Mr. S. Retif
Photographer
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July 23, 2015

RE: Notice of Inquiry, Copyright Office, Library of Congress
Copyright Protection for Certain Visual Works (Docket No. 2015-01)

I just learned of the Notice of Inquiry yesterday, and I wish that I had more time to more completely express my concerns, no - strike that, my outrage about the US Copyright Office's proposals for changing the law regarding "orphan works" published in the 2015 Orphan Works and Mass Digitization report.

In short, I am opposed to any change in the copyright law that results in what would effectively become a wholesale appropriation, without adequate compensation by the Government, of valuable constitutionally protected intellectual property rights of photographers and visual artists, like the changes suggested in the Orphan Works and Mass Digitization report.

Unfortunately, I only have time to briefly address the rhetorical fallacy that those in favor of changing the law of "orphan works" seem to be using as the foundation to advance this ill-begotten cause. If the proposed changes to the law are made, the damage that will be suffered may not be immediately or directly measurable in strict economic terms, but it is clear to me that artists will suffer economic losses and copyright infringers will reap economic benefits, in disproportionate amounts under the color of law.

Even if we were to ignore Article I, Section 8, Clause 8 of the United States Constitution, known as the Copyright Clause, equitable legal principles cannot allow such a law to be enacted.

Question 2. "What are the most significant enforcement challenges for photographers, graphic artists, and/or illustrators?"

Response:

When Did I Become an Orphan, Mom?- It seems to me that the term "orphan" was carefully chosen to for its imagery... to make it sound as if creator of the "infant" work abandoned it on a cold winter night in a wicker basket on the doorstep of a convent, and that nobody really wants the copyrighted work or cares about it, and it would be better off growing up in someone else's hands. But

that's not the case, the published work is not a minor infant, the work is a "full grown adult" vested with all of the rights and privileges endowed in it by its creator, and the Constitution. Proponents of changing the copyright laws for orphan works seem to be arguing out of both sides of their mouths, or in other words, they base their argument on a "middle-ground" rhetorical fallacy. That is, on the one hand, they argue that works are valuable to society, but on the other hand, nobody should have to worry about the possible liability for infringing those copyrights, because the true owners of the copyright are too hard to find (and it is perhaps too expensive to properly obtain the copyrights under the current law); therefore, the only remedy for those that want to publish "orphan works" is to substantially cut off the copyright owner's valuable constitutionally protected rights and limit their legal remedies if they were to bring an action in court to enforce those rights against an infringer, if they have satisfied the yet to be defined "good faith diligent search" as a safe-harbor defense.

The enforcement challenges today are significant enough. For example, the expense of bringing an enforcement action is prohibitive for most photographers, and obtaining competent legal counsel on a contingent fee basis to pursue a claim for statutory damages of a registered copyrighted work, is an uphill mission at best. If the proposed changes were enacted, I fear that enforcement actions would become nothing more than fodder for a soon-to-be-copyrighted reality television small-claims court program, a perversion of the law with lots of emotion that "He stole my Instagram photo and made a multi-million dollar art exhibit out of it!" But insignificant legal or economic relief will be meted out by the new "orphan works" court.

Please register my "Vote" on these proposals for change in the "Nay" column, if a tally is being kept. The proposals for change to the law that have been advanced in the Orphan Works and Mass Digitization report, seem to be a thinly-veiled effort to grab the rights of many copyright holders in a wholesale fashion, with foreign legal models as justification for the United States to follow suit. The United States was the leader of all countries by establishing copyright protection in the Constitution, and it would be unwise to become a follower when a proposed change to the law substantially undermines those rights.

Sincerely,

Mr. S. Retif