



National Press Photographers Association, Inc.

The Society of Professional Photojournalists

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The House Committee on the Judiciary
Hon. Howard L. Berman, Chairman
2221 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Berman,

RE: H.R. 5889, the "Orphan Works Act of 2008"

As president of the National Press Photographers Association, I am writing to you and the rest of the House to express my outrage over the Senate passage of "The Shawn Bentley Orphan Works Act of 2008," Bill Number: S.2913. I find it abhorrent that the Senate chose this moment in time, when the country is dealing with the worst financial crisis since the Great Depression and was intently watching the first presidential debate to railroad this measure through. Such middle-of-the-night action is repugnant to any illusion of transparency and openness in government. While it is my understanding that this bill had been hot-lined since June it cannot be mere coincidence that the Judiciary Committee used this opportunity to have it pass by "unanimous consent" while everyone was looking the other way. What is even more upsetting is that as someone who considers himself a photographer you cannot grasp the devastating impact that passage of this bill will have on all visual artists.

Since this legislation was first proposed, the NPPA has supported efforts to craft a bill that would address the very real concerns of our members while satisfying the needs of legitimate organizations for better access to creative works. As stated before, we believe that the Act as amended runs counter to the best interests of photojournalists and photojournalism, while undermining America's constitutional and international commitments to copyright.

The Senate's stealthy passage of this bill undermines the efforts of the organizations, including NPPA who have attempted to work with your staff to discuss our collective concerns and craft an acceptable bill. Passage disregards any attempt to consider a carefully and narrowly tailored expansion of the fair use exception to the Copyright Act as an alternative approach which would better address the legitimate concerns of librarians, historians and educators. There is no reasonable argument to authorize infringements for commercial use or of previously unpublished works; and certainly no reason at all to extend that authorization to newly created works.

Previously NPPA stated that it could not in good conscience support this bill. We now go on record as not only objecting to the bill itself but to the devious manner in which it was passed. On behalf of our membership of almost 10,000 photojournalists, students and editors throughout the country I urge you not to adopt the new Senate language and pass the bill to the floor. We urge you to consider the significant economic and artistic harm this legislation will cause and craft a bill that: minimizes potential abuse; balances the needs of those who legitimately seek orphan works exemptions; and offers greater protection those who seek to protect their copyrights.

Thank you very much for your attention in this matter.

Very truly yours,

Bob Carey
President
National Press Photographers Association

cc: The United States House of Representatives