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This is a comment to the inquiry on Orphan Works published in:

[Federal Register: January 26, 2005 (Volume 70, Number 16)]
[Notices]
[Page 3739-3743]

Background on angle

I am researcher in biological sciences, working on biodiversity issues. The relevant literature extends from approximately 1555 to today. One aspect of biodiversity research is writing monographic treatments, i.e., comprehensive accounts of all species in a particular group. Much emphasis is placed on the original description of the species, often accompanied by illustrations. These original works have been published in all countries of the world, often in small, dedicated presses. In many instances, the older works are available in very limited copies, and finding these works is not trivial. Hence, it is unreasonable to argue that anyone could just go to the nearest library and consult the original.

The new work is usually produced by one person, with little or no support, certainly without the benefit of assistance from a copyrights office. Most of today's authors are aware of copyright issues, but are also bewildered by the various aspects (what is "fair use", what is "reasonable effort", how even to start looking into a potential copyright holder from a Polish publisher from 1950?). So most will play it safe and not use anything younger than 100 years, unless the current copyright holder can be easily identified and contacted. These circumstances are certainly detrimental to the new summary work.

Orphan works

The ideal situation would be to have one central, world-wide facility (web site), where any publisher is listed in a data-base and either the contact information or the "orphan status" is given. For un-listed publishers, the potential licensee could submit all available information on a publisher and after a given period of time (6 months?) a determination is made.

The main issue are not the specifics, but the to remove the uncertainty. Most publishers are more than willing to grant free reproduction rights for scholarly works, and authors in academia are more than happy to send a letter of request, if they know where to send it. I have yet to either be rejected or asked to pay any fee. Hence, the request for reproduction right is mainly a formality.

Scholarly exemption

One approach could be to include an exemption for scholarly/academic usage. Many modern works are published by non-profit organization, hence, the issue of financial gain is irrelevant.

Sincerely yours

Daniel Geiger