

McLaughlin & McLaughlin

1432 DUFFIELD ROAD
LENNON, MICHIGAN 48449
FAX: 810 621 4111
WWW.MCLMCL.COM

Ms Jule L. Sigall,
Associate Register for Policy & International Affairs
Copyright Office, Library of Congress

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Responsive to NOI in The Federal Register of January 26, 2005 (pages 3739-3743) concerning Orphan Works

These comments are directed solely to making digital copies of Orphan Works that are scholarly printed works of scientific, mathematical, or engineering subject matter. Such scholarly printed works are expected to have only incidental graphical material such as graphs or schematics.

These comments are not related to recordings of music or dramatic works, are not related to works of fiction in any form or medium, and are not related to scholarly works that were not published in a printed form. These comment are also not directed to scholarly works that are readily available in printed or digital form from an original copyright holder or a successor in interest.

1. The presentations of Denise Troll Covey; Principle Librarian for Special Projects; Carnegie Mellon University Libraries (OW0537-CarnegieMellon.PDF) and of William A. Gosling; University Librarian; University of Michigan (OW0565-UofMI.PDF) are sited for consideration of their teachings of the problems attendant to the subject orphan works. These two presentations, and others, make abundantly clear that a problem exists. Solving the problem, at least for the type of work herein considered, is very much in the public interest and consonant with Article I of The Constitution.
2. Numerous scholarly printed works of scientific, mathematical, or engineering subject matter exist that were published over twenty years ago, that have continuing value to the scientific, mathematical, or engineering community, and that are now difficult to obtain. Worse still is the fact that some of the older subject works have become too fragile to withstand inter-library loaning. The need for a means for producing digital copies of subject works without inhibiting expense, and without significant injury to a possible copyright holder, is apparent.
3. Many have commented on the expense of determining who a possible copyright holder might be. Many have commented on how inhibiting is the present process.
4. A scheme along the following lines is suggested as a balance between a possible copyright

holder and the scientific, mathematical and engineering community:

Note: (a) the only works considered are scholarly printed works of scientific, mathematical, or engineering subject matter; (b) a presumption should be used that older works are less likely to have republishing value and more likely to be difficult to obtain; (c) producing a digital copy of a work may involve considerable effort and cost; and (d) the scheme needs to be certain and to have low transactional cost.

A person or entity proposing to make a digital copy of a scholarly printed work of scientific, mathematical, or engineering subject matter that was last published more than twenty years ago and that is not now listed in Books-In-Print, may make application to the Copyright Office to be listed as desiring to make a digital copy of an identified work. Such an application is to include as complete an identification of the work as is possible and means for contacting the person or entity desiring to make a digital copy. The whole list is to be promptly made available on the Internet for searching by at least author name, title, publisher, and date of last publication. (It is expected that such applications will be made on-line to minimize cost.)

If, at the end of a period of time calculated from a formula that requires a longer wait for newer works and a shorter wait for older works, the copyright holder (or its successor in interest) has not filed an objection with the Copyright Office then the person or entity desiring to make a digital copy may make digital copies of the work. However, for such an objection to be effective it must include an undertaking that the objector shall make available a digital copy of the work within one year at a price that does not exceed the original retail price of the work. Additionally, the person or entity desiring to make a digital copy shall be limited to charging others no more than \$5 plus \$1 for each 100 megabytes (or fraction of 100 megabytes) more than 500 megabytes plus \$1 per media (such as CD-ROM or floppy disk) plus necessary postage and tax for each physical copy.

The proposed scheme could be implemented at low cost to all parties including the Copyright Office. Please encourage Congress to provide the means for curing the problem.

Sincerely,

James C. McLaughlin; Patent Attorney
McLaughlin & McLaughlin