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I am apposed to any kind of legislation aimed at enabling consumers to use so-called “orphaned” artwork.

If anything, the laws in the U.S. and abroad need to be strengthened to further protect the rights afforded to people with creative, innovative, and expressive minds. Indeed, inventive minds are a rare commodity in any profession because of the onslaught of pirating and Work For Hire contracts by publishers, stock houses, and other businesses that uses art but neither produce it or pay market rates for it.

One of the reasons there is such a thing as orphaned artwork is because some unscrupulous buyers routinely remove copyright notices. They also pirate artwork without proper credit or compensation and over time that artwork can be widely distributed and before too long there is no easy way to determine who originally produced it. Perhaps a more accurate alternative to the word “orphaned” to denote artwork that is difficult to ascribe, would be “kidnapped.” Considering the broad spectrum of pirating going on without compensation to the creators, one could also call that kidnapping *and* slave labor.

The Illustrators Partnership of America IPA was formed to protect the rights of visual artist as a result of the abuses I have described above. The IPA was modeled after the music industry, which falls under the same Constitutional protections by Congress as visual artists. Musicians felt similarly unprotected by a Congress that has a duty to do so, and they formed their own protective agencies, ASCAP and BMI. That’s right, courts have whittled away artists rights to an extent that we have to subscribe to corporate-sized institutions with adequate legal muscle and war chests just to protect our rights under the Constitution. The author of the foundation for copyrights knew we needed to establish them for writers, artists and inventors of this country so it would foster innovations and creative environments and initiatives. The framers even then realized creativity and innovation is the driving force behind a thriving economy. Making orphaned artwork free and available for unrestricted use is a terrible undermining of this very crucial concept (I think the most crucial for our economy) in our Constitution.

The question you pose is even offensive, as if the rights of those who would wantonly pirate another, more creative person’s work, are more important than supporting the very people who are already established as creative thinkers and who have demonstrated talent. The U.S. government (specifically, Congress) has been failing creative people for decades by allowing the judicial branch to continually erode the text and spirit of the copyright laws. To be fair, a large part of the blame also belongs to our culture, which has always regarded artwork as at least somewhat free. Opponents of copyright ownership seem to believe artwork of all types (unless it belongs to them specifically) ought to be free and on the same legal ground as art in the public domain.

The most damaging aspect of free access to orphaned art is this: If legislation is passed that enables anybody to use the so-called orphaned art, it would mean enhancing the common practice of pirating artwork under the pretense of merely excusing oneself if caught by claiming the artist was not readily identifiable. Bottom line: legislation of this sort would make it even more excusable for anyone to use the orphaned art claim as an excuse to use ANY artwork without fear of retribution. And the more the public is allowed to borrow and steal the property of creative artists, the more decline there will be in the creation of new art because there will simple not be a sustainable market for creative people to flourish.

A prime example: I found a publication from 1914 at an antiques store. On the cover was artwork produced by the famed illustrator, Perham Wilhelm Nahl. I didn't know who the artist was at first because there were no credits either by the artist on the artwork or within the publication. I had seen this particular artwork published in an issue of Smithsonian Magazine, so I set out to track it down to find out who the illustrator was. It took me 2 years of on and off again searching until a librarian at Smithsonian Institute identified the artwork by all the information I provided. I have since made this relatively small original illustration into a handsome poster and gave full credit to the illustrator –as it should have been back in 1914! The problem now is determining if the art is in the public domain.

What I did in tracking down the artists was my responsibility as an individual who had great interest in obtaining the information required for a purpose ...identifying the illustrator. Why is it any less of a responsibility for any other individual or corporate concern to pursue that information with the same zeal that I did? I contend the reason I had challenges identifying the artist is due at least in part because whoever published the artwork didn't properly identify the copyright owner –much less, the illustrator (we are often overlooked as a profession this way). If every publisher were to take an illustrator's copyrights seriously, orphaned art wouldn't exist.

The issue of orphaned artwork is reaching prominence now because of one man: Mr. Lawrence Lessig, Professor of Law at Stanford University. He lost an argument for making orphaned art available before The Supreme Court of United States. Now he's trying to make his argument effective by first making his ideas acceptable in Europe and now he's bringing it back here to The States as a sort of end around the Constitutional way of enacting law, of which he lost. The danger to artists like me is he's using subtle language and deception to trick masses of Europeans –who don't have the American history, standards, or concern for the issue of copyrights –to gain worldwide appeal for his orphaned art concept. In effect, he has duped European artists and their lawmakers into giving away their rights and their property. He literally has incited enthusiasm about making it easier to give their artwork away for free without them realizing the implications.

He's created something called Creative Commons licenses and they are taking hold all over the European Union:

If there were any doubts about the underlying purpose and spirit of orphaned artwork, I hope the above excerpt reveals the truth about the real objectives of the movement.

Please don't destroy my freedom to create by allowing easier ways to infringe on my work. Not everyone has the requisite talent to succeed as an artist, but everyone deserves to prosper from his/her ingenuity in this country. Don't take that away from the one group that is already struggling to survive due to stereotypes and disregard as a profession.

With great concern and sincerity,

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