Re: Copyright Protection for Certain Visual Works (Docket Number 2015-01)

I am writing to express concern about potential pitfalls and adverse consequences involved with having a central database for copyrighted work. Additionally, I wish to express my position against adopting 'Orphan Works' legislation for creative content on the web. Orphan Works legislation would be a potential by-product of establishing a database that would 'centrally assemble information' for purposes of licensing of digital content. Changing copyright law to adopt Orphan Works legislation would mean changing copyright law to suit technology companies to the detriment of public interest.

A searchable database of copyrights – if implemented without enabling people to copy copyrighted content (see below) - would be a useful tool for creative professionals and users. However, treating any work that is *not* in the database as an 'Orphan Work' would not be in the interests of creative professionals, particularly prolific ones. It would also not be in the interests of the many creative professionals who create 'drafts' of work (sketches, demos, etc) and do not necessarily want these drafts to be seen or heard by the public but also of course do not want the work to be copied without their permission. It would however of course be in the interests of advertising-based technology companies.

I am concerned that the organization the Copyright Office has chosen to partner with to research the issue of a central database of copyrighted content has a potential conflict of interest which the Copyright Office should be fully aware of when considering changes to Copyright Protection for Certain Visual Arts and any related legislation. As per the notice from the Copyright Office, students from the Stanford Law School are working on the searchable database with the Copyright Office. It should be noted that Google has many close ties to Stanford University and Google is a major donor to the Stanford Law School's Berkman Center for Internet and Society. Google of course would potentially be a major beneficiary of any searchable copyright database – especially if Orphan Works legislation was a by-product of the searchable copyright database.

Given the high costs of litigation against infringing users from the perspective of creators, any searchable copyright database should include the ability to search on a file but NOT the ability to copy a file. If the copyright database provided actual copies of the digital files to the users, digital copies could be made and shared without the author's permission and the copyright database would turn into a travesty of itself – it would turn into a huge piracy search engine.

The ability to search without copying would be technically possible to achieve even without the need for digital rights management (which is generally very easy to circumvent). This could be done by using file 'signatures' or digital 'fingerprints'. In fact, DropBox is an example of a site where this kind of technology is used. When copyrighted content is identified on DropBox and they receive a DMCA take-down notice, DropBox takes a digital signature of the file and blocks it from being shared.

(In contrast, Google makes it almost impossible for creators to keep their work off Google properties by requiring a new notice to be sent for every infringing link. It is self-evident that Google could use file signaturing too, and implement 'take-down means stay down'. Instead, Google gets upward of 43M DMCA take-down requests per month. Of course, many of these are duplicates – requests where the

owner of the copyright has to file multiple DMCA notices, over and over again. It is a game of whack-a-mole that very few companies, let alone individual creators, can afford the time and/or money to play.)

For searching a central database of copyrighted creative work, a file signature or digital fingerprint could be created by hashing technology and could be applied to the whole of a file or sub-sets of a file so that (for example) a single, entire original file would have a single signature and a modified digital work (a mash-up of images or music for example) may have many signatures.

For example, if a digital copy of a creative work was found by a member of the public and they wanted to know who owned the rights to it, they could search a copyright database *using the digital fingerprint or signature* of *that file* to see if the file was registered. Therefore, search would be possible against the database, but it would not be possible to *copy* copyrighted content from the database.

Enabling the public to obtain a file signature or digital fingerprint would entail using some kind of tool officially designated by the copyright office so that the public could input a digital file and get a digital signature or fingerprint.

It would be crucial that the searchable database itself store only signatures/fingerprints only and *not* the original content. As many high-profile hacks have shown, systems can and will be hacked, and any online database containing actual copyrighted content will lead to mass piracy even if the public can only look up content via digital signatures or fingerprints.

Again, if a work was not found by doing a file signature/fingerprint search in the searchable copyright database, it should not automatically be considered an 'Orphan Work'.

Copyrighted work is not a public good, it is the lifeblood of creative professionals, and Orphan Works is NOT a problem of concern to the majority of creative people – it is a problem of concern to advertising-based technology companies and organizations funded by advertising-based technology companies.

The fact is, creators need a better deal, not a worse deal. They should not have to register their works to avoid them being claimed as 'orphan' works.

