

To Whom It May Concern:

My name is Emily Holland and I am a copyright researcher for the National Portrait Gallery. I am writing this letter in support of a solution for "Orphan Works." I have encountered several difficulties, both in works in which I have located a copyright holder and in those that I have not. Making "Orphan Works" available to the public would be a great help to the National Portrait Gallery.

Despite the difficulties arising from the research itself, the greatest problem I have encountered is that there are no documented steps one must follow in order to make an "Orphan Work" acceptable for use. As of right now, the research department and the Rights and Reproductions department have agreed to a "good faith search" policy. This consists of first running the artist through the Artist Right's Society search engine and VEGA's search engine. If neither of those options leads to any results, the next step is to complete a web search. A web search, depending on media, occasionally yields positive results, but that is only occasionally. After this, if a copyright has not been found, solution scenarios begin to run dry. In some cases, the artist's work has been featured in a book, but certainly not in all cases. If such a work is still in print (many of these books are not), it possibly might contain copyright information. Sometimes, other museums and galleries might own works by the artist in question, but they often face a similar dilemma concerning the artist. When the above efforts yield nothing, as is so often the case, can we assume we have conducted a "good faith search"? We can not be sure.

Due to our uncertain status after such an investigation, we are still compelled not to reproduce these images on our website. Until our institution reopens in the summer of 2006, our web products are our face to the public and with all the problems attached to proper copyright security, our works cannot be seen on the web. If our works can not be seen, *how can we generate public interest in our collection?* Further, this means *our work is unavailable to scholars*, especially those outside of the Washington, DC area.

The National Portrait Gallery has works that span the forms of media including painting, sculpture, printed work, drawing and photography. All of these fields represent unique and equally frustrating copyright issues. Whereas paintings and items of sculpture have copyrights which are difficult to discern at times because of age, photography is more difficult in that the art contains within it the capacity to produce unlimited quantities of an image. It is almost impossible to know if a single image carries the copyright, or if the copyright is an arc over the artist's entire collection. Prints and drawings are difficult to investigate.

These problems exist for almost all standard copyright research and this discussion in no way touches such outstanding circumstances as a work like James Montgomery Flagg's famous "I Want You!" poster of Uncle Sam. Who does this work belong to? There were copyrights on some of Flagg's work during his life, and his widow is still alive, but if he produced his work for the United States War Department, does this mean that his own copyright does not apply? Does the government own the rights to the works he produced while in government service? And if so, who is the point of contact? The contact for government owned works seems to be the Library of Congress, but unless a museum is willing to pay the research fee, there is no way to have

the question answered. This, like so very, very many other questions pertaining to current copyright research seems unanswerable.

This work is quite frustrating and at other times impossible because there is no defined set of parameters within which to investigate copywritten images and to determine whether or not such images may be used. What defines a “good faith search”? How much work needs to be done in order to determine whether or not a work is actually an “Orphan”? These standards need to be set, documented and distributed. Not knowing the answers to these questions detracts from the overall accessibility of the National Portrait Gallery, both in the public and within the museum community.

Thank you for your time. I hope that the matter of “Orphan Works” can be solved in a timely fashion and that the museum community will soon benefit from the decision of the United States Copyright Office.

Sincerely,

Emily Holland  
CEROS Researcher  
National Portrait Gallery