

We are the Guild.



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Myths & Facts About Orphan Works

- **Will my work automatically be “orphaned” by enactment of either the Senate or House version of the bill?**

Possibly. If a user is able to identify the artist with his or her work, it will not suddenly become orphaned.

In fact, for artists who don't register their work now, the passage of these bills may have almost no effect at all with regard to their rights upon the discovery of its infringed use.

Current copyright law allows for statutory damages and attorney fees only if the work was registered prior to the infringement. If the work was not registered, the only remedy allowed now is the artist's lost profits or the infringer's net profits. There are no statutory damages or attorney fee reimbursement permitted when the work was not registered beforehand.

As a practical matter, the calculation of lost profits or net profits often equates to a reasonable royalty because of overhead deductions. Both versions of Orphan Works (OW) legislation also award reasonable royalties for infringed artwork, so the difference may be negligible.

- **Will I have to register all of my work with a database?**

No. The legislation only calls for a study regarding the feasibility of a database. It does not mandate it. However, if the ownership of a work is not readily apparent, such as by the presence of a watermark, it may help to have the work registered in a well-known database. This increases the likelihood of the user finding the owner.

- **If we stop this legislation now, that will be the end of it, or at least we'll be able to get better bill in the future.**

That's a nice thought, but neither is necessarily true.

OW legislation was initiated by powerful and large constituencies including museums, publishers and others who are likely to be persistent. It's also exceptionally rare in the lawmaking process for a bill to be completely abandoned after so much time and effort has been expended.

Future versions could potentially be more disadvantageous to artists. The creative constituency is relatively small compared to those in favor of the bill.

The Graphics Artist Guild has been part of the process since 2005 to make sure this legislation has the best possible outcome. We participated in the roundtable discussions, hired a lobbyist and pressed our membership into action once the key committee approved the Senate bill. We will continue to take a responsible approach, particularly with regard to the Useful Articles and Notice of Use clauses, but it's naïve to think the bill will go away or suddenly take a remarkable turn for the better.

- **Congress will have to listen if we keep sending letters.**

The Graphics Artists Guild was among the first in the visual arts arena to be involved in affecting this legislation, and we have expressed artists' concerns to lawmakers through every means possible for years. Legislative personnel prefer to work with people familiar with the details of the legislative process, the current legislation at hand, the history of the bill and the entirety of the political situation and interests involved. Flooding offices with letters from individuals can sometimes backfire by angering key staffers. As a result, most responsible organizations counsel members to work within the established process before resorting to letter-writing campaigns.

- **Are we supposed to just take a “wait and see” approach?**

Absolutely not. The Graphics Artist Guild has been working as an active and responsible partner during this process. We successfully lobbied to have useful articles excluded from the Senate bill and now ask members to support our insistence upon the Notice of Use provision. This clause will enable artists to take a proactive approach to protecting their work. As the process moves forward, we will have further recommendations for the creative community, and we urge artists everywhere to get accurate and up-to-date news about the legislation on the Internet from Orphan Works News (<http://www.orphanworksnews.com>).

- **So, we have nothing to worry about then?**

That's an overstatement.

The inherent presumption in the provisions of these bills is that artists' rights will be protected by a visually searchable database that does not exist. Until an image-searchable, comprehensively populated database technology is available that doesn't impose undue burden on artists, the Graphic Artists Guild insists that Notice of Use Statements be filed and made available for review by copyright owners.