



## NORTH AMERICAN NATURE PHOTOGRAPHY ASSOCIATION

March 6, 2006

United States Senate Judiciary Committee  
United States House of Representatives Judiciary Committee

RE: Comments on Proposed Section 514 of the Copyright Act: Limitations on Remedies: Orphan Works

Dear Ladies and Gentlemen:

On behalf of the North American Nature Photography Association (NANPA), I am writing to oppose the recommended statutory language of Section 514 of the Copyright Act regarding orphan works.

Consisting of almost 3,000 members, NANPA is composed of amateur and professional nature photographers, magazine editors, film and camera manufacturers and distributors, and others, and is the first and only association in North America committed solely to serving the field of nature photography. Part of NANPA's mission is to promote the art and science of nature photography as a medium of communication, nature appreciation, and environmental protection. Therefore, among other things, our association seeks to stimulate, encourage and promote public interest in photography of the environment of the natural world, as well as promote amateur and professional photography of the environment as an art form, a tool of science and a medium of communication.

NANPA is deeply concerned that, in its present form, Section 514's language gives commercial users of images the incentive to find unattributed pictures, and do less than exhaustive research before using an image. If later accused of having infringed on a photographer's copyrighted image, an infringer would simply claim he was "reasonably diligent" (the highly subjective language found in the proposal) in his search for the author. Under these circumstances, the infringer would, at worst, have to pay the photographer "reasonable compensation" (another subjective term) for using the work. In essence, the infringer would be in the same position he would have been had he found the photographer in the first place, even if the photographer registered the work before the infringement took place. Moreover, the lack of statutory damages and attorney's fees makes it impractical for the photographer to receive any kind of compensation. These issues are of particular concern to photographers because many images are published without attribution of the photographer.

Conversely, the proposed language would lessen a photographer's incentive to register his or her work—an important goal of the copyright laws—because registration would give the photographer practically no legal protection if the work was infringed upon by a user claiming he used the work after a reasonably diligent search.

Regarding the use of orphan works by libraries and museums, NANPA believes those institutions have a greater need than commercial users to be able to use images in situations where they have enormous difficulties in finding the copyright owner. Accordingly, it might be appropriate to create an exception for libraries, museums and similar institutions serving the public.

Thank you for taking the time to consider our concerns and recommendations. We look forward to being of assistance in the further refinement of the proposed orphan works language.

Very truly yours,

Albert Sieg, President