

109th CONGRESS  
2d Session  
H. R. 5439

To amend title 17, United States Code, to provide for limitation of remedies in cases in which the copyright owner cannot be located, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES**

**May 22, 2006**

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on the Judiciary

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**A BILL**

To amend title 17, United States Code, to provide for limitation of remedies in cases in which the copyright owner cannot be located, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Orphan Works Act of 2006'.

**SEC. 2. LIMITATION ON REMEDIES IN CASES INVOLVING ORPHAN WORKS.**

(a) Limitation on Remedies- Chapter 5 of title 17, United States Code, is amended by adding at the end the following new section:

**'Sec. 514. Limitation on remedies in cases involving orphan works**

'(a) Limitation on Remedies-

'(1) CONDITIONS- Notwithstanding sections 502 through 505, in an action brought under this title for infringement of copyright in a work, the remedies for infringement shall be limited under subsection (b) if the infringer sustains the burden of proving, and the court finds, that--

'(A) before the infringing use of the work began, the infringer, a person acting on behalf of the infringer, or any person jointly and severally liable with the infringer for the infringement of the work--

'(i) performed and documented a reasonably diligent search in good faith to locate the owner of the infringed copyright; but

'(ii) was unable to locate the owner; and

'(B) the infringing use of the work provided attribution, in a manner reasonable under the circumstances, to the author and owner of the

copyright, if known with a reasonable degree of certainty based on information obtained in performing the reasonably diligent search.

`(2) DEFINITIONS; REQUIREMENTS FOR SEARCHES-

`(A) OWNER OF INFRINGED COPYRIGHT- For purposes of paragraph (1), the `owner' of an infringed copyright in a work is the legal or beneficial owner of, or any party with authority to grant or license, an exclusive right under section 106 applicable to the infringement.

`(B) REQUIREMENTS FOR REASONABLY DILIGENT SEARCH- (i) For purposes of paragraph (1), a search to locate the owner of an infringed copyright in a work--

`(I) is `reasonably diligent' only if it includes steps that are reasonable under the circumstances to locate that owner in order to obtain permission for the use of the work; and

`(II) is not `reasonably diligent' solely by reference to the lack of identifying information with respect to the copyright on the copy or phonorecord of the work.

`(ii) The steps referred to in clause (i)(I) shall ordinarily include, at a minimum, review of the information maintained by the Register of Copyrights under subparagraph (C).

`(iii) A reasonably diligent search includes the use of reasonably available expert assistance and reasonably available technology, which may include, if reasonable under the circumstances, resources for which a charge or subscription fee is imposed.

`(C) INFORMATION TO GUIDE SEARCHES- The Register of Copyrights shall receive, maintain, and make available to the public, including through the Internet, information from authoritative sources, such as industry guidelines, statements of best practices, and other relevant documents, that is designed to assist users in conducting and documenting a reasonably diligent search under this subsection. Such information may include--

`(i) the records of the Copyright Office that are relevant to identifying and locating copyright owners;

`(ii) other sources of copyright ownership information reasonably available to users;

`(iii) methods to identify copyright ownership information associated with a work;

`(iv) sources of reasonably available technology tools and reasonably available expert assistance; and

`(v) best practices for documenting a reasonably diligent search.

`(b) Limitations on Remedies- The limitations on remedies in a case to which subsection (a) applies are the following:

`(1) MONETARY RELIEF-

`(A) GENERAL RULE- Subject to subparagraph (B), an award for monetary relief (including actual damages, statutory damages, costs, and attorney's fees) may not be made, other than an order requiring the infringer to pay reasonable compensation for the use of the infringed work.

`(B) EXCEPTIONS- (i) An order requiring the infringer to pay reasonable compensation for the use of the infringed work may not be made under subparagraph (A) if--

`(I) the infringement is performed without any purpose of direct or indirect commercial advantage and primarily for a charitable, religious, scholarly, or educational purpose, and

`(II) the infringer ceases the infringement expeditiously after receiving notice of the claim for infringement,

unless the copyright owner proves, and the court finds, that the infringer has earned proceeds directly attributable to the infringement.

`(ii) If the infringer fails to negotiate in good faith with the owner of the infringed work regarding the amount of reasonable compensation for the use of the infringed work, the court may award full costs, including a reasonable attorney's fee, against the infringer under section 505, subject to section 412.

