

holland-turner

Holland, Turner et al. do not understand the issues; they have their facts wrong.

They state:

"If a work of art is orphaned because of unlawful or feckless usage, its integrity will be irreparably compromised by stripping it of protection."

This is a red herring. Nobody proposes that works should lose copyright due to unauthorized use without attribution! They ignore the common situation where the artist has died leaving no identifiable heirs, or chose not to put attribution on his own work.

They state:

"Creativity is not chilled by protecting orphaned works."...

"Free speech is not restricted by protecting orphaned works."...

They have clearly not heard of derivative works. Many, if not most, creative works are, under current law, derivative works of older works -- legal only because the older works are in the public domain.

The right to create and publish derivative works of orphaned works must be established. The restrictions imposed by copyright law on this are a very severe restriction on creativity and free speech -- much more of a restriction than the traditional restrictions on simple copying.

It would be a major improvement to the current system if, for any work for which authorship could not be traced, anyone was allowed to create and publish works derivative of it, without fears of one day being sent a cease-and-desist order by the suddenly reappearing author of the original work.

They state:

"Copyright law already permits the copying of work for archival preservation..."

However, this is false, excepting certain works in the last 20 years of copyright. For archival copying to be practically useful, the archivist must be permitted to distribute and show the archival copy to the same people as the original was available to (in a library, for instance), and must not be required to destroy or hide the original. These rights are *not* available under current law. This is actually causing major university research libraries to avoid digitizing post-1923 works; ask them!

They state:

"Culture is not impoverished by protecting orphaned works, because orphaned works will still be available for study and enjoyment."

Except they won't be, not legally anyway, due to the lack of archival rights. And even if they are, the lack of the right to make derivative works will directly impoverish culture by preventing the creation of new works.

I suggest that for orphaned works

(a) anyone be allowed to make and distribute copies, unless and until the copyright holder turns up (at which point they must cease)

(b) anyone be allowed to make derivative works, unless and until the copyright holder turns up (at which point they must cease), and to distribute those derivative works forever without further interference from the original copyright holder, as though they were not derivative works.

These address the fundamental problems which are simply *ignored* by Holland, Turner, et al.