July 20, 2015

To:
U.S. Copyright Office

From:
Scott Kuykendall
23 River Drive
Norwalk, CT 06855

Re: Orphan Works Copyright Legislation

To whom it may concern:

As a self-employed graphic/web designer and fine artist, I'm writing to express my opposition to the conclusions expressed in the U.S. Copyright Office Orphan Works Report.The 1976 Copyright Act guarantees me as an artist the exclusive right to authorize or withhold reproduction of my work and to create derivative works. It guarantees this from the moment I fix the work in a tangible form, and it guarantees this without imposing formalities such as a copyright mark or registration. The Berne Convention for the Protection of Literary and Artistic Works forbids such formalities as a condition on my enjoyment and exercise of copyright. This is particularly important for visual artists because many works appear without credit lines or identifying information. The explosion of unauthorized posting on the internet has increased instances of unidentified work.

The Orphan Works provision constitutes a loophole that will jeopardize the copyrights of thousands of freelance artists such as me, and do so retroactively. Although the Orphan Works report states that it does not re-impose formalities, I fear that for all practical purposes the proposed amendment will have that effect.

All work created by all artists throughout the world, regardless of age, whether published or not, whether of U.S. origin or abroad, will be subject to orphan works claims.

The provision shifts the burden of diligence from the owner to the user. I see no practical way that I could monitor any potential infringement of my work in any publication or database anywhere within the reach of the internet. My creative work is one of the most personal forms of private property that I have because it wouldn't exist without the specific expression that is the result of my outlook and experience. Nothing in the Orphan Works Report justifies the exploitation of my private property by others.

I'm also afraid the penalties provision is another glaring loophole for anyone who chooses to make payment for usage the option of last resort. Once a work has been published there is no certain way to establish a reasonable fee. Any user can offer any fee, and unless I'm agreeable to the offer I have no option but to file a prohibitively expensive lawsuit that would cost more than I could recover. I'm therefore afraid that this part of the Orphan Works provision would constitute a no-fault license to infringe.

Several times in the Orphan Works Report unvalidated assertions are made that orphan work has little or no commercial value. This is contrary to my entire professional experience. The work that I create constitutes a valuable inventory that I can license any time, now or in the future, as part of my day-to-day business. Nothing in the universal copyright conventions gives any user the right to devalue my inventory for their own gain.

I believe that the answer to those instances of users who wish to use genuine visual art orphan works be confined to the specific instances that have been identified, such as family photo restoration, genealogy research and historical archiving, and be handled with specific limited exemptions to the Copyright law, just as many other countries have done.

I ask you to reject any legislation that would further undermine copyright protection for artists.

Respectfully yours,

Scott Kuykendall