

From: [REDACTED]
To: FN-OMB-IntellectualProperty
Cc: info@copyrightalliance.org
Subject: How intellectual property infringement affects my livelihood
Date: Wednesday, March 24, 2010 1:12:35 PM

Greetings Ms. Espinel,

The Copyright Alliance has informed me of this welcome invitation from the Obama Administration to share my thoughts on my rights as a creator.

My name is Diana Ponce and I am a New York City based illustrator who makes my entire living from creating artwork, specifically by selling usage rights to my illustrations. In over 20 years working as an artist, I have created a multitude of illustrations used in advertising, editorial and licensing work. As a business owner, I not only do I create illustrations, but I also handle negotiating rights and fees for the usage of the artwork. Intellectual property rights are very important to me. With current U.S. copyright law, my intellectual property rights are inherent upon creation, even without a mark of copyright or official registration I am protected. Officially registering works offers even more strength with up to \$150,000 statutory damages per infringement as well as court costs and attorney's fees if I win a case. This alone acts as a deterrent to those who may think about infringing upon my work. I gladly register my work with the assurance that I have the law behind me in case of infringement. The current U.S. copyright law has done a fair job at protecting the rights of intellectual property owners. This, along with the rights defined in the Berne Convention are what creatives around the world use to protect themselves from infringement of their creative works. This is why I personally oppose the Orphan Works Act (H.R. 5889 and S. 2913).

As it is currently written, the Orphan Works Act will expose creators' past and future copyrights to a multitude of unscrupulous opportunists with access to images on the internet or artwork on products. They are looking for 'free' valuable content to take and profit from. Once acquired, it only takes basic knowledge and cheap software to remove any copyright information from artwork. With this legislation, even if infringers were to get caught, they would basically get a slap on the wrist, a tiny penalty serving as an after-the-fact licensing fee which the artist will not have been in charge of negotiating. Even then, the fee would be difficult to collect if it ends up going through the special small claims court (which is being proposed), as most fines imposed in small claims court cannot be enforced. The new legislation would make it impossible for everyone except for perhaps multimillion dollar companies with IP attorneys on call from pursuing infringers. Most artists would end up spending excessive amounts of money (that would not be recovered as allowed today) to go after all the infringers only to win a set fee which would never come close to the expense they initially had to lay out. This would have a ripple effect as more and more people infringe on images with no fear of real repercussions. This endless scenario would most certainly drive many creatives to leave their respective fields.

This legislation will also make it incredibly easy for large corporate special interest groups to sell access to collections of 'royalty-free' artwork that they can harvest en masse online. There are also those in the 'Free Culture' society who claim they want to use public domain works under the guise of education and history, but in reality are looking to use Orphan Works as a loophole to free 'for-profit' content. 'Free Culture' advocates claim that there is a need to have a special clearinghouse to identify copyright holders. We already have a searchable database in place, it is called the U.S. copyright office. There is no reason for artists to have to re-register all of their work at their own expense for the benefit of others. I do understand the origins of the Orphan Works Act. But, unfortunately what began as a measure to allow librarians, historians and educators increased access to older copyrighted works, the Orphan Works Act has become a misguided attempt to dilute current U.S. copyright law. Fair-use is currently allowed under current U.S. copyright law and those using it must adhere to specific guidelines. It is set up in a way that is fair to both legitimate non-profit institutions as well as to creators.

If inventors, computer programmers and other creators have full rights of intellectual property protection, visual artists, photographers, writers and musicians should have equal protection against misappropriation by infringers. American creative content is a valuable resource to its creators and for our country. With piracy a menace throughout the world, the best way to set an example of regard for intellectual property law is to protect and enforce the laws to the fullest extent.

Thank you for the opportunity to share my opinion. I hope the information I have provided will give you some useful insight into the importance of intellectual property rights to me and to my creative community.

Diana Ponce
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Illustrator