

C. Recommended Statutory Language

SECTION 514: LIMITATIONS ON REMEDIES: ORPHAN WORKS

(a) Notwithstanding sections 502 through 505, where the infringer:

(1) prior to the commencement of the infringement, performed a good faith, reasonably diligent search to locate the owner of the infringed copyright and the infringer did not locate that owner, and

(2) throughout the course of the infringement, provided attribution to the author and copyright owner of the work, if possible and as appropriate under the circumstances,

the remedies for the infringement shall be limited as set forth in subsection (b).

(b) LIMITATIONS ON REMEDIES

(1) MONETARY RELIEF

(A) no award for monetary damages (including actual damages, statutory damages, costs or attorney's fees) shall be made other than an order requiring the infringer to pay reasonable compensation for the use of the infringed work; *provided*, however, that where the infringement is performed without any purpose of direct or indirect commercial advantage, such as through the sale of copies or phonorecords of the infringed work, and the infringer ceases the infringement expeditiously after receiving notice of the claim for infringement, no award of monetary relief shall be made.

(2) INJUNCTIVE RELIEF

(A) in the case where the infringer has prepared or commenced preparation of a derivative work that recasts, transforms or adapts the infringed work with a significant amount of the infringer's expression, any injunctive or equitable relief granted by the court shall not restrain the infringer's continued preparation and use of the derivative work, provided that the infringer makes payment of reasonable compensation to the copyright owner for such preparation and ongoing use and provides attribution to the author and copyright owner in a manner determined by the court as reasonable under the circumstances; and

(B) in all other cases, the court may impose injunctive relief to prevent or restrain the infringement in its entirety, but the relief shall to the extent practicable account for any harm that the relief would cause the infringer due to the infringer's reliance on this section in making the infringing use.

(c) Nothing in this section shall affect rights, limitations or defenses to copyright infringement, including fair use, under this title.

(d) This section shall not apply to any infringement occurring after the date that is ten years from date of enactment of this Act.