



**MOTION PICTURE ASSOCIATION
OF AMERICA, INC.
1600 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
(202) 293-1966
Fax: (202) 452-9823**

**DAN GLICKMAN
CHAIRMAN
AND
CHIEF EXECUTIVE OFFICER**

September 26, 2008

The Honorable Patrick Leahy, Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

Chairman John Conyers, Jr.
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Ranking Member Lamar Smith
House Committee on the Judiciary
2409 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Leahy, Ranking Member Specter, Chairman Conyers and Ranking Member Smith:

On behalf of the Motion Picture Association of America, I write to convey our strong concerns with several provisions of S. 2913, which will soon likely pass the United States Senate. We are very appreciative of the changes made during Senate consideration to protect the rights of copyright owners. In particular, the minimum search standards and the effective date in the Senate-passed bill represent a great improvement over the provisions of the introduced bill. However, we believe it imperative that several additional changes be made before this legislation is enacted.

As an initial matter, it is important to note that S. 2913 confers substantial benefits to users of copyrighted works, and constitutes a significant new limitation on the rights of copyright owners. S. 2913 relieves users of "orphan" works of the threat of statutory damages, attorneys' fees, and in many cases, even the obligation to pay reasonable compensation to a copyright owner. Because of this extensive relief to users, it is essential that the bill's protections are given only to those truly "orphaned" works, rather than depriving existing copyright owners of their right to the compensation from and use of their creative work.

While we have a number of concerns, two in particular must be resolved.

First, the minimum search standards should include a search, as appropriate, of all Copyright Office records relevant to finding the owner of a copyrighted work, unless such a search would be unlikely to yield useful information as to the owner of a work. The changes made to the Senate legislation potentially scale back the search requirements to only require a search of online Copyright Office records. It is critical to note that none of the pre-1978 records of the Copyright Office are online, and these pre-1978 records are likely to be the most useful for locating otherwise hard-to-find copyright owners. Thus, unless an appropriate search of all relevant Copyright Office records is clearly required, we believe there is a substantial risk that copyrighted works may be wrongfully "orphaned." We also believe that it is entirely fair and consistent with the purpose of the legislation to require a user to search the offline records of the Copyright Office if those records are highly likely to yield information as to the owner of a work.

The second issue that must be resolved prior to final enactment regards the injunctive relief provisions in S. 2913. As currently drafted, these provisions would, in many cases, prevent copyright owners from stopping others from usurping their exclusive rights. If copyright owners come forward to exercise their rights in a work, that work is by definition not orphaned, and this legislation should not limit the owner's right to prevent further infringement in such cases.

Before this bill moves forward, we ask that the two concerns described above be addressed so that copyright owners' rights are not unfairly curtailed. These changes are critical if this bill is to achieve its goal of protecting copyright owners while promoting the use of those orphan works whose owners truly cannot be found.

We again want to express our appreciation for the efforts that have been made to date to address our concerns, particularly with regards to the minimum search provisions. We continue to be available and willing to discuss these issues.

Sincerely,

A handwritten signature in black ink that reads "Dan Glickman". The signature is written in a cursive, flowing style.

Dan Glickman
Chairman and Chief Executive Officer
Motion Picture Association of America, Inc.