



John Weidman
President

Marsha Norman
Vice President

Arthur Kopit
Secretary

Jonathan Reynolds
Treasurer

COUNCIL

Lee Adams

Lynn Ahrens

Edward Albee

Robert Anderson

David Auburn

Susan Birkenhead

Craig Carnelia

Kirsten Childs

Betty Comden

Gretchen Cryer

Christopher Durang

Jules Feiffer

William Finn

Stephen Flaherty

Nancy Ford

Maria Irene Fornes

Frank D. Gilroy

Micki Grant

John Guare

Carol Hall

Sheldon Harnick

Tina Howe

David Henry Hwang

John Kander

Tony Kushner

James Lapine

Arthur Laurents

Shirley Lauro

Warren Leight

Ira Levin

Richard Lewine

Kenneth Lonergan

Emily Mann

Donald Margulies

Terrence McNally

Thomas Meehan

Janet Neipris

Polly Pen

Theresa Rebeck

Mary Rodgers

Stephen Schwartz

John Patrick Shanley

David Shire

Stephen Sondheim

Joseph Stein

Jeffrey Sweet

Jeanine Tesori

Alfred Uhry

Wendy Wasserstein

Michael Weller

Lanford Wilson

George C. Wolfe

Doug Wright

Maury Yeston

Christopher C. Wilson
Executive Director

Ralph Sevush
Associate Director

May 4, 2005

Jule L. Sigall
Associate Registrar for Policy and International Affairs
US Copyright Office
Copyright GC/I&R
PO Box 70400
Southwest Station
Washington, DC 20540

RE: 70 FR 3739 Response Letter

The Dramatists Guild of America, the national association of playwrights, composers and lyricists, is pleased to respond to the Copyright Office's notice of inquiry and to comments regarding the subject of orphan works. The Guild agrees that the problem of orphan works is a real one, and one which, if left unresolved, places society in a position in which a choice must be made to either willfully violate an unknown holder's copyright or allow certain works of intellectual property to lie fallow.

The Guild believes that these problems can be avoided with the construction of a method to permit active holders of copyrights to avoid having their works deemed orphan works and by sensible strictures on the designation and use of orphan works. Among other things, such strictures should include the requirement of payment for the use of the work in a manner commensurate with what is payable for non-orphan works used for similar purposes.

The Guild believes that any solution should, at a minimum, include the following:

- (a) The ongoing maintenance of a registry to permit diligent copyright holders to maintain and update their contact information so that the works of such holders do not become orphan works,
- (b) A requirement that any effort to deem a work an "orphan work" should include a demonstration of a good faith effort to contact any known address for a holder, plus an extended notice period for a work posted on a public registry (which would, ideally, be maintained by the Copyright Office), whereby someone seeking to use a work for which the owner cannot be located will post the title and pertinent information about the work for a minimum of six months with no response, before such work could be deemed an "orphan work",
- (c) A legislative enactment deeming any orphan work (one for which the holder cannot be located via registry or following posting an orphan work) to be subject to a statutory non-exclusive and non-competitive license,

- (d) A mechanism to establish a payment scheme for the use of such work in accordance with practices in place for similar non-orphan works used for similar purposes, and
- (e) An escrow mechanism to receive payment for the use of the work, with the funds to remain available for possible claim by holders able to prove their ownership for an extended period (perhaps ten years from the date of the final payment) following the effectiveness of the license.

The Guild further believes that a well-designed escrow fund mechanism should include provisions enabling the fund to avoid the effects of state law escheat requirements, to enable the Copyright Office to use interest generated from the fund to administer the orphan works program, and to distribute unclaimed monies to groups [such as the Author's Coalition] which benefit the interests of American authors.

A system that contains the foregoing elements could strike the right balance of societal interests, and permit a protected and limited use of orphan works in a way that benefits society while reaffirming the value of copyrights.

Thank you for your consideration.

Very truly yours,



Christopher C. Wilson
Executive Director

CCW/trs