

This is a comment on Orphaned Works as requested by the Copyright Office of the Library of Congress.

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Comments:

As a producer of audio, video, and multimedia productions for institutional and/or broadcast use, we have experienced the frustration of trying to obtain copyright clearance on works which are, we must assume, under copyright but for which no owner can be found to obtain permission from. This is a particularly difficult problem when trying to get permission to use period music as part of an historical production. While we may believe that there is no longer any desire on the part of the owner of the copyright - or the owner's heirs to the sixth generation - to exploit the work, given the draconian penalties now in place for copyright violation, we dare not use such a piece and, even if the overall quality of the production suffers, we must simply pass on it.

While we, as creators and copyright holders ourselves, appreciate the social contract which provides us with an opportunity to exploit whatever economic value may be in our work in exchange for eventually ceding it to the public domain, we think that present copyright law is terrifically "out of whack." Orphaned works are one example of the law's shortcomings. As anyone in Hollywood will admit (at least privately), there is no such thing as a new idea, or a completely original work. We all draw on what has gone before. Not to be able to tap into that common culture for 100+ years because an owner cannot be found is totally stupid, and simply limits the range and value of creation in our society and economy. I am certainly not going to be "incentivized" by current law to create a new work 70 years after my death. If anyone wants to use something after my death - or even before - that I have created, if I do not care enough about the work to register it so a potential future user of the work can find me or my heirs to ask permission, then that user should be welcome to use the work without fear that he or she will be liable for catastrophically huge fines should I or my great-great-great-great grandchildren pop out of the woodwork.

We support efforts to right the imbalances in current copyright law. Devising a way that orphaned works can become available to the common cultural pool for re-use and to build upon is a good first step, but only a first step. Re-instituting a mandatory registration system of some sort would make the problem go away for future generations. We seem to be tremendously concerned about the longevity of copyright terms - perhaps we can become just as concerned about the overall creative health of our culture and economy by making sure that if an owner isn't exploiting his or her work any more, that work enters the public domain at once, not many lifetimes hence.

