

Orphan Works 2008

House H.R. 5889 & Senate S. 2913

There were two bills - one filed in the House H.R. 5889 and one in the Senate S. 2913. The bills differed from each other BUT both bills were highly problematic as they were written.

It is very important to note that the crafters of the legislation were trying to pass them before the legislative session ended in what is called a "Lame Duck Session" .

Again due to the advocacy by artists and others, these two bills died in the last Congress.

The history of the legislation:

The House Bill- On 5/7/08- the House IP Subcommittee unanimously approved H.R. 5889 by a voice vote, and it has moved to the House Judiciary Committee. There were no needed corrective changes made to the legislation (as of this date by the Subcommittee). On late Thursday night 10/2/08 the House Judiciary Committee "explored" trying to pass a version of the Orphan Works legislation before they recessed* Again they could still pass the legislation during what is called a "Lame Duck Session".

The Senate Bill- On 5/15/08- the Senate Judiciary Committee unanimously reported S. 2913 out favorably with no needed corrective changes made to the legislation. A new version of S.2913 was introduced on Friday, Sept 26 in the afternoon in an effort to pass it in the Senate. In the late afternoon/early evening of 9/26/08 the Senate passed S.2913*

*OF particular note is that this was the timeframe that Congress was trying to address the wall street/financial crisis.

More background info:

During the late afternoon of Friday, September 26th, Senator Leahy, the main sponsor of S.2913, amended S. 2913 and "**hotlined**" the new Senate Bill-*which means there was no floor discussion or amending the bill and it passed unanimously in the Senate (note Senator Hatch was in agreement with Senator Leahy). There is no record of how Senators voted or who/how many voted . We now have [the amended language](#) for S.2913 and the final version of S.2913 has been posted on <http://thomas.loc.gov> and one of our fellow artists advocates has made a [downloadable pdf](#) of it. **The passed S. 2913 bill still does not offer enough protection to artists and small businesses.** It is doubtful that many Senators or their staff got to review the new amendment version of S.2913. Again this was the weekend Congress was trying to address the wall street/financial crisis.*

As for the House they could have suspend the rules and also fast tracked their version of bill. They did try to fast track H.R.5889 on the late evening of October 2nd and worked til the early morning of October 3rd

to do this. In other words there was an effort in the House to try to reconcile the differences between the House Bill and the Senate Bill with the goal of getting the Orphan Works Legislation on the suspension calendar BEFORE the big vote in the House on the economic stimulus package. Luckily, via intense advocacy, this did not happen.

The other scenarios that could have taken place in the lame duck session: 1) to pass the House Bill as it was written with it ending up in what is called a conference committee to iron out the differences between the two bills. 2) the House could have "pull" their version of the bill and agreed to the Senate Bill-then there is no conference committee. In either case, this legislation could become law if it gets to the president's desk during the Lame Duck Session.

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