February 4, 2013

Library of Congress
U.S. Copyright Office
[Docket No. 2012-12]
Notice of Inquiry: Orphan Works and Mass Digitization
Submitted via: www.copyright.gov/orphan/

I. Orphan Works – Introduction and General Comments

On behalf of the Directors Guild of America, Inc. (DGA), and the Writers Guild of America, West Inc. (WGAW), we are pleased to submit these comments in response to the Copyright Office's Notice of Inquiry (NOI).[1] DGA represents 15,000 directors and members of the directorial team who create the feature films, television programs, commercials, documentaries, news and other motion picture productions that are this country's greatest cultural export. WGAW represents more than 8,000 professional writers of motion pictures, television, radio, and Internet programming, including news and documentaries. Both DGA's and WGAW's mission is to protect the creative, economic and human rights of its members. As a result, the Guilds have participated in the orphan works debate since the Copyright Office first addressed the issue in 2005.

We welcome the chance to respond to this second NOI regarding orphan works.[2] In the years since the first NOI, the context of this debate has evolved. Notably, the continued growth of the global Internet has implications for the designation and use of orphan works. The ease with which content can cross borders because of the Internet suggests the development of a common approach to orphan works legislation. The Internet also makes it possible to breathe new life into copyrighted material and increases the amount of information available on such works, facilitating the process for determining orphan status. For authors and creators, the Internet has brought about modern digital theft as well as entrepreneurial opportunities that can expand audiences. We believe this submission reflects these realities and balances the needs of authors and copyright users. That being said, we also believe the fundamental concerns and

[1] Notice of Inquiry, Orphan Works and Mass Digitization, 77 Fed. Reg. 64,556 (2012)
[2] For the purpose of these comments, we assume the term "orphan work" means a copyrighted work for which the copyright holder and other rightholders cannot be located after diligent search.

corresponding proposals addressed in our 2005 submission remain relevant, which is why we reiterate some of them in this filing.[3]

The most significant issues we addressed in 2005 and are addressing again in 2013 relate to authors' and creators' rights. Writers and directors have well-established contractual, legislative, moral and human rights with respect to the works they create. These rights should be protected if a motion picture is designated an orphan work.[4] Indeed, a motion picture cannot truly be considered "orphaned" if its authors or creators can be located.

For that reason, the Copyright Office must not limit its investigation to the interests of copyright holders and consumers. Rather, it must consider the interests of all rightholders – a term that includes writers and directors, who have valuable rights in their works. While DGA and WGAW agree that tailored reforms or copyright exceptions may be appropriate for certain orphan works, those reforms should nevertheless ensure the economic, creative and human rights of their authors and creators. This could be accomplished by giving writers and directors the right to grant non-exclusive licenses for their works and by ensuring that authors and creators are part of any "diligent search" requirement. This is precisely the strategy adopted by the European Parliament in its recent Directive on Orphan Works.

II. The EU Orphan Works Directive Provides Solutions to Many of the Issues Raised by The Notice of Inquiry

The NOI seeks comments regarding what has changed in the legal and business environment since 2005, and specifically mentions the recently adopted EU Directive on Orphan Works. Our submission draws heavily on the findings and orders of the EU Directive, which both DGA and WGAW were involved in through their membership in UNI-MEI, a global union representing over 100 media, entertainment and arts unions in over 70 countries. UNI-MEI was an integral participant in the formulation and adoption of the EU Directive, and we are well aware of the issues raised during debate of the legislation and how the EU resolved them.

After extensive fact-finding, discussions with stakeholders, and over one year of discussions in the European Parliament and the EU Council of Ministers, the European Parliament formally adopted the EU Directive on September 13, 2012. The Directive establishes a legal framework for a limited number of public and non-commercial institutions to use orphan works. However, it also recognizes and respects the rights of authors and creators by putting them on similar footing to other rightholders.

[3] Please note that our current comments are limited and specific to motion pictures. The challenges presented by other categories of orphan works, such as software, music or still photography, are different than those presented by motion pictures and should be considered separately.
[4] Motion picture refers to an audiovisual work such as a theatrical film, television program, or other video material.

The EU Directive is directly applicable to prospective U.S. solutions regarding orphan works. Indeed, the globalization of the Internet has also globalized the challenges presented by copyright law; it is increasingly difficult to implement copyright laws with significant distinctions between regions. DGA and WGAW encourage the Copyright Office to consider the following key components of the EU Directive with respect to any administrative or legislation action that flows from the NOI.

