

The goal of all property rights is to provide the rightful possessor with the right to the full use and enjoyment of his or her property. These rights include exclusivity, namely the right to use or not use the property as one sees fit. However negative rights, except perhaps in the case of patents, are not absolute. In fact with in comes to property rights, intellectual and/or otherwise, there is always a strong tendency to not only allow but to promote the free alienability of property. It could be argued that of all intellectual property rights, because of the potential for restrictions on free speech, copyright law has always shown a "predilection" toward the usage of works covered under the Copyright Act. Although there are many examples of the tendency toward usage, the best example is the Fair Use Doctrine. In short, the Doctrine is powerful evidence that when the rights of free speech are balanced against the economic interests of the Author, society is best served by statutory law allowing individuals involved in the arts and sciences to utilize the works of others in the interest of promoting an environment for the free and robust discourse of subject matter important (and perhaps not so important) to our cultural progress. The enactment of an Orphan Works Act would continue this tradition of copyright exceptions and in fact help promulgate the recent trend toward greater third party rights.

In fact, property laws have in many ways historically been treated as a "two-way street." Allodial rights are an expression of the natural rights philosophy adhered to by most of the Founding Fathers. In particular Thomas Jefferson was a great believer in allodial rights and utilized these theories of ownership as his basis for private property rights. The theory is actually quite simple. Land must be put to good use and the person who is most capable of using the land and in fact does, has a natural right to the land. In many ways this theory of property ownership can be used as a basis for an Orphan Works Act. Much like a landowner who abandons his land and risks losing the property to someone who wishes to make good use of it (adverse possession), an Author who "abandons" his or her copyright, much like the absentee landowner who *cannot be found*, should in fact expect that his or her property may, under the right circumstances, be utilized by someone wishing to make good use of the property.

This view is also further supported by the obligation in virtually every other area of the law to actively protect one's rights. As a landowner can put up a sign or build a fence, copyright owners should not be allowed to abdicate their responsibilities as property owners, intellectual or otherwise, and expect the United States government to reward their complete lack of diligence by unilaterally protecting their rights, in this case, copyrights.

In closing, it is time to take the "guesswork" out of current copyright law by enacting an Orphan Works Act that allows good faith uses who wish to make use of abandoned copyrights to rely upon and benefit from a common sense set of rules based upon the American tradition of the free alienability of property, be it intellectual or otherwise.