

The Honorable Bobby Scott
U.S. House of Representatives
1201 Longworth House Office Building
Washington, D.C. 20515-1007

December 8, 2008

Dear Representative Scott:

On behalf of Association of Medical Illustrators (AMI) – that represents over 600 small businesses in the US – we are writing to express our grave concern about the controversial Orphan Works Act of 2008 (HR 5889). We've been advised that the Judiciary Committee may try to place it on the Suspensions Calendar and pass it by unanimous consent. Please don't allow this to happen.

The AMI did not have a voice in drafting this bill, yet all our members who create a specialized type of visual intellectual property will be harmed by it. The safe harbor clauses for nonprofits in the Orphan Works Acts in both House and Senate pose a unique threat to the profession of biomedical and scientific illustration, as well as advancements in American medicine, science and healthcare.

Unique and Highly Specialized Visual Art Profession

Biomedical and scientific illustrators are highly educated professionals, the majority of whom have earned bachelor, master and doctorate degrees and certifications in art and science. As creators we spend countless hours researching our subject material to ensure accuracy and to determine the best instructional design for our content.

Every year, we produce thousands of medical/surgical illustrations, animations and models that are essential for the ongoing education of medical and allied health professionals and the general public on health-related topics. Our didactic visualizations support growth in medical and science education. These teaching visuals also support important scientific research that generates new treatments and technologies and advances mankind's understanding of the biomedical sciences. Medical illustrators play a key role in patients' understanding of their own conditions, allowing them to be active participants in their own care. We enrich children's understanding of science, nature, and health.

Mission-Critical Biomedical Education and Research Visualization

Our works generate important intellectual property for US businesses, nonprofit organizations and universities, and nonprofit educational institutions, which are a sizable and vital client base. Tragically, under the proposed legislation, biomedical and scientific illustrators would have little or no incentive to create innovative new works.

Biomedical and scientific illustrators do not oppose the usage of orphaned works by the cultural heritage sector for noncommercial purposes, or use by museums and libraries for preservation and education. However, this legislation *makes no limitations for these purposes*. Instead, it will dangerously expose copyrighted visual content to infringements while stripping medical artists of any practical means to protect their work.

The bill's protections, as currently written, are impractical in providing the tools needed to maintain a visual arts business. And, as biomedical and scientific illustration businesses would begin to fail under the proposed law, commercial and nonprofit organizations would lose a valuable, highly trained group of vendors who consistently provide up-to-date and accurate media.

We urge you to limit the safe harbor to not-for-profit libraries, archives or museums accredited by a recognized national authority, for the express purpose of cultural heritage preservation. There should be no safe harbor exception for nonprofit educational institutions,

and no orphan works exemption for educational use. Fair use already generously covers scholarship. Any other use needs to be licensed according to existing copyright law that protects an artist's exclusive rights, regardless of whether the use is "commercial" or not.

Copyright and Academia

The Association of Medical Illustrators believes the specific provisions in the Copyright Act for the use of copyright-protected materials by academic institutions provide adequate – *and generous* – exceptions to artists' exclusive rights and limit a user's infringement liability, including:

- Section 107 on fair use, which applies to activities such as using excerpts for illustration or comment, unexpected and spontaneous reproduction of classroom materials, and creation of parodies.
- Section 108 on reproduction by libraries and archives, which applies to such activities as archiving; replacing lost, damaged or obsolete copies; patron requests for entire works; and interlibrary loans.
- Section 109 on first sale, which permits the resale or lending of copies of works, providing the basis for library lending and the sale of used books.
- Section 110 on performance and display in the classroom, which permits certain types of content use in the classroom and in distance education.

Further, we also bring to your specific attention that current law already exists to limit statutory damages to not less than \$200 for infringements by an employee or agent of a nonprofit educational institution, library, archive or public broadcasting entity acting within the scope of his or her employment. See *USC, Title 17, § 504 (c) 2 (i) and (ii): Remedies for infringement: Damages and profits*.

On July 11th, on behalf of all those who wish to see a true orphan works bill, the Illustrators' Partnership (of which AMI is a member), Artists Rights Society and Advertising Photographers of America submitted Amendments to the Subcommittee on Courts, the Internet and Intellectual Property*. The Amendments have never been considered. A new Congress would have the opportunity to do so. Please do not allow this legislation to pass until it can be subjected to an open, informed and transparent public examination.

Sincerely,

Wendy Hiller Gee
Chair, Association of Medical Illustrators Board of Governors

Mark Lefkowitz
President, Association of Medical Illustrators

*H.R. 5889 Amendments available here:
<http://ipaorphanworks.blogspot.com/2008/07/hr-5889-amendments.html>]