First, the Directive seeks to ensure equal protection for all "rightholders." Under the Directive, "rightholders" include all parties with an economic stake in the work – *including the original author*.[5] (We use the term "rightholder" throughout this filing in the same way). In other words, the Directive recognizes that the copyright owner is not the only entity with a financial or creative stake in the work. Article 2 provides that when there is more than one rightholder in a work, and not all of them can be identified, the work can be licensed under the Directive by the remaining rightholders.[6] This empowers all identified rightholders – including writers and directors –to protect and license their interest in a motion picture.

Second, the Directive protects the ongoing interests of rightholders in works considered orphaned. For example, should a director or writer be identified after a work has been given orphan status, they have the express power to nullify the designation.[7] Moreover, in an attempt to minimize the chance that works are improperly given orphan status, the Directive sets forth rigorous diligent search protocols to which good faith users must adhere.[8] That "diligent search" must be specifically tailored to the applicable category of work.[9] Of equal importance is that the standards for what constitutes a "diligent search" must be developed in "consultation with rightholders," including the authors and creators of works.[10]

The potential uses of and protections required for orphan works in the United States are the same as in Europe. Moreover, as noted above, the global scope of the Internet and modern copyright law require that any administrative or legislative solutions consider similar actions in foreign jurisdictions. We appreciate that the Copyright Office is doing just that. As a result, the Copyright Office should strongly consider the three key components of the EU Directive discussed above: (1) equal protection for writers, directors and other rightholders as defined, (2)

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[5] *See Berne Convention for the Protection of Literary and Artistic Works*, Art. 6.bis. "Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action."
[6] *See Directive of the European Parliament and of the Council on Certain Permitted Uses of Orphan Works*, Art. 2.
[7] *Directive of the European Parliament ,* Art. 5. "Member States shall ensure that a rightholder in a work or phonogram considered to be an orphan work has at any time, the possibility of putting an end to the orphan work status in so far as his right are concerned."
[8] *Id* at Art. 3.
[9] *Id* at Par. 2
[10] *Id*.

a diligent search tailored to specific categories of works, and (3) revocable orphan work designation.

III. Orphan Works on an Occasional or Case-by-Case Basis (Question 1)

A. Directors and Writers are Economic, Creative, Moral and Human "Rightholders," and Those Rights Warrant Protection

In the United States, writers and directors are typically employed by film and television studios on a "work for hire" basis; accordingly, under U.S. law they generally do not hold the copyright to the motion pictures they write or direct. They do, however, retain a number of well-established economic and creative rights established by collective bargaining agreements and specific contractual arrangements entered into with the copyright holder. Moreover, international treaties acknowledge and enshrine writers' and directors' human rights with respect to the use of their work. In this sense, writers and directors are "rightholders" precisely as that term is used in the EU Directive, even if they are not copyright holders.

1. Economic Rights

DGA's and WGAW's collective bargaining agreements establish certain minimum economic benefits that apply to all guild writers and directors working on motion pictures. Individual writers and directors often negotiate additional financial terms specific to each motion picture. Incorporated into the very foundations of our collective bargaining agreements is an acknowledgement by producers that the contributions of the writer and director are so significant to the final work that their interest in that work exists long after it leaves their hands. For example, writers and directors receive residuals payments based on all non-theatrical revenue generated from the motion picture in perpetuity. Residuals payments derived from license fees can extend for many years after a motion picture is released and for as long as the motion picture generates revenues, regardless of monetary amount. DGA's and WGAW's agreements also require copyright holders to protect these economic interests by entering into residuals assumption agreements with subsequent buyers or distributors of motion pictures. In addition, individual writers and directors often negotiate supplemental economic benefits called participations, which are also based on future revenues earned from a motion picture, often in perpetuity.

DGA's and WGAW's agreements with industry producers also provide that writers' and directors' rights to residuals be memorialized in the copyright mortgages recorded at the Copyright Office. These security interests serve as financial assurances to writers and directors that the obligation of copyright holders to pay residuals extends to whoever earns revenue from the motion picture. Congress further recognized writers' and directors' status as rightholders

when it guaranteed their economic interest in motion pictures through "Transfer Legislation" included in the Digital Millennium Copyright Act. 28 USC 4001, enacted in 1998, expressly provides that a transferee of rights in a copyrighted motion picture is deemed responsible for residuals payments to writers and directors when an underlying collective bargaining agreement requires such payments. By establishing a legal requirement that enforces economic terms of collective bargaining agreements, and by expressly tying this requirement to "transfers of copyright ownership" in motion pictures, Congress has affirmed directors' and writers' ongoing economic interest in copyrighted works. These contractual and legislative guarantees protect directors' and writers' rights if a producer goes bankrupt or reneges on its financial obligations. In fact, writers' and directors' financial interests are placed before those of the banks or other debtors – another indication of the importance of their interest in the works they write or create.

