

**It's very obvious that Marybeth Peters, Register of Copyrights, did a great job discussing the problem of 'orphan works'. From the many letters we on the NAPP site have received from our representatives it's also obvious that they are assuming/trusting that the Shawn Bentley Orphan Works Act accurately addresses the issue of an orphaned work. Herein lies the discrepancy.**

Statement of Marybeth Peters, The Register of Copyrights before the Subcommittee on Courts, the Internet, and Intellectual Property, Committee on the Judiciary

**Excerpt - the problem explained:**

"In fact, the most striking aspect of orphan works is that the frustrations are pervasive in a way that many copyright problems are not. When a copyright owner cannot be identified or is unlocatable, potential users abandon important, productive projects, many of which would be beneficial to our *national heritage*. Scholars cannot use the *important letters, images and manuscripts they search out in archives or private homes*, other than in the limited manner permitted by fair use or the first sale doctrine. Publishers cannot recirculate works or publish *obscure materials* that have been all but lost to the world. *Museums* are stymied in their creation of exhibitions, books, web sites and other educational programs, particularly when the project would include the use of multiple works. Archives cannot make *rare footage* available to wider audiences. Documentary filmmakers must exclude certain manuscripts, images, sound recordings and other important source material from their films. The Copyright Office finds such loss difficult to justify when the primary rationale behind the prohibition is to protect a copyright owner who is missing. If there is no copyright owner, there is no beneficiary of the copyright term and it is an enormous waste. The outcome does not further the objectives of the copyright system."

**In a nutshell: rare, historical and cultural works, that would be beneficial to our national heritage, are at risk of being lost in the system.**

**Now I'd like to share with you the transcript from my phone interview with Senator Leahy's aide and a Senate Judiciary aide.**

**Before I ask anything at all, I think you should know that I've spent the morning reading Title 17 of the U.S. Code with special emphasis on Chapter 5. You should also know that this will all be on the web.**

**Q: 'Could you please define an Orphaned Work?'**

**A: Absolutely, an Orphaned work is an image that does not have a clearly visible name attached to it and whose owner can not be found by searching the US Copyright office.**

**Q: So it doesn't necessarily have to be a significantly old image?**

**A: No.**

**Q: And it isn't Orphaned because the original creator has long passed?**

**A: No.**

**Q: So this has nothing to do with restoring old photos or preserving historically significant photos and works?**

**A: No, the intention is to specifically target online artists who fail to attach their name to their work.**

**Q: But there's no specific wording to that effect.**

**A: I will make note of that for the Senator.**

**Q: Also, much of this bill outlines protections for libraries, archives, educational institutions and non-profits that are already clearly outlined in Title 17 Chapter 5 Sec. 504.**

**A: That is true, but this bill would extend those protections to Broadcast Agencies.**

**Q: Broadcast Agencies? That's an incredibly, generic term for an hugely, profitable market. Why should they be exempt from lawsuit for copyright infringement?**

**A: I can't answer that.**

**Q: Hang on a second, you said a work would be considered Orphaned if the creator 'failed to attach their name to their work' but Copyright Law says that no specific mark or registration is required?**

**A: Uh . . . right.**

**Q: So this would effectively eliminate passive copyright, which is the right to control your own work from the moment of creation regardless of registration and formalities?**

**A: I really can't answer that.**

**Q: But you just did, you said very clearly that in order to be protected a visual work would be required to have a name clearly attached!**

**A: I'll connect you to the Senate Judiciary Committee. I'm sure they'll have the answer for you.**

**Connected to the Senate Judiciary Committee now:**

**Q: Senator Leahy's aide tells me that an Orphaned Work is one without a clearly visible name attached to it.**

**A: Yes, that's correct.**

**Q: So this Orphaned Works bill will effectively eliminated passive copyright?**

**A: I'm not sure I understand what you mean.**

**Q: Ok, as a parent I snap hundreds of photos of my sons and I use the Internet to share them with family and friends far away. I don't take time to sign each and every one, and I certainly don't pay to register them. So how will this bill impact me?**

**A: I would have to look into that and get back to you.**

**Q: Also does this Bill mean that the U.S. is withdrawing from the Berne Convention?**

**A: I'm not sure I understand.**

**Q: Well the result of the Berne Convention was the Digital Millennium Copyright Act wasn't it?**

**A: Well, yes.**

**Q: And the DMCA clearly allows for passive copyright which means I and other artists around the world have the right to control our work without having to sign it or register it right?**

**A: Oh, I see what you mean. Again that's something I will have to look into and get back to you on.**

**So, Sarah and I exchanged email addresses and that's all I know at this point . ~Lisa Sage**

Update: July 20, 2008 still no word on how this will impact families and passive copyrights. Also no change to the wording that would indicate we've been heard.