

The Orphan Works- A Federal Issue

This page was last updated 1/14/09

The Artists Foundation (AF) is working very closely with several artists run advocacy organizations on tracking and advocating on the Orphan Works Issue. In 2008 Orphan Works legislation was proposed and if it had passed as it was written it would have changed US copyright law and would have **negatively impacted artists of all disciplines (literary, visual, music, etc.), as well as every US citizen**. For more info on what happened in 2008 see our [background page](#) on it.

THANK YOU to all who called, emailed, faxed, visited their federal elected officials and their staff. The legislation DID not advance in the last Congress (i.e. it did not pass). Orphan Works Legislation will more than likely be introduced in the next Congress- so our advocacy on this matter is far from over. Any new Orphan Works legislation will probably be based on the 2008 versions.

Contact your Congressperson and Senator- To find out who represents you: www.vote-smart.org

The very basics on this issue:

Currently under US copyright- the two legal ways to use someone's work is under what is called "fair use" or to find the copyright owner and negotiate for the use of the work (whether the creator has officially filed for copyright with the US copyright office or not). If one can't find the copyright owner to get permission to use the work and if "fair use" doesn't apply - they can NOT legally use the work. What has been called Orphan Works legislation will change that. Proposed Orphan Works legislation would allow for someone (a person or a business) who has done a "search" and if they can't find the copyright owner, they will be legally allowed to use or infringe the copyright (i.e. use your work). This will hold for artwork, music, family photos, films, essays, poems, etc.. One does not lose their copyright, but their work will be able to be legally infringed under these pieces of legislation if their work is deemed to be orphaned. None of the Orphan Works Legislation has ever clearly spelled out how long the search needs to be and what it needs to entail Nor has any orphan works legislation required the "infringer" to prove they obtained the "orphaned" work legally.

What has prompted this legislation you may ask? Libraries and other educational institutions have works in their collections that they would like to use the copyright for educational purposes and presently they can not find the copyright owners in question. Individuals want to be able to retouch old family photographs and they too can't find the copyright owner of the photographs. Documentary filmmakers are also in need to have access to images and work that they can not find the copyright owners of. These are clearly very important issues that need to be dealt with

The 2008 Orphan Works Legislation allowed for anyone to "infringe" who had done a search and the 2008 legislation also made no distinction from educational institution v.s. Commercial institution. (i.e. an advertising company could use your work under this proposed legislation if they searched and could not find you). Although there was some effort to minimize someone using the orphaned work for commercial purposes in the 2008 legislation, both pieces of legislation did not offer enough protection for artists of all

disciplines or individuals for that matter.

There are other aspects of the 2008 legislation that were very troubling that were contained in both bills: 1) the pieces of legislation called for on-line databases or what would be also called registries to be certified by the Copyright office for visual artists to register their work with. No where in the legislation does it say they are to be free of charge to artists and although the law does not mandate you to register your work with these databases/registries- it is clear that these databases/registries will be a key tool for those to use searching for the copyright owners and a way for them to justify they did a search, 2) the amount of damages that could be retrieved by the copyright owner if they "surface" and find their work was deemed and used as an orphan work when in fact it was not orphaned were very problematic and unacceptable (legal fees need to be covered for example) 3) this law would essentially force musicians, writers, visual artists, and others who want to protect their creative work to officially copyright their work to protect it-this will be too costly for most individuals and small businesses. 4) and the very real problem that works will be classified as orphaned works when in fact they are not orphaned, etc..

We strongly suspect that aspects of the 2008 Orphan Works Legislation will be incorporated in any new legislation that is filed in the next Congress. The AF has compiled key [talking points](#) for individuals & organizations to use in advocating to make sure that ANY Orphan Works Legislation that is filed in the next Congress does not negatively impact our community. I also include [my letter](#) to elected officials on the 2008 Orphan Work issue and the AF's short paper on the 2008 Legislation's [Impact](#).

I urge you to get involved and to get others involved. Your copyright protection and everyone else's is depending on it.

---Kathleen Bitetti- Artist and Executive Director of the Artists Foundation

WHAT YOU CAN DO:

Contact your Congressperson and Senator- To find out who represents you: www.vote-smart.org

PLEASE note- do not mail a letter to your Congressperson or Senator to their DC office (it will take over a month for them to get it due to the mail needing to be screened). If you want to mail a letter - send it to their district office.

If you want to track and read any federal legislation off the Federal Government's official website: <http://thomas.loc.gov> (I encourage you do to so)

If you run an artists/arts organization or an artists/arts advocacy organization and are interested in working with the Artists Foundation on this issue- email us- [afinfo \(at\) artistsfoundation.org](mailto:afinfo@artistsfoundation.org)

Spread the word and urge all other artists of all disciplines across the country (visual artists, musicians, writers) and supporters of artists to contact their Congresspeople and Senators on this issue immediately.

MORE RESOURCES:

The Illustrators Partnership of America has a wonderful website that goes into much more detail on this legislation and you can also download the legislation off of their website to read it for yourself. You can also join their email list to be kept abreast of this legislation.

www.illustratorpartnership.org

Another great website is Orphan Works Opposition Headquarters www.owoh.org

Another wonderful resource is the Stock Artists Alliance's website. www.stockartistsalliance.org

OF NOTE:

The European Union on June 4th 2008 approved a good orphan works agreement: http://ec.europa.eu/information_society/newsroom/cf/itemdetail.cfm?item_id=4145

Some model protocols for interacting with Native American work and art work in general: <http://www2.nau.edu/libnap-p/protocols.html>

Boston Herald Article on the issue: <http://www.bostonherald.com/business/general/view.bg?articleid=1095637>

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