As demonstrated above, it is appropriate to consider writers and directors to be "rightholders" even if they do not hold the copyright in a work. Indeed, in some instances, their financial interest in a work is even greater than the copyright holder. For example, while a multinational corporation may lose interest in a particular motion picture producing only modest revenue streams, individual writers and directors invariably attach greater value to maintaining and protecting such copyrights and the income they provide.

2. Contractual Creative Rights

The DGA and WGA Basic Agreements with the film and television industry establish a range of creative rights that attach to individual writers and directors. These creative rights, first and foremost, establish the creative protections writers and directors have before production commences, during production, and in post-production. There are additional creative rights that extend beyond the theatrical release of a film that include creative participation in subsequent use of their works, such as editing rights for other release platforms. Under the Basic Agreements, writers' and directors' creative rights extend to all licensees, assignees and purchasers of a motion picture. In addition, individual writers and directors often negotiate contracts with copyright owners that specify supplemental and more expansive creative rights. As with economic rights, writers' and directors' creative rights are protected long after a work is released.

3. Moral Rights

The "moral" rights of motion picture "authors" (a term that includes both writers and directors under EU law) have long been part of international law.[11] In countries that recognize and respect strong moral rights, writers and directors are recognized as having a continuing interest in protecting their motion pictures from distortion or manipulation in any way that

[11] Some moral rights are also protected under various U.S. laws, though not in the same manner as under European Union and international laws.

undermines their creative reputation. The Berne Convention's provision on moral rights, to which the U.S. is signatory, provides certain other protections to authors and creators, including the right of attribution (to receive or decline credit for their work) and the right of integrity (to prohibit distortion or mutilation of the work that would undermine their creators' reputations). Where the United States has enacted limited moral rights protections, such as in the Visual Artists Rights Act of 1990 ("VARA"),[12] U.S. law specifically excludes works made for hire. As a signatory to the Berne Convention, the U.S. implications of the limited statutory reach of VARA are not clear. This was stated in a Copyright Office 1996 study assessing the impact of the waiver provisions contained in the legislation:

> Nations that are members of the Berne Convention for the Protection of Literary and Artistic Works are required to meet a minimum level of protection, as set forth in the Berne Convention's Article 6bis. The multilateral treaty does not address waiver of moral rights; waiver is neither sanctioned nor prohibited, and individual member nations may implement the Berne Convention in their own ways.[13]

The study goes on to point out other places where moral rights receive protection in the United States:

> Although moral rights were not recognized in U.S. copyright law prior to the enactment of VARA, some state legislatures had enacted moral rights laws, and a number of judicial decisions accorded some moral rights protection under theories of copyright, unfair competition, defamation, invasion of privacy, and breach of contract. Such cases have continued relevance, not only for historical interest, but also for precedential value because state and common moral rights protection was not entirely preempted by VARA.[14]

In her 2004 testimony before the House Judiciary Committee on the *Family Movie Act*,[15] the then Register of Copyrights alluded to "fundamental principles of copyright, which recognize that authors have moral rights."[16]

[12] Public Law 101-650, title IV, §406(a), October 28, 1998.
[13] Waiver of Moral Rights in Visual Artworks, U.S. Copyright Office, 1996, Executive Summary at page 2; available online at http://www.copyright.gov/reports/exsum.html
[14] Executive Summary at page 3.
[15] H.R. 4586, 108th Congress.
[16] Statement of Marybeth Peters, Register of Copyrights, before the Subcommittee on Courts, the Internet and Intellectual Property of the House Judiciary Committee, June 17, 2004

The Register commented that:

> But beyond our treaty obligations, the principles underlying moral rights are important. The right of integrity – the author's right to prevent, in the words of Article 6*bis* of the Berne Convention – the "distortion, mutilation, or any other modification of, or other derogatory action in relation to [his or her] work, which would be prejudicial to his honor or reputation" is a reflection of an important principle…I can well understand how motion picture directors may be offended when a product with which they have no connection and over which they have no control creates an altered presentation of their artistic creations by removing some of the directors' creative expression. This is more than a matter of personal preference or offense; it finds its roots in the principle underlying moral rights; that a creative work is the offspring of its author, who has every right to object to what he or she perceives as a mutilation of his or her work.[17]

While those views were stated with regard to the ability of companies to market software that edits movies under the *Family Movie Act,* they have some applicability to the issue of Orphan Works. If the Copyright Office proposes to make orphan works available to the public, a user should not have the right to make changes to a motion picture without the ability of the actual authors and creators to prevent such action.

