



## National Humanities Alliance

March 25, 2005

Mr. Jule L. Sigall  
Associate Register for Policy & International Affairs  
U.S. Copyright Office  
James Madison Memorial Building, Room-401  
101 Independence Ave., S.E.  
Washington, D.C. 20540

ORPHAN WORKS NOTICE OF INQUIRY – 70 Federal Register 3739 (Jan. 26, 2005)

Dear Mr. Sigall:

On behalf of the National Humanities Alliance (NHA), we would like to thank the Copyright Office for inviting comments on this important issue. NHA represents more than 80 national, state, and local nonprofit organizations, including scholarly and professional associations; higher education associations; organizations of museums, libraries, historical societies, and state humanities councils; university-based and independent humanities research centers. A list of members is attached. The Alliance was founded in 1981 to advance the cause of the humanities by promoting the common interests of its members with regard to national policy and legislation affecting scholarly research and public understanding of the humanities. The humanities encompasses a broad range of scholarly disciplines, including: languages, linguistics, literature, history, law, philosophy, archaeology, comparative religion, and ethics, and the history, criticism, and theory of the arts.

We write to you today out of concern for many members of our community, including those engaged in teaching, scholarly research, and preservation, as they confront the problem of "orphan works" on a day-to-day basis. Their inability to identify the owners of many works that are presumptively subject to copyright, despite best efforts to do so, means that various projects must be modified or abandoned to avoid potential liability for copyright infringement. Both our members and the larger public we serve must bear the costs of the current, unsatisfactory situation.

Written works, as well as film, photographs, drawings, music and other media constitute the primary materials for scholarly books and articles; classroom curricula; film, television and radio shows and documentaries; museum and library exhibits. A growing number of internet-based projects in the humanities (including teacher resources, documentary editing projects, archives, historical sites) make rich use of images and sound files, photographs and scanned documents. When an organization, scholar or educator is forced to abandon the use of an "orphan work", out of fear of copyright infringement liability, the result may be a new work of lesser value, or a diminished educational tool.

Recognizing the importance of the "orphan works" problem, and the need for a balanced solution to it, the National Humanities Alliance endorses the approach to its resolution proposed in the comments filed by the Glushko-Samuelson Intellectual Property Law Clinic in response to this Notice of Inquiry. Briefly, this approach involves a broad definition of what may constitute an "orphan work," including both older and newer works, and both published and unpublished ones. This definition is coupled with a statutory procedure under which a would-be user is encouraged to make "reasonable efforts" to identify the copyright owner. If those efforts proved unsuccessful, the "orphan work" could be made available (or incorporated into a new work) with confidence that if the copyright owner subsequently came forward, this use could continue and the damages the owner could receive would be limited. By the same token, the copyright owner would retain the authority to license future uses of the work. In sum, this proposal promotes the cultural progress which is the ultimate objective of our copyright system. And it does so by meeting the needs of responsible users and the public without depriving individual copyright owners of their valuable intellectual property.

Thank you for your consideration of these comments. The National Humanities Alliance looks forward to participating further in this important inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Jones Irons". The signature is written in a cursive, flowing style.

Jessica Jones Irons  
Interim Executive Director

## National Humanities Alliance Member Organizations

African Studies Association	Imagining America (University of Michigan)
American Academy of Arts and Sciences	Independent Research Libraries Association
American Academy of Religion	Institute for Advanced Study
American Anthropological Association	Institute for the Humanities (University of Michigan)
American Association for State and Local History	Institute for the Medical Humanities (University of Texas Medical Branch)
American Association of Museums	Linguistic Society of America
American Association of University Professors	Medieval Academy of America
American Comparative Literature Association	Middle East Studies Association
American Council of Learned Societies	Midwest Modern Language Association
American Dialect Society	Minnesota Humanities Commission
American Folklore Society	Modern Language Association of America
American Historical Association	National Communication Association
American Library Association	National Council of Teachers of English
American Musicological Society	National Foundation for Jewish Culture
American Numismatic Society	National Humanities Center
American Philological Association	Northeast Document Conservation Center
American Philosophical Association	Omohundro Institute of Early American History and Culture
American Political Science Association	Organization of American Historians
American Society for Aesthetics	Phi Beta Kappa Society
American Society for Legal History	Popular Culture Association
American Society for Theatre Research	Renaissance Society of America
American Sociological Association	Research Libraries Group
American Studies Association	Shakespeare Association of America
Association for Asian Studies	Shelby Cullom Davis Center for Historical Studies (Princeton University)
Association for Documentary Editing	Simpson Center for the Humanities (University of Washington)
Association for Jewish Studies	Sixteenth Century Society and Conference
Association of American Colleges and Universities	Society for Cinema and Media Studies
Association of American Geographers	Society for Ethnomusicology
Association of American Law Schools	Society for Music Theory
Association of American Universities	Society for the History of Technology
Association of American University Presses	Society of Architectural Historians
Association of Art Museum Directors	Society of Biblical Literature
Association of Research Libraries	Society of Christian Ethics
Center for Research Libraries	SOLINET Southeastern Library Network, Inc.
Center for the Liberal Arts (East Carolina University)	Sonja Haynes Stone Center for Black Culture and History (University of North Carolina-Chapel Hill)
Chicago Historical Society	The Council of the Humanities (Princeton University)
Coalition for Networked Information	The Franke Institute for the Humanities (University of Chicago)
College Art Association	The Honor Society of Phi Kappa Phi
Community College Humanities Association	Virginia Center for the Humanities
Council of American Overseas Research Centers	Woodrow Wilson National Fellowship Foundation
Council of Independent Colleges	
Council on Library and Information Resources	
Dictionary Society of North America	
Doreen B. Townsend Center for the Humanities (University of California, Berkeley)	
Federation of State Humanities Councils	
Hall Center for the Humanities (University of Kansas)	
History of Science Society	