

COOL TOOLS

www.cool-tools.org

Monday, March 21, 2005

Jule L. Sigall
Associate Register for Policy & International Affairs
U.S. Copyright Office
Copyright GC/I&R
P.O. Box 70400, Southwest Station
Washington DC 20540

Re: Orphan Works

Dear Mr. Sigall:

I am a publisher. I have published both small-time magazines (*Walking Journal*) and award-winning national magazines (*Wired* – which I co-founded-- and *Whole Earth Review*). I publish small-run books, and occasional CDs. And I publish websites – the latest being the very popular *COOL TOOLS*.

I am also an author and artist published by corporate publishers (*New Rules for the New Economy*, *Asia Grace*) so I appreciate the value that a strong copyright brings to the act of creation.

But I would like to give you a couple of personal examples of the ways in which the current copyright laws as they pertain to “orphan works” go against the interests of publishers, authors and the public.

I’ve had a long interest in technical non-fiction. *Wired* magazine, *Whole Earth* and *Cool Tools* all review informational books. For any number of reasons many of the best of these books – particularly those from large publishers -- go out of print in less than 5 years. Yet quite a few of them remain relevant. Many of these titles are orphaned works – an out of print title whose pedigree is uncertain and thus unclaimed.

Amazon has created a vibrant market for used books, so old copies of a valued orphaned book can often be found. However while this solution is good for the public, it brings no revenue for either author or publisher. I decided to try to reprint a few select out-of-print books that I cherished and thought others would be willing to buy.

This ambition lead to a wild goose chase in trying to secure copyright in these orphan works.

One book about amateur rocketry was a cheap 75 cent paperback published in the 1960s. Rare copies of book were selling online for \$50. There was a market for the book. I was able -- with much difficulty -- to track down the son of the deceased author of this work. He was interested in granting a license, but could not because the fate of the copyright of the essential and integrated illustrations -- which were not drawn by his father -- was uncertain. He didn't know what arrangements his father or the original publisher had made with the deceased illustrator. No deal could be made. I just checked the used booksellers and the rare copies of this paperback now sell for \$175. Again, none of this goes to the author or his estate. And at this price, few books make it to the public. If the copyright on this orphan could be cleared, I or someone else would make many copies available at modest cost and some income for the copyright holders.

A second book I tried to reprint was a chemistry experiment book for children published by a large New York publisher in the 1960s. It also enjoys a hefty price for used copies. Repeated inquiries to the publisher produced no results. They were uncertain of the copyright status of the book, and the trouble of determining it (this book also had multiple authors and illustrators) was simply not worth the cost to them of doing such research. In the end they ignore offers to reprint their out of print backlist.

What I learned from these and other attempts to secure copyrights:

It takes a professional researcher to begin to locate the current ownership of a copyright, with no assurance the found is the actual holder. It's difficult for anyone less than a professional or the most determined to track this information down. Even with Google, the public has little chance of locating ownership.

Thus:

Everyone loses in this current situation:

- 1) The author (or his estate) gains no incentive.
- 2) The publisher gains no additional revenue.
- 3) The public is forced to seek a few copies at extravagant prices.

No one wins.

The current laws should be changed to remove the uncertainty of old copyright and bring orphan works into the marketplace. Once released from uncertainty, there will be no end to innovative ways they are rebirthed.

Everyone wins.

Sincerely,

Kevin Kelly