

Smith-Sean-20050314110002

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

Date: 03/14/2005

From: Sean Smith

Comment:

I would like to submit my feelings on the "orphan works" problem. Specifically, enforcing copyright law where no licensor can be contacted (or contacted easily) may not be the solution. This undue enforcement could seriously hinder innovation and the process of creating derivative works.

As is my opinion, I would gladly pay royalty and/or licensing fees for the use of someone's intellectual property (here "copyrighted works"). In fact, I would gladly heed the creator's disapproval and find another way to produce the idea, content, or product I had in mind. However, with no one to ask for permission, this hinders my ability to expand upon or implement the original creator's concept. It's important to note that I'm not talking about implementing someone else's for profit either. This could simply be that the technology necessary for the original creator's idea was not available at the time of conception and the idea could greatly benefit humanity, or simply entertain them.

With this said, I feel that holding works in escrow for a short time may be appropriate. For instance, if person A creates a copyrighted work and becomes unreachable for a period of time. Then, person B attempts to contact A for his permission to utilize the work in question. After a reasonable search, B decides he cannot contact A and petitions for the work to be opened as an orphaned work. Then, the work is posted for review either on a website or some other public resource. After a short time (2 or 3 months, perhaps), the work could be opened if person A does not come to claim the work as his own. However, if person A does claim it and his claim can be authenticated, now the onus of finding the original creator (person A) has been performed and B can now contact A to request his permission for use.

Please open orphaned works to the public. I honestly believe that important ideas will eventually be lost to our society if something progressive is not done. However, I fully respect the rights of the original creator to protect his property.