

From: [Brad Holland](#)
To: [FN-OMB-IntellectualProperty](#)
Subject: Copyright
Date: Wednesday, March 24, 2010 4:44:03 PM
Attachments: [3 24 10 Holland to Espinel.doc](#)

Dear Ms. Espinel,

Thank you for the opportunity to comment on this important issue.

Sincerely,

Brad Holland

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March 23, 2010

Victoria A. Espinel
U.S. Intellectual Property Enforcement Coordinator
Office of Management and Budget
Executive Office of the President of the United States
Washington, DC 20500

Re: **Federal Register** / Vol. 75, No. 35/ Tuesday, February 23, 2010/ Notices

Dear Ms. Espinel,

As Co-chair of the American Society of Illustrators Partnership, I' ve joined my colleagues in writing to you on behalf of our organization' s members. Now I want to write to you as a long-time copyright holder. I' m an artist and writer whose work has appeared in *Vanity Fair, The New Yorker, Rolling Stone, Time, Newsweek, the New York Times, Washington Post, Wall Street Journal, Atlantic Monthly* and many other national and international publications. I' ve been nominated for the Pulitzer Prize and have been inducted into the Society of Illustrators Hall of Fame. I' ve been working professionally since I was 17 and have been published in major magazines since the Johnson Administration. I' ve been fortunate in never having to do anything else for a living, yet developments now taking place in copyright law could well cripple or end my career and the careers of tens of thousands of artists like me.

The Internet has created a defining moment in the history of the creative arts. While in many ways a blessing, the easy access it provides to other people' s work threatens every citizen' s right to his or her intellectual property. Yet intellectual property is *private property*, the most personal form that exists. It' s property we create ourselves, the property many of us use to make a living, the property we use to express our time on Earth. Under current copyright law we hold this property as an *exclusive right*. But the Internet has spawned a premise, strongly held by some, that all such private property should now be made accessible to the public and that the public is being harmed unless it is. As a result, these " public knowledge" advocates have been lobbying to " reform" copyright law in accord with their questionable premise.

This premise has found its first legislative incarnation as the failed Orphan Works Acts of 2006 and 2008. If resurrected and passed into law, these bills would undermine every creator' s exclusive right to his or her property. *In particular, they' d impose a radically new business model on the licensing of copyrighted work.* It would do this by " pressuring"

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individual creators to surrender access to our commercial inventory, along with our metadata and licensing information to privately owned commercial databases. Failure to do this would make orphans of our works and expose them to potential infringement. Publicly, the bill's advocates have argued that they're promoting this "reform" for our benefit because, they say, "artists have complained that they can't be found." With all due respect, this is nonsense. We're professional artists. We can be found. Our clients find us all the time. Magazines and newspapers are full of our work.

To understand this bill, we have to go instead, to the heart of the matter. By defining millions of works as orphans on the premise that some might be, this bill would *allow Internet content providers to profit by harvesting the work of others, providing their databases with content they could never afford to create themselves nor license from us*. By giving giant image banks access to our intellectual property and metadata, this legislation would allow them to enter our commercial markets as discount clearing houses to compete with us for our own clients. This would be inexcusable. I can think of no other field where small business owners can be coerced to supply potential competitors with their content, business data and client contact information.

The sponsors of this "reform" have said it's merely a small adjustment to copyright law. In fact, its logic *reverses* copyright law. It presumes that the public is entitled to use our work as a *primary right* and that it's our obligation to make our work available. If this legislation were to become law, in the United States, copyright would no longer be the exclusive right of the copyright holder. And exclusive rights matter to us for three reasons:

- Creative control: No one can change my work without my permission;
- Ownership: No one can *use* my work without my permission;
- Value: In the marketplace, my ability to sell exclusive rights to a client *triples the value of my work*.

This "reform" would void that exclusive right:

- It would permit anyone who can't find me (or who removes my name from my work and says he can't) to infringe my work.
- And since anyone's work can be infringed without their knowledge anytime, anywhere in the world,
- I could never again guarantee a client that my work has not been – or won't be – infringed.
- Therefore I could never again guarantee a client the exclusive right to my work.

That means that if this particular "reform" were to become law, my entire archive of work would be devalued by 2/3.

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In addition, the cost of digitizing and registering thousands - or tens of thousands - of individual images will make compliance impossible for most artists. Let me be specific:

During the last 12 months, I have scanned, cleaned up, cropped, color corrected, key-worded and partially catalogued around 700 images from my inventory of published works. These scans had to be archived in various formats and file sizes. To do this took me 30 to 40 hours a week over and above my ordinary working schedule. This means that for a year I worked roughly 100 hours a week or more. Yet my full inventory of published works consists of over 7,000 drawings and paintings. **If I had to make the same commitment of time to digitize my work for Orphan Works registries, it would take me 10 years of hundred hour weeks to comply. Or, if I paid my assistant to do it, at \$20 dollars an hour for 20 hours a week, compliance would take us 20 years and cost me over \$400,000. In short, there is no rational way I' d be able to comply with this unfunded mandate –nor could any artist I know. Passage of this mis-named reform legislation would lead to cultural abuse on an unprecedented scale.**

The majority of visual artists are self-employed. We work alone without paid benefits or financial backing. We receive no salaries, do our own marketing and have no administrative support. We have no safety net. Yet we supply much of the visual material that makes up our popular culture. We have every incentive to see that our work is accessible. But it' s our right to control its use and it' s our prerogative to protect it from exploitation. In the letter submitted on behalf of the American Society of Illustrators Partnership, my colleagues and I have proposed a copyright reform that would actually benefit artists and would have their support. I hope you' ll take the time to consider it and I thank you for the opportunity to comment on this vital issue.

I' m supplying a link to various websites which contain my work and which reflect the hundreds of hours of scanning, etc. I' ve just referred to.

Sincerely,



Brad Holland

<http://www.bradholland.net/beta/portfolios/portfolioAdv.html>

<http://drawger.com/holland/>

<http://holland.profilestock.com/>