



**Statement for the Record of Sandra M. Aistars, Chief
Executive Officer, Copyright Alliance**

**To The House Judiciary Committee Subcommittee on Courts,
Intellectual Property and the Internet**

“Preservation and Reuse of Copyrighted Works”

April 2, 2014

The Copyright Alliance submits these comments for the record in order to identify four principle issues the Committee should bear in mind while considering the preservation and reuse of copyrighted works – commonly referred to as the “orphan works” issue.

Members of the Copyright Alliance, like many creators and innovators, are both creators and users of copyrighted works, and thus are interested in ensuring that productive and beneficial uses of orphan works not be inhibited because potential users of copyrighted works cannot identify or locate the owner of a work they wish to use and cannot determine the conditions under which the work may be licensed. We therefore encourage the Committee to assist the Copyright Office in addressing this issue.

**1. The Goal Of Any Orphan Works Solution Must Be To
Identify Authors, Not Consign Works To “Orphan” Status**

We urge the Committee to agree at the outset of its deliberations that the guiding light in any orphan works solution must be that all searches be conducted for the primary purpose of identifying rights holders so that their works do not fall into “orphan” status (as

opposed to deeming works orphaned or adding works to a list of “orphaned” works for licensing or other purposes). Bearing this purpose in mind will of necessity suggest certain approaches as more appropriate than others when establishing solutions.

We believe the Copyright Office can play a very important role in promoting the identification of authors of works, and limiting the number of works which fall into “orphan” status by (1) the establishment of officially recognized registries for various types of works; and (2) defining standards for conducting a reasonably diligent search for the author of a work. The Copyright Office has already engaged in extensive inquiries to examine the state of the affected industries, and has gathered testimony from various stakeholders on a variety of approaches in use today. We urge that this work be completed and presented for evaluation.

2. The Copyright Office Should First Improve the Registration System

Even before identifying registries and standards for performing searches, we believe a first step in limiting issues with orphan works should be investigating how the Copyright Office can improve the current registration system to make it more effective and more useable – including by making it searchable for works like photographs and other works of visual art, which are among the areas where great challenges in identifying authors of works have existed. The Copyright Office has itself recognized that among its key priorities must be increasing incentives for participation in the registration system. This serves not only authors, but users of works. Realizing such improvements will likely require additional funding for the Copyright Office.

As it exists now, the registration system works relatively well, and is used fairly consistently by copyright owners of works like motion pictures and books, which may be described as low volume and high individual value copyrighted works. Such authors are

accordingly afforded all the benefits of timely registration, including the ability to pursue claims for statutory damages for infringements. The availability of statutory damages is often a threshold question for an individual author deciding whether or not to pursue a claim of infringement against an infringer, given the extremely high costs involved in bringing a copyright claim in Federal Court. Thus, whether or not the registration system adequately serves an individual author's needs can mean the difference between being able to enforce one's copyright or not.

In contrast to authors of low volume/high value works, the current registration system does not serve the interests of large volume/low value works often created by authors such as photographers, and other "creative upstarts." The costly and burdensome nature of the registration process for these users, and the inefficiency of the system (e.g. lack of searchability for images) reduces the likelihood that individual authors of such works will register their copyrights. This creates numerous problems both for owners and for potential users of such works, including exacerbating the so-called "orphan works" problem in multiple ways. First, and most obviously, if authors do not feel the registration system serves their needs, they do not register their works, and they are less likely to be found. Second, even when authors do register their works, if the registration system is not adequately searchable, it is not an efficient tool to aid potential users in identifying authors of works. Thus, a cost effective, searchable and non-burdensome registration system which serves the needs of registrants and users of large volume/small value works at least as well as the current system serves to identify authors of low volume/high individual value works could begin to encourage greater and more accurate registration of works, as well as better searchability and thus reduce the incidence of orphan works.

3. Progress Has Been Made Since 2008

The issue of orphan works is not a new one for this Committee.

But happily, progress has been made since the last time this issue was considered in 2008.

Given the particular challenges inherent in addressing orphan works in the visual arts world, we are encouraged by the collaborative work of the Picture Licensing Universal System (PLUS), a neutral, non profit 501(c)6 organization which brings together stakeholders from the photography, illustration, publishing, graphic design, advertising, museum, library and education communities to seek solutions to mitigate the orphan works challenge facing those communities. We believe the standards developed by this group and the image rights registry and registry hub established by PLUS in the intervening years since 2008 demonstrate that it is feasible to define standards for identifying rights holders and communicating rights information; and model best practices for operating an industry neutral, global, non profit rights registry for images.¹

4. Mass Digitization Presents An Entirely Different Set Of Concerns

Although of late the issues have been raised together, it is erroneous to presume that a policy overlap exists in resolving orphan works issues and mass digitization issues. In most instances where mass digitization has been at issue, the entities

¹ Of course numerous other registries have existed for various categories of works for many decades, which may also serve as a model for best practices for registries. For instance, ASCAP, BMI and SESAC have each maintained registries for musical works for many decades, which they each use to license and deliver royalties to songwriters and composers who have registered their works with them. These practices are elaborated on in the Joint Comments of the American Society of Composers, Authors and Publishers [and] Broadcast Music, Inc. [and SESAC, Inc.], Copyright Office Docket No. 2012-12 (February 4, 2013); also explained therein is why these practices mean there is for all practicable purposes not an Orphan Works “problem” when it comes to the public performing right in musical works. Similarly, SoundExchange operates a very effective registry for delivering royalties for certain uses of sound recordings to musicians.

involved were not seeking to identify authors of works for purposes of seeking permission to digitize and make the works available. While we are sympathetic to the preservation and archival needs of libraries, archives and museums and recognize that in the digital environment these needs may ultimately involve entire collections of an institution's work, it is important to proceed from the premise when dealing with orphan works that the ultimate goal is to identify and engage with the author of the work. Section 108 very specifically addresses the preservation and archival needs of various institutions in a way that does not contemplate such an engagement.