July 22, 2015

Maria Pallante
Register of Copyrights
U.S. 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

Dear Ms. Pallante and the Copyright Office Staff:

As a creator, I am writing to ask that you form policy to protect visual artists and their exclusive rights, and to support a sustainable environment for their livelihoods. I appreciate the opportunity to be able to contribute to this inquiry into visual art in the marketplace. As I am not working in the industry currently, I am unable to answer some of the questions directly. Instead I will talk about how these potential changes to copywrite law would affect me and those hoping to enter into creative field in the near future.

For the past 6 years I have poured enormous amounts of my time, energy, and money into honing my craft and working towards the opportunity to become a full time illustrator. After attending art school I proceeded to get a stable job to ensure that I could pay my loans. I decided not to pursue illustration right out of school because I was well aware that freelancing is very difficult, the pay can be low and the work is not always steady. Despite this, I have planned to pursue my freelance career wholeheartedly within the next few years. However, the proposed changes to copywrite law regarding *Orphan Works and Mass Digitization*, has given me cause to reconsider.

Illustration is not a career that is known for producing high income. I wish to pursue this career because it is something that I love. Despite this, I will need to be able to make a living with my chosen career. My copywrites are assets of my business and my exclusive right to the licensing of my work is central to how I will derive future income. Artists rely heavily on, not only being paid for their original work and its licensing, but also upon their right to relicense any work in their inventory. These works do not become worthless, disowned or orphaned after they are published; they are invaluable to the artist and are their rightful property.

Regarding these perceived orphan works, it is claimed in your report that "*by forgoing use of these works, a significant part of the world's heritage embodied in copy write- protected works may not be exploited and may therefore fall into a so-called '20th century black hole*.'" The implication that these "orphaned" works should not be denied to society because the artist cannot be found and therefore these works will mean more to the world's cultural heritage then to the artist is a gross misrepresentation.

A creator's copywrite lasts for their lifetime and 70 years past that. If the creator truthfully cannot be located, then it should be assumed that they are currently living and/or holding their copywrite until proven otherwise. To assume anything other than this is to steal willful from the creator.

It is also stated in your report that "*the orphan works problem is perhaps the single greatest impediment to creating new works...*" This may have been true of the documentary filmmakers who testified to this; however every creator I know personally is creating new works underived from other's creations. When it comes to art, photography, and literature, the idea of introducing legislation for perceived orphaned works becomes a blatant grab to legalize the theft of private property.
Perhaps these companies or individuals that wish to use artist's "orphaned" work should instead consider adding to the world's *cultural heritage* by hiring an artist to create new work!

It would become unreasonably hard for artists to protect their works under the purposed legislation. Any work not registered with the collective *management organizations (CMO)* could easily be claimed as orphaned work by infringers. Under this new system, no artist with a significant body of work will ever be able to afford the time and money to register all of their works as suggested. If a creator did attempt to register all of their works (and remember that each artist can create thousands of works in their lifetime), they would lose significant income in processing fees and precious time that should be used to create new works to support themselves. Meanwhile, the artist's work would easily be perceived as orphaned as they try to complete this impossible task. Their work will then be legal to use without compensation in whatever way the "good faith users" deem useful. By changing the copywrite law to include the purposed legislation for *Orphan Works and Mass Digitization*, you would legitimize shameless infringement and strip income from the artists, income that is integral to their business and livelihood.

Additionally, under the proposed CMO's, whether work is registered or not, the artist is forced to be subjected to *extended collective licensing* that would replace <u>voluntary</u> business agreements between the artist and their clients. The addition of this third party would practically remove creators from the negotiations for their own work. I find it deeply disturbing that the licensing of my work would be done without my involvement or consent. It is extremely important that I have the right to determine how and by whom my works are used in order to protect myself from misrepresentation and to unsure that my works aren't used for anything that does not align with my personal moral standings.

I do not believe this agency is necessary or beneficial to those whom they would represent. I do not want any collective management organization involved in collecting fees on my behalf. If there must be a central agency then it should be the copywrite office itself, as the agency should absolutely not reside in the private sector.

The CMO would be a business and therefore creators would be unable to rely on such an organization to have the creator's best interest at heart. How would I ever know that I was truly owed for the use of my work if I am not involved in the licensing process? Will I be allowed to determine who I am willing to let

license my work? I should also note that I am strongly opposed to the CMO being allowed to collect royalties for non-member right holders. If it was claimed that I, a non-member right holder, could not be located then where exactly is my money going? The thought of someone monetizing my work for their own profit or marketing without my knowledge or consent make me feel violated. This is further opportunity for the artist to be taken advantage of by being cut completely out of a transition for their work. This will only lead to the legal theft of our private property with no consequences for the infringers and no benefit to creators.

My inherent right to my work, whether it is registered of not, is the only reason I feel secure in moving into a business that relies heavily on marketing oneself and one's work to be successful. Without this protection I will no longer feel comfortable sharing my works, marketing myself online, and perhaps even pursuing my career further.

If these proposed changes and additions are carried out as they are now suggested, I believe we will see many creative fields struggling to survive. Artists will lose their jobs as companies learn to devalue their services, claiming "orphaned" work with no fear of consequences, and as CMO's cut them out of their own negotiations. By purposing changes to the copywrite law regarding *Orphan Works and Mass Digitization* you will further hurt the artist, giving preference to infringers who would now have no incentive not to infringe. Theft is a crime, copywrite infringement should not be treated any differently then theft is in the legal system and it certainly should not be encouraged as it is currently being purposed. Instead, consider promoting an environment that favors creators. Please consider doing away with the idea of orphaned works and registration entirely. Allow creator's their inherent right to their works. Otherwise I fear that the quality of visual art in general will diminish as less is created and more is rehashed and overused. For the artist perhaps it will seem better not to create at all.

Sincerely,

Sara Plante