

Regarding the “Orphan Works” Proposal

The proposed changes are unnecessary, ill-advised, unfair, and being pushed by wholesale infringers, especially Google.¹ Google must gut existing copyright law in order to advance its infringement-based business models. Although the initial goal is probably connected to Google’s infamous book-digitizing programs, this ill-advised change in copyright law would also strip the rights from photographers, artists, and other creators, as well as from authors and publishers. (Google and other infringement operations also steal from those other creators, as well as authors and book rights-owners).

The proposals would turn copyright law upside down, demanding that the targeted victims of infringement spend their own money and time trying to warn off potential infringers. This is a giant change from copyright law which forbids stealing copyrighted work and requires that the would-be user (or thief) get permission or face strict liability. To draw an analogy, someone cannot be excused for stealing a car or bicycle merely by claiming he couldn’t find the owner.

Among the most significant and profoundly misguided aspects of the proposal, is that it would remove monetary deterrence for infringement. The thief could avoid penalties merely by claiming he did a “reasonable” search. Then, even if the victim caught the thief the thief could avoid penalties by claiming he did a “reasonable” search. And it would be easy for the thief to make a false claim of a search, or to do a minimal pro forma search.

The penalties would be diminished to almost nothing, far less than would be needed to deter infringement. In most cases the thief would merely have to promise to stop stealing that particular work. Even in egregious cases, the penalties would be limited to a “reasonable” license fee. Such a fee would be so small that it would remove the deterrents against wholesale thievery.

The proposals ignore some of the more odious aspects, including the reality that rights-owners would be bullied into paying money to register with various databases at unknown costs. Who would probably set up such databases? Most likely thieves like Google, who would not only steal intellectual property, but effectively set up a shakedown of the rights-owners, forcing them to register at onerous bother and expense.

The proposal is full of bad ideas and would as a practical matter strip creators and “little guys” of their rights, their property, and their legal redress. It would remove the existing deterrents to theft of intellectual property and would encourage massive infringement by Google and other operators with infringement-based operations and business plans.

Copyright law should be left as it is. This proposal should be thrown in the garbage. Or in the Potomac River.

¹Google is currently engaged in massive infringement of over 18 million books, with the intention of digitizing and monetizing “all the books in the world,” entirely without permission of the rights owners. It needs to gut copyright law, especially penalties for infringement.