York City gallery, the image taken with a camera I bought, translated for the gallery with a computer and software I bought, yet he felt it was fine to just use it without asking. Really? So much for a “good faith” user’s plea either of ignorance of the law or inability to locate the artist! I don’t see this situation improving for me or other artists under the new law in any way except becoming even more “blessed” by the system, especially if the work is deemed to be “orphaned” simply because it is not “registered” so the artist could not be found. I just find it hard to believe this will improve with the proposed new copyright law. When his offending posting came to my attention, I told (not asked) the individual to take it down immediately and to not try it again. I enlightened him that it was against the law and that he was now on my “radar screen”. Perhaps it was something about the quiet rage that translated in the delivery of that demand on the night of the opening reception, but he image came down within a few days. Score “one” for the artist! It is my understanding of what I read that this proposed new copyright law would go beyond even the private rogue thief and go even further to allow for the mass digitization of my intellectual property by and/or for corporate interests. I have spoken about how that felt about that sort of scenario early during my art career. It still is still offensive and frustrating to me. Does this color how I see this proposed clearinghouse of images? Absolutely! And the color is dark, very dark.

Additionally, I note that if this proposal becomes law, it would be as though the expense of the website to the artist, both in its establishment and maintenance, effectively puts the artist in the dubious position of knowing that they are paying for the easy access of someone else to the

theft of their artwork and income potential, and in the knowledge that there are fewer protections under the law of their online images than they had under the currently in-place copyright law. It is important to me and my business that *I* am the one who determines voluntarily how and by whom my work is used – published or not. It is important to note here that, contrary to the proffered argument put forth by proponents of this proposed law, my work does not lose its value simply because it is published. I also note that *everything* I create is part of *my* business inventory – *not* someone else's – posted and/or sold or not. Especially in this digital age, my personal inventory of my work is more important than perhaps at any other time in art history, and I value it as such, even though others look upon it as theirs for the taking – literally - because it is seen as being of little value. If that were true, why would they want to use it?

Another part of this new copyright law proposal that bothers me is the Extended Collective Licensing provision, which appears to simply be a form of (or other name for) socialized licensing that would replace voluntary business agreements between myself and my clients and collectors. This cuts my income potential from my own images drastically and should be considered theft.

I asked myself why this ill-conceived law was even being considered. What I have found out along the way was that the history of this proposed copyright "reform" includes the fact that its genesis is large Internet firms and legal scholars aligned to them, whose business models involve supplying the public with access to other people's copyrighted work, and whose problem has been how to do this legally and *without paying artists*. At the end of the day, it really is all about the money! As I understand it, if any part of this is true, these "reforms" would allow these firms to stock their databases with my pictures, and those of other artists. This would happen either by forcing us to hand over our images to them as "registered" works, or by harvesting unregistered works as orphans and copyrighting them in their own names as "derivative works". While I "get" that "registered" works would have an electronic paper trail, it does not mean that they can't be modified and then used by second or third parties – innocent or not - after artists' names have been removed from any connection with the image(s) and then argue that they had no way of finding the originator of the pirated work(s).

Evidently, based upon what I read, by your Copyright Office's own admission, it acknowledges that this new law will cause certain and special problems for visual artists but somehow judges that it would still be OK for artists to be subject to an "orphaned works" law. With all due respect, this just makes no common sense at all. It is intuitively obvious to me that somewhere along the line there is pressure being applied to the Copyright Office in this matter by those who stand to gain in a hand-in-glove arrangement via this proposed law. The proposed establishment of a Copyright Small Claims Court to handle the flood of lawsuits apparently expected as a result of "orphan" works infringements speaks volumes about how smoothly this is expected to roll out in real time. It is a tacit admission by your office that it is inevitable that disputes are bound to occur. So why in the world is this proposal even being seriously be considered by the Copyright Office and not filed under the "back to the drawing board" category?

In summary, I vehemently oppose this proposed overhaul of the copyright law, which will effectively throw out the baby with the bath water. I say that our nation's creative community deserves better than this, which for me, include flashbacks of my ugly experiences of 1971 and 1974.