`(2) INJUNCTIVE RELIEF-

`(A) GENERAL RULE- Subject to subparagraph (B), the court may impose injunctive relief to prevent or restrain the infringing use, except that, if the infringer has met the requirements of subsection (a), the relief shall, to the extent practicable, account for any harm that the relief would cause the infringer due to its reliance on having performed a reasonably diligent search under subsection (a).

`(B) SPECIAL RULE FOR NEW WORKS- In a case in which the infringer recasts, transforms, adapts, or integrates the infringed work with the infringer's original expression in a new work of authorship, the court may not, in granting injunctive relief, restrain the infringer's continued preparation or use of that new work, if the infringer--

`(i) pays reasonable compensation to the owner of the infringed copyright for the use of the infringed work; and

`(ii) provides attribution to the owner of the infringed copyright in a manner that the court determines is reasonable under the circumstances.

`(C) TREATMENT OF PARTIES NOT SUBJECT TO SUIT- The limitations on remedies under this paragraph shall not be available to an infringer that asserts in an action under section 501(b) that neither it nor its representative acting in an official capacity is subject to suit in Federal court for an award of damages to the copyright owner under section 504, unless the court finds that such infringer has--

`(i) complied with the requirements of subsection (a) of this section;

`(ii) made a good faith offer of compensation that was rejected by the copyright owner; and

`(iii) affirmed in writing its willingness to pay such compensation to the copyright owner upon the determination by the court that such compensation was reasonable under paragraph (3) of this subsection.

`(D) CONSTRUCTION- Nothing in subparagraph (C) shall be deemed to authorize or require, and no action taken pursuant to subparagraph (C) shall be deemed to constitute, an award of damages by the court against the infringer.

`(E) RIGHTS AND PRIVILEGES NOT WAIVED- No action taken by an infringer pursuant to subparagraph (C) shall be deemed to waive any right or privilege that, as a matter of law, protects such infringer from being subject to suit in Federal court for an award of damages to the copyright owner under section 504.

`(3) REASONABLE COMPENSATION- In establishing reasonable compensation under paragraph (1) or (2), the owner of the infringed copyright has the burden of establishing the amount on which a reasonable willing buyer and a reasonable willing seller in the positions of the owner and the infringer would have agreed with respect to the infringing use of the work immediately before the infringement began.

`(c) Preservation of Other Rights, Limitations, and Defense- This section does not affect any right, limitation, or defense to copyright infringement, including fair use, under this

title. If another provision of this title provides for a statutory license when the copyright owner cannot be located, that provision applies in lieu of this section.

`(d) Copyright for Derivative Works- Notwithstanding section 103(a), the infringing use of a work in accordance with this section shall not limit or affect the copyright protection for a work that uses the infringed work.'

(b) Conforming Amendment- The table of sections for chapter 5 of title 17, United States Code, is amended by adding at the end the following new item:

`514. Limitation on remedies in cases involving orphan works'.

(c) Effective Date- The amendments made by this section shall apply only to infringing uses that commence on or after June 1, 2008.

### **SEC. 3. REPORT TO CONGRESS ON AMENDMENTS.**

The Register of Copyrights shall, not later than December 12, 2014, report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the implementation and effects of the amendments made by section 2, including any recommendations for legislative changes that the Register considers appropriate.

### **SEC. 4. INQUIRY ON REMEDIES FOR SMALL COPYRIGHT CLAIMS.**

(a) In General- The Register of Copyrights shall conduct an inquiry with respect to remedies for copyright infringement claims seeking limited amounts of monetary relief, including consideration of alternatives to disputes currently heard in the United States district courts. The inquiry shall cover infringement claims to which section 514 of title 17, United States Code (as added by section 2 of this Act), apply, and other infringement claims under title 17, United States Code.

(b) Procedures- The Register of Copyrights shall publish notice of the inquiry under subsection (a), providing a period during which interested persons may submit comments on the inquiry, and an opportunity for interested persons to participate in public roundtables on the inquiry. The Register shall hold the public roundtables at such times as the Register considers appropriate.

(c) Report to Congress- The Register of Copyrights shall, not later than 1 year after the date of the enactment of this Act, prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the inquiry conducted under this section, including such recommendations that the Register considers appropriate.

*END*