

Maria Pallante, Register of Copyright
U.S. Copyright Office
Library of Congress

May 9, 2013

Re: Orphan Works and Mass Digitization
(FR Doc. 2014-02830; Copyright Office Docket Number 2012-12)

Dear Ms. Pallante:

I endorse comments to the Copyright Office submitted by the National Writers Union. As a working writer, I oppose any "orphan works" legislation or any interpretation of "fair use" that permits use of my work without my permission or restricts my remedies for copyright infringement because someone claims they were unable to identify or locate me or any person or entity they thought held certain rights to my work.

Proposals for "orphan works" legislation and expanded interpretations of "fair use" fail to consider ways working writers earn our living. Under the Berne Convention, an exception to copyright for "fair use" or other use of "orphan works" is permitted only if it "does not conflict with normal exploitation" of the work. But, as far as I know, the Copyright Office has never conducted research on the market for works whose original printed editions have gone out of print and might be deemed "orphaned." Nor has it asked writers about new norms of commercial exploitation of our out-of-print works, especially via self-publication and digital publication.

"Orphan works" legislation or "fair use" cannot properly be evaluated without understanding writers' new business models that only writers can provide. If work to which I hold some or all rights is deemed "orphaned" because it is not in publishers' or libraries' records, despite the fact that I am currently earning money from it, any so-called "orphan work" would unfairly compete with and destroy the value of my rights.

Before the Copyright Office or Congress considers any "orphan works" or "fair use" legislation, I request you hold hearings to learn from writers and other creators about how we are currently exploiting our rights to our work and how such a law would affect us. No "orphan works" legislation should be considered unless it respects the rights of creators.

Sincerely,

Anita Diamant