

Orphan Works Sample Letter

Here is a sample letter that you can edit, copy, and paste onto your letterhead for faxing. YOU MUST PERSONALIZE THE FIRST SENTENCE. State if you are a constituent of that Representative in the first paragraph. Also state your profession (e.g. illustrator, cartoonist, textile designer, etc.). State clearly that you would like them to vote against the Orphan Works Bill H.R. 5439. [Make sure you have this information in the first paragraph.]

Please note that this is a two part letter. The second part of the letter is a bullet-point list of what needs to be changed in the current Bill. The bullet-point list needs to be attached to your signed letter.

The bullet-point list can also be used as a letter by itself. Just remember to sign it before sending it. You can also use it as a stand-alone letter for the members of the House Judiciary Committee (see attachment titled House Judiciary Committee Members).

INSTRUCTIONS FOR FAXING:

We would like you to fax your own Congressman/woman and the House Judiciary Committee regarding the Orphan Works Bill.

The House Judiciary Committee Members is attached as a separate document (see House Judiciary Committee Members attachment).

If you do not know your local Representative's name, visit <http://www.house.gov/writerep/> and enter your state and zip code.

Once you know who your Representative is, go to <http://www.house.gov/house/MemberWWW.shtml> and find the Representative's home page using the alphabetic list. The home page will have a "contact" link for fax numbers and other info.

The Honorable _____
U.S. House of Representatives
Washington, DC 20515

Via Facsimile

RE: H.R. 5439

Dear Rep. _____:

My name is [John Artist]. I am an [e.g. illustrator/cartoonist/surface designer, etc.] working in [City and State where you live]. I am writing to urge you to vote NO on H.R. 5439, The Orphan Works Bill.

If enacted, H.R. 5439 - the Orphan Works Bill - would be devastating to creators of copyrighted works like me. As a professional artist, I make my living from licensing my creative works, not from government funding or any other source. I and other creators of visual arts, such as illustrators, surface and textile designers, and photographers would be at risk of losing a substantial part of our income from licensing our copyrighted works. The fact is that most commercial images and patterns are published or manufactured without any attribution to their creators according to common industry practices, and are at great risk of becoming "orphan works."

The very nature of an orphan copyrighted work - where the author/creator either cannot be located or is unidentified - indicates that there is no way to determine with certainty whether some works considered "orphans" by this Bill are authored by American citizens. If a user cannot find attribution to an author/creator on a work, or cannot locate the author/creator or copyright holder through the US Copyright Office or other databases, it is possible that the author/creator may be a foreign national. H.R. 5439 would violate both the Berne and TRIPS agreements, and may instigate retaliatory copyright infringement backlash as users in other countries declare American works "orphans" for commercial use in their countries.

I am a member of the Graphic Artists Guild, part of a Coalition of creators' groups that is on record with amendments and terms that would be needed to make H.R. 5439 acceptable. I have included some information from the Coalition of creators' organizations regarding the terms of the Bill.

Thank you for your time and consideration of this issue.

Respectfully yours,



The basic approach of the H.R. 5439 is fundamentally flawed. Its effect would be to create compulsory licenses for all works whose owners cannot be located. However, unlike all other compulsory licenses of copyrighted works, this license would often be free. Most works created prior to the June 1, 2008 enactment of this Bill were not created under compulsory licensing, with the exception of musical works and some other specific categories. That underlying unfairness, which would be retroactively applicable to all existing copyrighted works, is fatal to the reasonableness of the Bill and I ask you to vote against it.

If you feel that you must support the Bill, it desperately needs to be amended in the following areas:

1. Most importantly, the Copyright Office has told trade association representatives that it will never make its inventory of copies of images searchable on line by any members of the public. That is simply an unreasonable position and one that virtually guarantees that many copyright owners can never be found. There is image-recognition software currently available on the market that would allow a searcher with an image to locate matching images, and the related copyright information, but the Copyright Office will not allow the public to search its deposit copies on line.

I urge you to require the Copyright Office to change that position and, in fairness to all, to set the effective date of H.R. 5439 to a time when the Copyright Office's inventory of deposit copies is searchable by the public on line.

2. The so-called Safe Harbor provisions ("Limitations on Remedies") are far too broad and take large amounts of revenues out of the pockets of already underpaid artists, photographers and writers. I urge you, at the very least, to limit the safe harbor to situations where the use is:

A. by individuals acting in a personal, non-commercial capacity, or by non-profit educational institutions, museums or libraries, and

B. for a scholarly or educational purpose, and

C. performed without any purpose or foreseeable effect of commercial advantage, and

D. where the infringer did not know, and had no reason to believe, that the copyright owner would normally have charged a fee for the use actually made by the infringer.

3. This Bill limits our relief and financial remedy by diminishing the serious nature of infringement and putting an artificially low cap on damages. The language does not define the term "reasonable compensation." Nor does this Bill provide any monetary relief if the infringement is "without any purpose of direct or indirect commercial advantage and primarily for a charitable, religious, scholarly, or education purpose." These usages are NOT necessarily covered under the Doctrine of Fair Use.

4. The Safe Harbor provisions relating to injunctive relief need to be changed in several areas, including the situation where an infringer negotiates a reasonable fee, but then fails to make payment. This Bill forces us to seek remedy with a hostile user who has used the work without the creator's permission.

5. The "Special Rule for New Works" needs revision to reflect the language of the Copyright Office's original report by requiring "the infringer's SIGNIFICANT AMOUNT of original expression in a new work of authorship."

6. The sovereign immunity provision ("Treatment of Parties Not Subject to Suit") requires amendment so that if an infringer asserts the defense of sovereign immunity, he cannot also assert an orphan work defense in the same matter.

Thank you for your time and consideration. I cannot emphasize how devastating to my business this Bill would be if it were enacted in its current form. It is not an "Orphan Works" bill --- it is a bill to revoke the copyrights of creators of visual artworks and writers, and a guide to copyright infringement with indemnification.

Respectfully yours,