

September 28, 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. As a working artist, graphic designer and illustrator, I support the comments submitted by the Illustrators Partnership regarding the Constitutional issues raised by the proposed orphan works legislation as well as a GREAT many of the comments submitted by the numerous working artists who wrote in concerned about the Orphan Works Bill being passed.

[Article 1, Section 8](#) of the Constitution grants artists the exclusive rights to our work. It is my understanding that those

rights cannot be abridged except by a Constitutional amendment, yet the orphan works proposals the Copyright Office has recommended to Congress *would* indeed 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. This simply cannot be allowed. Because "orphan works" legislation would not be limited to true orphaned work, it would in fact 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.

[The Fifth Amendment](#) to the Constitution creates another serious conflict should the Orphan Works bill be passed and enforced. It states that no citizen's private property "shall" be taken by the government for public use without "just compensation." The work I create is my private property - Article I, Section 8 has established that. If government lacks the right to confiscate it without just compensation, I do not see how the government can then grant that right 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 the property. To make the public 'part owner' of each and every citizen's intellectual property, which, in fact, is effectively what the proposed Orphan Works legislation

would do, would make all contracts regarding the disposition of that property essentially meaningless. Such Orphan works infringements would actually nullify millions of private business contracts between artists and the clients they've licensed work to.

**When individuals knowingly interfere with the contracts or business affairs of others, it's called tortious interference and under the law there's a remedy for that. But here the interfering party would be the US government.** Legislative immunity would, of course, exempt lawmakers from lawsuits for tortious interference, but by what right can they permit members of 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?

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." Yet 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, where or on what terms any particular work is, has been or will be used by others. All artists and clients would then have to spend extensive time monitoring *everything everywhere* to uncover any misuse of intellectual property. 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..."

Benefits? Benefits for whom? Certainly will be no benefits for artists, who would lose their rights. The infringers would be the ones to gain, and these infringers will come out of the woodwork by the thousands to take advantage of all art creators and their newly orphaned creations.

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. This would be a total reversal of the principle of copyright as expressed in Article 1, Section 8 of the Constitution;

and with all due respect, a Constitutional provision cannot be reversed legally except by means of a Constitutional amendment.

Thank you again for this opportunity to express my thoughts on the proposed changes to the copyright law. Our current copyright law works - and the changes proposed by the Orphan Works bill are simply unconstitutional.

Sincerely,

Greg Voth

I'd like to tell you about the damage that the Orphaned Works Bill would cause in my life.

As a 63 year old illustrator, graphic designer and image creator who's been an artist for decades, I have created hundreds of images for magazines and newspapers, CD and record covers, as well as art for online and advertising use. I survived as a full-time illustrator on commissioned jobs and by selling the reproduction rights to existing artwork all that time. With fewer commissioned works in this day of stock illustration and the dominance of photography, I rely even more than before on selling rights to my existing library of illustrated images over and over, when, for how much and to whom I choose. All my artwork is under my control.

Sure, everyone *thinks* they're an 'image creator' these days, using existing stock photos and art to generate graphics. Under ever tightening deadlines, designers spend less and less time conceptualizing ideas and crafting unique imagery, pushed to juggle existing images rather than working with an illustrator to create a specialized product. Spoiled by the availability of stock photography and stock art, many clients care less about originality than they do the bottom line. This is what makes our illustration work uniquely ours - we bring the originality to the client's doorstep.

While an illustration might initially cost more than using a stock photograph or stock art image, once you add in the usage rights requested, original image cost settles surprisingly in the same ballpark as stock usage. By re-selling the rights to my existing images, with few exceptions, I can compete head to head with images from stock houses. These days it pays to think globally regarding our illustrated projects and our backlog of original works remain a vital source of income.

As an illustrator and graphic designer *since 1976*, I've formally copyrighted a fair amount of my work but by no means all of it, since the copyright is considered mine and informally copyrighted upon creation according to the Copyright Act of 1976 without the need to register it. Many of my illustrations for publications include only a credit line linking the art to me. In dozens of instances this credit line was omitted and my signature cropped out, effectively 'orphaning' the artwork. With many of these magazines no longer in print, my art could easily be scanned and re-used with a half-hearted 'good faith' search by a less than honorable infringer.

This isn't just about a few uncredited illustrations found in the bottom of a box at a flea market. It's an industry waiting in the wings to steal our work for great commercial gain if a quick Google search results don't immediately provide the identity of the creator of a piece of art. In this day of digital manipulation, any work can be altered, imagery changed and an artist's name removed, effectively 'orphaning' work for improper use and stealing without permission.

The Orphaned Works Bill has been defeated twice before. I've expressed opposition it each time. If this bill is passed, it will devastate my working career as an illustrator. I will be pressured to register *all of my work* (past, present and future sketches, art and photos) with an ever growing number of clearance houses globally to insure people will know a specific piece of art it's mine, creating a bazaar 'opt out' procedure that will cost me thousands just to protect what I already own. An infringer only need to conduct a 'good faith' search to find me, putting the burden of proof on me. I will be *forced* to take advantage of *every means* to make sure I can be located and my art viewed and sourced as mine.

ll of my artwork *will have to be published* and viewable in searchable databases for any potential user to locate me. The burden remains mine. I don't want everyone to see my art and potentially steal my concepts and technique. I choose what the public sees of my work to keep it fresh and my work desirable. This so-called 'Next Great Copyright Act' would make it *far too easy* for abusers to create derivative artworks from my art and allow these 'artists' to copyright such works in their own names. *My ink smearing technique took me years to originate and perfect...* and, damn it, it's mine, as are my watercolors, sketches, photos and other graphics, a lifetime of creative work.

It is my Constitutional right to exclusively control my work. I choose who uses it and for how much. The Orphaned Works Act will 'privilege' the public's right to use my work. Don't think for one second that this is just about students adding art to reports, dozens of art houses will spring up from passage of this disastrous bill, selling what they consider 'orphaned' art for high prices. There is a profit motive just under the surface of this 'improved' copyright law. That profit will not be mine.

The intellectuals who surmise that 'all art belongs to the society it's created within' should try generating unique imagery for decades only to have it stripped away with the

passage of such a far reaching, life altering and career damaging bill. Say NO to support of the Orphan Works bill.

Greg Voth

Illustrator and Graphic Designer

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