

copyri ghtoffi ceorphans

David H. Rothman
Coordinator, Tel eRead

Jul e L. Si gal l
Associate Register for Policy & International Affairs
U. S. Copyright Office
Copyright GC/I&R
P. O. Box 70400, Southwest Station
Washington, D. C. 20024

REPLY COMMENTS (TRANSMITTED VIA THE INTERNET)

Dear Mr. Si gal l :

Tel eRead is a small and informal Internet-based group advocating well-stocked national digital libraries. Needless to say, Tel eRead strongly favors a better policy toward orphaned works--in line with the intent of copyright law to promote "the progress of science and the arts."

As already documented by Sarah E. Thomas at Cornell University and James Boyle of the Duke Center for the Study of the Public Domain, the present laws impose a heavy burden on librarians and others seeking to preserve the past. Physical libraries are becoming electronic libraries, at least in part. It only makes sense to use the new technology to reproduce and disseminate publications and other items that formerly would have simply gathered dust.

Consider the opportunities not just for scholars but also for K-12 students and others for whom orphaned print publications and other items, including videos and audios, could make history come alive in settings other than libraries.

Here are specific examples of the benefits of an improved policy:

--Distribution of old Web logs that lack appropriate Creative Commons licenses--and whose owners cannot be found.

--Greater use of hyperlinks that go directly to the original sources, published or not. In the Tel eRead vision for well-stocked national digital libraries, authors could freely link not just to other modern books but also to older works whose creators could not be found. This would seem to be very much in the spirit of Ms. Thomas' earlier comments. The links would not be possible without the items being available. Ideally such hyperlinks could go not just to these other books and other content, period, but even to specific passages--making full use of the power of linking.

--Easier distribution of the works of the poor and minorities, whose families may not be as easily reachable as those of well-off Caucasians.

--Benefits not just for scholars and the public in general but also for creators, who might wish to quote orphans extensively in their own works without fretting over fair use restrictions.

--Reduced legal risk for online publications such as the Wikipedia--a point already made by James Kilfiger. Significantly, the Wikipedia is a valuable tool for Web log creators who are picking up images from it or who are linking to it to provide context for their thoughts. I can

copyright orphan works

also envision creators using videos and audios located through the Wikipedia and found to be safe by way of a "fair attempt" to locate copyright holders.

As the author of half a dozen books published by Ballantine, St. Martin's and others, I especially question the argument of creators who worry about their "legacies."

First off, as we all know, many works, especially newspaper and magazine articles, are owned not by writers but by publishers, which may go out of business. So the creations are no longer the authors' anyway. Ms. Thomas has already cited an example where the law actually denied 38 writers the opportunity to share their works. Secondly, bear in mind that to protect the works, the creators or their heirs could merely supply appropriate contact information via registration. In an era of eBay and Amazon and electronic tax forms, this would be far, far less of a burden to the registrants and to the copyright office than in previous years.

I hope that the above is helpful. I am not a lawyer, just a writer and library-oriented activist, but it is plain even to us "civilians" that society needs a solution to the orphan problem. I fully support the remedies suggested by James Boyle for film and furthermore recommend that, where relevant, they be applied to other media.

Let me also conclude by saying I'm most grateful to the Copyright Office for soliciting comment on the issue of orphaned works. I just wish that somehow there were a way to do the same in terms of the damage that the Sonny Bono Copyright Term Extension Act is doing to our national heritage.

As we know, Bono and the orphan issue are interrelated. It would behoove both Congress and the Copyright Office to hold hearings on Bono, especially given the recent NEA report on the dramatic decline of serious reading. A robust public domain could encourage young minds to absorb more books, regardless of family wealth or lack thereof. Today's students are tomorrow's professional creators. In line with the "progress" language, I urge the Office to consider an open-minded examination of Bono's effects such as the inability of students to access *The Great Gatsby* for free over the Internet. Bono in end is nothing more than a multibillion-dollar transfer of wealth from society at large to a favored few--at the expense of "progress." And, of course, it has aggravated the orphan problem. Simply put, I believe that your present requests for comments about orphans should be only the start of a thoughtful process of rebalancing copyright law to make it friendlier to libraries, archives, schools and the public at large.

Thank you,
David H. Rothman

Author, Copyright and K-12: Who Pays in the Network Era?
(U. S. Department of Education)
<http://www.ed.gov/Technology/Futures/rothman.html>

Author, "TeleRead: A Virtual Central Database without Big Brother"
(Chapter in *Scholarly Publishing: The Electronic Frontier*, MIT Press/ASIS, 1996)