

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
April 6, 2006

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Ranking Member, Judiciary Committee
Intellectual Property Subcommittee
Hearing on "Orphan Works - Proposals for a Legislative Solution"

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We live in a country with deep creative roots. We have the best music industry in the world, the greatest film industry in the world, and the largest publishing industry in the world, to name a few, from which millions of creative works are born. Yet, there are many works for which no copyright owner can be found. These so-called "orphans" are unavailable for any use - reproduction, restoration, adaptation - because it is impossible to gain permission from their lawful copyright holders.

Under current copyright laws, if you cannot find the photographer who took your great-grandparents' wedding picture over 75 years ago, no matter how hard you search, you still cannot have that picture restored. Or, in an example recently mentioned in the Wall Street Journal, a Civil War historian wrote an article which used several letters and diaries from soldiers. Although a magazine initially agreed to publish the article, the publisher pulled the piece because he feared litigation arising from the use of those 150-year-old works. Orphan works problems have a particularly unfortunate effect on older films - some of these films are literally disintegrating because their copyright owners cannot be determined. I am something of a photographer myself, and I know the particularly vexing issues that must confront the professional photographer or illustrator, with their great number of works and the difficulty of ensuring that others do not claim them for their own.

This situation impacts copyright owners and potential copyright users in every industry, from the individual scrapbooker or illustrator to the largest corporation. So I, along with Chairman Hatch, asked the Copyright Office to study orphan works and issue a report on the situation, as well as a suggestion for possible legislation. The Report came out in January, and it is clear that the Copyright Office spent a tremendous amount of time and effort on it, and for that I thank them. The multitude of comments, both those made to the Copyright Office and those made in the subsequent public roundtable discussions, show how committed all the interested parties are to finding a sensible and equitable solution to the orphan works conundrum, and I am just as grateful to hear all of those voices.

I want to take the opportunity during this hearing to have an open dialogue with representatives of all points of view on this issue. This is an issue of vital importance. I have no intention of crafting legislation that harms the creators who hold copyrights, and who bring so much value to our culture and our economy. I would like to see, though, the chance for social and cultural enrichment by enabling use of these orphan works by the public. I thank all the witnesses, and I look forward to working with Senator Hatch and all of you to come to a constructive solution to this problem.