We do not present this discussion as a means, as some might assume, to advance the case that writers and directors should have more firmly established moral rights in the United States. Rather, we simply mean to underscore that any new regulatory or legislative authority that gives the public access to orphan motion pictures, including the ability to modify an orphan motion picture, implicates important principles that require the interests of writers and directors be considered. The Copyright Office should only pursue legislative or regulatory solutions that balance the rights of the public with those of the original authors and creators. This is particularly true considering recognition of those rights under the EU Directive and international law.

4. Human Rights

While the concept of moral rights may not be firmly established in U.S. law, the related concept of human rights is central to our nation's genesis and identity. Human rights with respect to authors and creators have long been recognized by key international human rights documents to which the United States is signatory. Through these documents, the United States

[17] *Id.*

and most other industrialized nations have agreed that authors and creators have fundamental rights regarding how their expressions are used.

Specifically, the 1996 International Covenant on Economic, Social and Cultural Rights[18] recognized the "human right" of all people to the "protection of the moral and material interests derived from any scientific, literary, or artistic production of which he is the author."[19] This right is derived from the "inherent dignity" and worth of "all members of the human family."[20] The human rights of artists and creators are also recognized by the Universal Declaration of Human Rights;[21] the 1948 American Declaration of the Rights and Duties of Man;[22] the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights;[23] and the 1952 Convention for the Protection of Human Rights and Fundamental Freedoms.[24] In all these instances, a multitude of nations joined together to recognize the international and fundamental human rights that artists have regarding their creative works. These and all other human rights are worthy of government protection, regardless of economic considerations.

Failure to recognize and respect authors' and creators' human rights as provided for in the agreements above undermines artists' ability to create and share their works with the world. Too often in these discussions in the digital age, the rights of the public and consumers are highlighted while the human rights of artists are disregarded, despite their recognition in numerous treaties. As with moral rights, DGA and WGAW present this discussion not to advocate specific regulatory or legislative changes regarding creators' rights, but to remind the Copyright Office that "copyright holders" are not the only rightholders with respect to an orphan work. The author and creator of that work, regardless of whether they hold the copyright, retains valuable economic, creative, moral and human rights in their creation.

[18] G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1996).
[19] *Id.* at art. 15, ¶ 1, 4.
[20] *Id.* at Preamble.
[21] G.A. Res. 217 (III) A, U.N Doc. A/RES/217 (III) (Dec. 10, 1948). "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author;" *Id.* at art. 27, ¶ 2.
[22] O.A.S. Res. XXX, International Conference of American States, 9th Conf., O.A.S. Doc. OEA/Ser. L/V/I.4 Rev. XX (May 2, 1948). "Every person has the right . . . to the protection of his moral and material interests as regards his inventions or any literary, scientific or artistic works of which he is the author."‖ *Id.* at art. 13, ¶ 2.
[23] Nov. 16, 1988, O.A.S.T.S. No. 69, 28 I.L.M 156 (Protocol of San Salvador). "The States Parties to this Protocol recognize the right of everyone . . . [t]o benefit from the protection of moral and material interests deriving from any scientific, literary or artistic production of which he is the author."‖ *Id.* at art. 14, ¶ 1.
[24] 213 U.N.T.S 262. "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of [their] possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."‖

B. To Ensure Equal Protection for Writers, Directors and Other Rightholders, DGA and WGAW Propose that Writers and Directors be Given the Right to Grant Non-Exclusive Licenses for the Use Of Orphan Works

Because writers and directors have well-established rights in their works, DGA and WGAW propose that locatable, credited writers and directors of "orphan" motion pictures be given the right to grant non-exclusive licenses in those works. The creation of such a limited right for writers and directors is easily implemented and well-justified. It will facilitate licensing of motion pictures while preserving and protecting the interests of their authors and creators. This solution was adopted in the EU Directive precisely because it balances the values of traditional copyright with the public's interest in access to works. Our recommendation is discussed in further detail in Section IV(A), below.

