

May 6, 2005

Jule L. Sigall
Associate Registrar for Policy and International Affairs
United States Copyright Office
Copyright GC/I&R
PO Box 70400
Southwest Station
Washington, D.C. 20024

Dear Mr. Sigall:

On behalf of the Whitney Museum of American Art, I am writing to express our support for the proposal relating to orphan works (the "Orphan Works Proposal") submitted by The J. Paul Getty Trust, The Solomon R. Guggenheim Foundation, and The Metropolitan Museum of Art in their Comment Letter to you dated March 24, 2005, and its Appendix (OWO610).

The Whitney's mission is to serve the public through the collection, preservation, interpretation, and exhibition of works of twentieth- and twenty-first-century American art. The Museum currently holds a permanent collection representing over 2,500 artists with more than 15,000 works, the vast majority of which are still under copyright. The Whitney organizes and hosts approximately thirty exhibitions each year, some of which travel nationally and internationally. In furtherance of our educational mission the Museum maintains an ambitious publishing program, featuring catalogues, educational brochures, and other publications which help us reach a broader audience of scholars and members of the public who may not be able to view the exhibitions in our galleries.

With many major Whitney publications, we encounter cases of orphan works. While we make concerted efforts to locate and obtain permission from potential copyright holders of works we intend to publish, we frequently cannot identify or locate the rights holders, even after months of diligent search. In such cases we make a determination as to whether to include the image, and often decide to remove the image from the publication altogether. This prevents us from fully presenting and interpreting the works, which is at the core of the Museum's mission.

We believe the Orphan Works Proposal is a thoughtful and well-articulated proposal that would be enormously helpful to the Whitney in allowing it to further its educational mission through its publications. One refinement to the Orphan Works Proposal we would urge the Copyright Office to consider is a two-tier approach to orphan works depending on the nature of the user. We feel that non-profit museums or similar

institutions using orphan works in furtherance of their charitable purposes should be afforded the full protections of the safe harbor as outlined in the Orphan Works Proposal. For commercial users of orphan works a different approach may be more appropriate, however, both in terms of the standards for a diligent search and the damages available to the rights holder. Whereas we feel that monetary damages are not appropriate for museums and other charitable institutions such as libraries, archives, and universities, we feel a limited damages approach for commercial users may be more fair for artists and rights holders whose works are used for commercial purposes.

Thank you for this opportunity for comment.

Very truly yours,



Nicholas S. Holmes
Legal Officer/Exhibitions and
Collections Coordinator