I am surprised and disappointed that the copyright office has in the past made an erroneous, generalized statement on it's website that 'Orphan works are a frustration, a liability risk, and a major cause of gridlock in the digital marketplace'. I am surprised and disappointed because that statement makes it sound like consumers in general are concerned about this. That is simply untrue. The push for changing Orphan Works legislation is NOT coming from ordinary consumers, who mostly don't know or care about Orphan Works. The push for Orphan Works legislation is also not coming from creative professionals. For example, I know many professional musicians and I have never, ever heard one lamenting about how their inability to locate the owner of a copyrighted work is stifling their creativity. The push for changing legislation regarding Orphan Works is coming from advertising-based technology companies and organizations funded by advertising-based technology companies, in particular Google.

Google constantly pushes very hard on multiple fronts to weaken copyright legislation whereas truly innovative companies that do NOT exploit creative work without permission from the owner – like Netflix, Apple and DropBox - do NOT lobby to weaken copyright protection.

Almost every pirate website in existence uses the Google Ad network. If you don't believe me, look at Ellen Seidler's www.popuppirates.com and watch her video entitled 'Who Profits from Piracy'? It is clear that Google makes a lot of money from pirated work. Google also owns YouTube, a site where Google can be in compliance with the letter of the DMCA because they remove content when they receive a take-down notice, but since exactly the same content pops straight back up immediately when another user uploads it, it is impossible in practice for any business that involves the creation of copyrighted work to get their content removed from YouTube. And as soon as that same content pops back up again, Google is again making money from serving advertisements against it. The same problems exist for all art that can be digitized.

And when a creator attempts to remove a link from YouTube or any Google property, Google reports the action to 'chillingeffects.org'. Why? Because Google are pretending that legitimately issuing a DMCA notice is a 'chilling effect' on exercising freedom of expression. However, as the film-maker Ellen Seidler says on popuppirates.com/chilling-effects, "the only chilling effect is on my ability to earn a living from my own work".

It should be noted that Chilling Effects is a project of the Stanford Law School's Berkman Center for Internet & Society in collaboration with the Electronic Frontier Foundation (the same Stanford Law School that is working with the Copyright Office on researching a central searchable database of copyrighted content). As previously noted, Google is a major donor to the Berkman Center. Google is also a major donor to the Electronic Frontier Foundation via 'Cy Pres' settlements. Cy Pres payments are of course supposed to be made to organizations that represent the public interest. However, the Electronic Frontier Foundation does not in my opinion represent the public interest, because it constantly takes positions on copyright that are to the advantage of it's major financial donor, Google.

It's notable that the Electronic Privacy Information Center (EPIC), which has taken Google to task for violations of privacy (unlike the Electronic Frontier Foundation) has been fighting for many years for a share of the Cy Pres settlements.

It should also be noted that the 'Future of Music Coalition' (which supports Orphan Works legislation) has also received funding from Google. Google have underwritten Future of Music Coalition conferences and has provided 'Google Policy Fellowships' for them to publish research. In my opinion the Future of Music Coalition does NOT represent the interests of musicians in general when those interests come in to conflict with their corporate donors. They, like most organizations funded by Google, represent the interests of Google. Again, I know many professional musicians and songwriters and none of them have ever complained about not being able to locate the owner of work they want to copy. They are too busy creating their own work (referred to as 'first-order creation', by Jaron Lanier).

Internet companies don't need any more favorable rules, they are not nascent businesses that need protecting. They are massive corporations that are fighting for their self-interest under guise of lobbying

for public interest, often via lobbying groups including the ones mentioned above. But I believe having a sustainable, thriving creative industry – one that can survive and provide value to society over the long-term – is genuinely in the public interest. Allowing technology companies to co-opt creative work will starve creative industries of income and cause a long-term cultural famine.

Because the truth of what advertising-based technology companies (particularly Google) have done and are doing is so extreme, there is a danger that stating it as bluntly as I have done above is itself going to appear 'extremist' to people who have not researched the situation. All I can say is I used to be a huge fan of Google until I was educated about what is actually happening by people like the film maker Ellen Seidler of Popuppirates.com, the musician David Lowery of the Trichordist, and the musician Krzysztof Wiszniewski (AKA the 'Cynical Musician'). I encourage anyone reading these comments to use these sources to educate themselves about what is happening to all creative professionals. And I encourage the Copyright Office to have a healthy dose of skepticism when considering organizational partners to explore the pros, cons and potential designs for an online database of copyrighted work.