C. Diligent Search to Locate Rights Holders Should Vary by Industry

The Orphan Works legislation proposed in 2008 would have required users to perform "a good faith reasonably diligent search" before qualifying for any protection as a good faith user of orphan works. Following extensive deliberation, not unlike that undertaken by the EU, Congress settled on a mix of mandatory and voluntary search guidelines to satisfy a diligent search mandate. Specific baselines were established, such as searching the online records of the Copyright Office. Users would also have been governed by the best practices applicable to identifying the rights holder for the category of work at issue. These practices would emerge from the consensus agreement of both copyright owners and copyright users as coordinated by the Register of Copyrights. The EU adopted a diligent search requirement with similar standards in its Directive on Orphan Works.

1. *The EU Orphan Works Directive Tailors Diligent Search Requirements to Specific Categories of Works*

Article 3 of the EU Directive lays out strict diligent search protocols users must follow before a work is classified as "orphan." A good faith user must begin "by consulting the appropriate sources for the category of works."[25] This requirement acknowledges that what constitutes an appropriate search method is determined by the category of work. The Directive demands an extensive search, with users required to expand their search beyond the initial inquiry when information or circumstances suggest that relevant information regarding

[25] *Directive of the European Parliament,* Art. 3

rightholders exists elsewhere.[26] Of equal importance is that the standard for what constitutes a "diligent search" must be developed in "consultation with rightholders," including the authors and creators of works.[27]

As in the EU, diligent search criteria in the United States should be narrowly tailored to account for the dynamics and business practices of different industries. Unique characteristics of the motion picture industry, in particular, call for distinct diligent search requirements. Like in the EU, these requirements should be developed in consultation with the rightholders for each category of work. In the motion picture industry, this includes both writers and directors.

2. Motion Picture Credits Readily Identify Authors and Creators

Unlike some visual works, the writers and directors of motion pictures are easily identified from the credits. In addition, a simple administrative process can be established that would enable the public to identify the writer and director when the U.S. copyright holder no longer exists or cannot be found. Modern Internet search engines and databases provide users with a readily available tool to identify, locate and contact authors and creators. The DGA and WGAW provide yet another resource for users to identify authors and creators. Because the writers and directors of motion pictures are easily identified, motion pictures should not be treated the same as mediums where rightholders may be more difficult to locate, such as still photography. Any diligent search should account for the industry's unique characteristics.

3. The Means of Creating and Owning Motion Pictures Facilitates Ease of Author Attribution

Motion pictures are most often created as works made for hire. This results in the employer, rather than the author or creator, taking ownership of the copyright. Indeed, copyright ownership in the motion picture industry changes frequently. Production companies often transfer ownership of copyrights to other entities, each of which may assume different rights. The confusion in copyright ownership may be further compounded by unregistered mergers or asset sales that leave no public record of current ownership. Although these circumstances may make it difficult to locate the copyright holder of a motion picture, they do not impede a potential user's ability to identify the writer or director. Any diligent search requirements should take into account the difference in difficulty between a user's ability to identify authors and additional rightholders.

[26] Id.; Art. 3.4 "If there is evidence to suggest that relevant information on rightholders is to be found in other countries, sources of information available in those other counties shall also be consulted."
[27] *Id.*

D. Orphan Works Designations Should be Revocable

Any proposal to make orphan works available to the public should protect the continuing interests of all rightholders as defined in the EU Directive. If a writer or director claims ownership of a work that was previously designated as an "orphan," there should be clear and simple procedures to restore and enforce their rights in the work.

The EU Directive does exactly this by guarantying the rights of writers, directors and other rightholders if they discover their work has been designated an orphan work. Should a copyright owner or other rightholder be identified after orphan status has been conveyed, the Directive permits that rightholder to nullify the "orphan" designation and enforce their rights going forward.[28] This process protects all rightholders while ensuring orphan works can be used for legally permissible purposes without risk of infringement. DGA and WGAW expressed support for similar safeguards in their 2005 comments and do so again.

IV. Orphan Works In The Context Of Mass Digitization (Question 2)

A. Non-Exclusive Licenses for Mass Digitization of Orphan Works

In our March 25, 2005 comment to the Copyright Office, DGA and WGAW proposed granting non-exclusive licenses to locatable, credited writers and directors of orphan motion pictures. Granting non-exclusive licenses to writers and directors, as discussed in Section III(B) above, would solve one of the fundamental problems relating to mass digitization: it would provide potential users a mechanism to obtain legitimate licenses even when the copyright holder cannot be located. At the same time, it would protect the economic, creative and human rights of writers and directors with respect to their creations.

