

LIBRARY COPYRIGHT ALLIANCE SUPPORTS ORPHAN WORKS REFORM

Orphan works are works whose copyright owners cannot be identified and located. Libraries and archives possess millions of orphan works in their collections, in the form of photographs, letters, manuscripts, drawings, and older books. These works often have great historic and cultural significance. However, because the copyright owners cannot be located, libraries cannot obtain the rights holders' permission to make these works widely available to the public. This leaves libraries on the horns of a dilemma. Libraries can either disseminate the works and face the risk of the copyright owners demanding statutory damages and injunctive relief; or leave the works in archives, where few people can see them.

In 2005, the Copyright Office, with extensive public participation, conducted a study of the orphan works problem. The Copyright Office concluded that Congress should enact legislation that limited the remedies available against legitimate users of orphan works. After lengthy negotiations among interested parties, Congressman Lamar Smith, then Chairman of the House Judiciary Subcommittee on Intellectual Property, introduced H.R. 5439, the Orphan Works Act of 2006. The Subcommittee reported favorably on H.R. 5439, which was then merged with other copyright amendments to form the H.R. 6052, the Copyright Modernization Act. The 109th Congress ended before the full Judiciary Committee could consider H.R. 6052.

Under the Copyright Office recommendation and H.R. 5439, if a person performed a reasonably diligent, but ultimately unsuccessful, search for the copyright owner prior to the use, the remedies available to a reappearing owner were limited. Instead of statutory damages, which can range up to \$150,000 per work infringed, commercial users would pay reasonable compensation for all past uses, as well as for any future uses permitted by the court. The bill defined reasonable compensation as the fee for which the owner licenses the work at issue. Thus, the bill required the user to pay the amount he would have paid had he succeeded in finding the owner prior to the use. If a noncommercial user stopped the use as soon as receiving notice from the owner, the noncommercial user was exempt from paying reasonable compensation.

H.R. 5439 also provided an important limitation on injunctive relief. If the user created a new work that incorporated the existing work, the user could continue the use, so long as he paid reasonable compensation. However, a court could enjoin the user from making new uses after the owner reappeared.

In addition to libraries, publishers and consumers support orphan works reform. Photographers and other visual artists voiced concerns, many of which were addressed in the negotiations prior to the introduction of H.R. 5439. Continuing opposition by some visual artists overlooks the fact that owners will still recover reasonable compensation for unauthorized use of their works. Thus, orphan works legislation permits socially valuable uses of obscure works without harming the legitimate interests of copyright owners.



The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5,000 members nationwide. AALL's mission is to promote and enhance the value of law libraries to the legal and public communities, to foster the profession of law librarianship, and to provide leadership in the field of legal information and information policy. <http://www.aall.org/>
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The American Library Association (ALA) is a nonprofit educational organization of over 65,000 librarians, library trustees, and other friends of libraries dedicated to improving library services and promoting the public interest in a free and open information society. <http://www.ala.org/>
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The Association of Research Libraries (ARL) is a nonprofit organization of 123 research libraries in North America. ARL's members include university libraries, public libraries, government and national libraries. ARL influences the changing environment of scholarly communication and the public policies that affect research libraries and the diverse communities they serve. ARL pursues this mission by advancing the goals of its member research libraries, providing leadership in public and information policy to the scholarly and higher education communities, fostering the exchange of ideas and expertise, and shaping a future environment that leverages its interests with those of allied organizations. <http://www.arl.org/>
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The Medical Library Association (MLA), a nonprofit, educational organization, is a leading advocate for health sciences information professionals with more than 4,700 members worldwide. Through its programs and services, MLA provides lifelong educational opportunities, supports a knowledgebase of health information research, and works with a global network of partners to promote the importance of quality information for improved health to the health care community and the public. <http://www.mlanet.org/>
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The Special Libraries Association (SLA) is a nonprofit global organization for innovative information professionals and their strategic partners. SLA serves more than 12,000 members in 83 countries in the information profession, including corporate, academic and government information specialists. SLA promotes and strengthens its members through learning, advocacy and networking initiatives. <http://www.sla.org/>
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