




## Orphan Works Legislation



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*Monopoly: Playing the Innovation Game*  
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### What are Orphan Works?

- Works protected by copyright law
- A potential user cannot locate a copyright owner (or another party who has authority to license the use)
- Even after conducting a diligent search

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### Recent History

- 2005: Copyright Office study
  - More than 850 written comments
  - Roundtables
  - Meetings
- 2006: *Report on Orphan Works*
  - Available at [www.copyright.gov/orphan/](http://www.copyright.gov/orphan/)
- 2007: 109th Congress
  - Two hearings
  - H.R. 5439 & H.R. 6052
- 2008: 110th Congress
  - House Subcommittee hearing
  - H.R. 5889, voted out of Subcommittee
  - S. 2913, voted out of Committee
  - Bills available at [www.thomas.gov](http://www.thomas.gov)

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### *S. 2913: Conditions for eligibility*

- Searched but could not find the owner
- Documented the search
- Provided attribution to the owner
- Included an O/W symbol with any public use
- Litigation requirements (pleading, jurisdiction, disclosure)

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### *S. 2913: Limitation on remedies*

- Monetary
  - Reasonable compensation
    - “The amount on which a willing buyer and willing seller in the positions of the infringer and the owner of the infringed copyright would have agreed with respect to the infringing use of the work immediately before the infringement began.”
  - No statutory damages
  - No attorney’s fees

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### *S. 2913: Limitation on remedies*

- Monetary
  - The “safe harbor”
    - Nonprofit educational institution, museum, library, archive, or public broadcasting entity
    - Infringement was performed without any purpose of direct or indirect commercial advantage
    - Infringement was primarily educational, religious, or charitable in nature
    - After receiving notice of claim of infringement, infringer ceased infringement promptly

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### *S. 2913: Limitation on remedies*

#### ● Injunction

- If infringer recast, transformed, adapted, or integrated the O/W with a significant amount of original expression:
  - Court can not stop use
  - Infringer has to pay reasonable compensation
  - Infringer has to provide attribution if owner requests
- If infringer did not recast etc.:
  - Court can stop use
  - Court should account for reliance

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### *S. 2913: Special issues*

- Sovereign immunity
- Useful articles
- Negotiation in bad faith
- Does not affect "fair use"
- Effective date

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### *H.R. 5889: Differences*

- Notice of use
  - Condition for limitation of remedies
  - Archive at Copyright Office
- Proceeds of a safe harbor use
  - Owner entitled to portion attributable to infringement
- Effect of registration
  - Court can consider when calculating reasonable compensation
- Effective date

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*Thank you!*



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