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To: Julie L. Sigall
Associate Register for Policy & International Affairs

Date: 03/14/2005

From: Timothy F. O'Reilly
Title: CEO
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Comment:

Orphan works may not just consist of works for which there is no apparent copyright owner, but ones for which the copyright owner does not respond!

In 1981, I wrote a book on science fiction author Frank Herbert for a company called Frederick Ungar, which was later merged into a company called Crossroads/Continuum. The book was out of print after only a few years.

About five years ago, I wrote to them asking them to revert the rights to me so that I could make the material available on the web. I am a well-known publisher of computer books (O'Reilly Media is the largest independent publisher of such books, and the third largest publisher overall), and many of my customers are also interested in science fiction, so I thought it a shame that the work should be completely unavailable.

I got no response.

As a result, I decided to take the risk of putting the book online without permission, with a note for them to contact me if they wished me to take it down, or otherwise discuss. After five years, I have yet to hear anything. But I'd rather not be put in such a position. Works that are not available commercially for more than ten years ought to be declared orphan works and made available to the public.

Incidentally, we have adopted the policy at O'Reilly, when a work is no longer commercially viable, of either reverting the rights to the author, or, if they agree, making the book available for free on the net under a Creative Commons attribution-only license. (See <http://openbooks.oreilly.com> for details.)