1. Extant Writers and Directors Should be Given the Right to Grant Non-Exclusive Licenses to Use Orphan Motion Pictures

Giving the credited writer and director the right to grant licenses in orphan motion pictures minimizes potential harm to other rightholders while facilitating the licensing and lawful use of orphan motion pictures.

Like most creators, writers and directors want their work available to the public. As a result, a motion picture that has been orphaned because it has no value to a corporate copyright

[28] *Directive of the European Parliament,* Art. 5 "Member States shall ensure that a rightholder in a work or phonogram considered to be an orphan work has at any time, the possibility of putting an end to the orphan work status in so far as his right are concerned."

holder will still have value to the writer and director. In addition, individual writers and directors receive greater utility from small license fees than do corporate copyright holders, who often find that the costs of granting such licenses outweigh the benefits. Writers and directors are uniquely able to understand the needs, financial situation, and creative vision of other creators who wish to license an orphan motion picture.

With respect to motion pictures, writers and directors are often more easily identifiable and locatable than copyright holders. The writer and director of a motion picture are prominently listed in the credits, providing the public sufficient knowledge regarding who to contact to license the work. Even in the unusual case where the potential user has no access to the original motion picture, information regarding production credits is available from DGA, WGAW, and various online public databases.[29]

By contrast, the identity of a *copyright holder* in a motion picture is not always readily apparent from motion picture credits. Copyright ownership changes frequently with respect to motion pictures, as can the names of production companies. A fairly common practice in the motion picture industry is to establish a single-purpose production entity to produce individual motion pictures. Once the motion picture has been completed, the company will dissolve and transfer ownership of copyrights to one or more other entities, with each receiving a different set of rights.[30] In other words, while the writers and directors of motion pictures remain static, ownership of the copyrights in motion pictures may change hands literally dozens of times. Because there is no legal requirement that these transfers of ownership be registered, there is often no public record of the current ownership of any particular motion picture.

In short, motion picture writers and directors are eminently more identifiable and locatable than copyright holders. For all the above reasons, vesting a non-exclusive licensing right with writers and directors of "orphan" motion pictures may in fact insure that such pictures will be much more available to the public.

2. DGA/WGAW Proposal is Limited to the Licensing of Orphan Motion Pictures

The manner in which motion pictures are created and licensed makes them particularly viable and appropriate for our proposal. Motion pictures are typically created as works made for hire[31] in which the employer rather than the creator takes ownership to the copyright.[32] Thus, the fact that the copyright holder of a motion picture cannot be located has no bearing on whether its authors or creators can be found.

[29] E.g., The Internet Movie Database at www.imdb.com.
[30] For instance, financiers of a motion picture often agree in advance to separately allocate the rights to North American and European distribution of the motion picture.
[31] *See* 17 U.S.C. § 101.
[32] *See* 17 U.S.C. § 201(a) and (b).

More importantly, as recognized in the EU Directive, specific rights accrue to writers and directors as original authors and creators, giving them rights comparable to that of copyright holders. In the digital age, geographic boundaries, which once separated the U.S. and European systems and designations, no longer exist with respect to content. It is not equitable for writers and directors to be afforded regional legal protections that must be enforced on a global Internet. Given writers' and directors' singular status, we recognize that our proposal, as described above, may not be appropriate for other categories of creative work.

V. Conclusion: Any Administrative or Legislative Action with Respect to Orphan Works Should Consider the Global Scope of Modern Copyright Law and the Key Provisions of the EU Directive

If the Copyright Office recommends a legislative or regulatory initiative to deal with orphan works, it should ensure the proposal protects the economic, creative, moral and human rights of motion picture writers and directors. Three of the key components of the EU Directive, which was adopted after years of inquiry into the problem of orphan works and the interests of the public in a changing world, should also be a part of any U.S. action. Specifically, any new initiative should include (1) equal protection for writers, directors and other rightholders, (2) a diligent search tailored to specific categories of works, and (3) revocable orphan work designation.

While we believe our proposal is workable and reflects a range of acknowledged realities, we do not profess to have anticipated every possible concern. Thus, we welcome any additional questions or issues the Copyright Office might want to raise. Thank you again for the opportunity to comment on an issue of such importance to our members.

Respectfully submitted,

/s/
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