

We are the Guild.

Orphan Works Legislation Position Paper

The Orphan Works legislation being deliberated in Congress has caused more division and panic among the creative community than any other issue during the Guild's 41-year history. Ironically, this challenge to the future of our profession has divided artists at the very time we should be united to achieve the best possible outcome.

The only successful labor actions in history have been the result of a well-informed and resolute workforce acting in unison. The current level of misinformation and deliberate fragmentation of the creative community is a threat equal to or greater than the worst provisions of the Orphan Works legislation. Visual creators must unite behind responsible and actionable positions regarding Orphan Works.

The Guild has successfully pursued copyright protection since obtaining a favorable decision from the Copyright Royalty Tribunal in 1978. We've secured numerous similar victories for artists of all kinds during subsequent years, and we were among the first to be involved in the Orphan Works discussion. Our accumulated respect and experience in this area of artistic commerce is beyond reproach.

There is almost no chance Orphan Works legislation will be stopped in its entirety. There are simply too many better-funded interest groups favoring changes to the law. However, that's not a reason to abandon our legitimate commercial rights.

The Guild has represented artists' interests regarding Orphan Works to the Copyright Office and both houses of Congress since 2005. After many discussions and negotiations, the Copyright Office issued recommendations contrary to the Guild's positions, and we responded by hiring an intellectual property attorney as our lobbyist to increase our presence on Capitol Hill.

We've repeatedly argued there is no current way to identify copyright owners of visual art regardless of what active steps the owner may take to protect his or her legitimate ownership rights. Until an image-searchable, comprehensively populated database technology is available that doesn't impose undue burden on artists, we are focusing our lobbying efforts on two bill provisions to provide a reasonable means of copyright protection:

- We sought to exclude useful articles from being subject to the legislation, because the art on these items are the most vulnerable to infringement. This clause limits commercial use but not to the extent we originally sought.
- We negotiated for the inclusion of a Notice of Use clause requiring users to file a copy of the allegedly orphaned artwork in a publicly accessible database within the Copyright Office. This would make it possible for artists to proactively determine if their work has mistakenly been identified as being orphaned.

We acknowledge these compromises are not preferred ideals. But even if we managed to delay the legislation, it's entirely possible a far worse version of a bill could be passed the next time around. We're working very hard to prevent that possibility, but the Guild needs the artistic community to be accurately informed and united.

Influence in the realm of politics is based upon perception. Much of the misinformation and tactics employed by some betray a pervading ignorance of the substance of these bills and the legislative process itself. This undermines the credibility with lawmakers the Guild has meticulously built during the last four decades, and legislators could develop the impression that artists lack the political potency for any serious consideration at all.

Please visit our dedicated website, Orphan Works News, for accurate and reliable information as the situation evolves (www.orphanworksnews.com). There you will be able to sign up for RSS feeds to get the latest developments as the Guild daily monitors the situation.

Together, artists can withstand the strongest opposition, but divided we're sure to fail. Please join the most experienced and reliable artist advocacy group in meeting the greatest challenge of this generation.



Graphic Artists Guild
32 Broadway, #1114
New York, NY 10004

212-791-3400
www.gag.org