

## Consortium of College and University Media Centers

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**CCUMC**  
Leadership in Media &  
Academic Technology

To: Maria A. Pallante, Register of Copyrights  
Copyright Office, Library of Congress

Subject: Comments on Notice of inquiry on Orphan Works and Mass Digitization

Respondent: CCUMC (Consortium of College & University Media Centers)

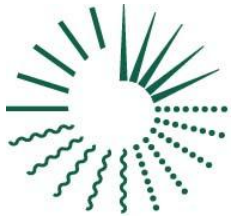
CCUMC desires to respond to the Copyright Office's call for comments on the ongoing problems related to use of orphan works (OWs), including their mass digitization. At the present time we offer general observations addressing the two-part subject of this inquiry: OWs subject to occasional use and OWs in relation to mass digitization projects.

CCUMC's constituent members are likely to have an interest in both aspects of OW use, both as higher education users and as service providers who supply both the content and the technology involved. Membership of our organization is comprised primarily of media and technology support centers in higher education organizations, where they may be administered either by libraries or by information technology divisions; complementary members include prominent vendors representing technology and educational media programming.

As is the case with other higher education organizations, the goals of our institutional members are to address the needs of teaching, learning and research in an evolving technology environment. Since the last time that the Copyright Office examined the issues related to OWs, and for which CCUMC offered responses, we believe that the environment of educational practice has changed, even though the materials we are likely to deal with in our collective educational mission have not done so as dramatically.

*1. Subject of inquiry: Orphan Works on an occasional or case-by-case basis*

This type of use in pursuit of teaching and research support remains the most likely and varied among our higher education service professionals in media and technology centers. These members respond to changing teaching content and strategies of individual faculty and staff, as well as the learning styles of individual students. Our primary focus remains traditional media programming that originates from historical examples in film and audio formats, targeted both at general audiences (part of our larger cultural heritage) and specifically designed for education; many of these materials have been apparently "orphaned" by market history but remain vital to teaching of our national cultural record. In addition to these historical examples, we should add media materials and the textual material that may accompany them—especially



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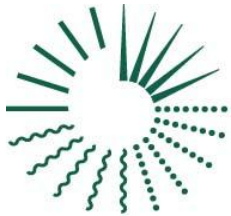
valuable in an increasingly online collaborative learning environment—and digital materials that are created for and furnished through the Internet itself. Any of this latter, Webderived material especially becomes a new frontier that is subject to educational inquiry, even though the variations of ownership and use of such content can be capricious and unclear at times.

Where media and technology support centers work independently, rather than as administrative parts of libraries on their campuses, the primary copyright law tool they depend on is 17USC107's "fair use." Even within the library environment, fair use is at least as crucial a tool as the library "rights" under 17USC108. Responsibly applied fair use may figure into targeted restoration and conversion of an (ostensible) OW for which access and use by specific courses is required. Within the past very few years, the willingness of higher education media professionals to apply fair use proactively to meet instructional demands has increased. This increase has also been supported and encouraged by professional legal opinion, such as that found in the *Code of Best Practices in Fair Use for Online Video* (Center for Social Media, American University; June 2008) and especially *Code of Best Practices in Fair Use for Academic and Research Libraries* (Center for Social Media, Washington College of Law, American University; Association of Research Libraries; January 2012).

Because of the critical importance of fair use and library exemptions under U.S. Copyright law in meeting our educational missions, CCUMC would be concerned that any proposed OW legislation enhance or strengthen their utility—not weaken or supplant them for this specific category of copyrighted work. In short, if OW legislation is advisable, the best-case scenario for higher education would be to make the application of existing "rights" for libraries and for allied users such as their institutional media centers easier to decide where works of uncertain ownership are concerned.

### *2. Orphan works in the context of mass digitization*

Unquestionably, mass digitization within the educational community is a development that continues on a growth curve since OW legislation was first considered in 2005. Especially after the failure of a Google Books all-purpose solution to mass digital availability of works in copyright of any description (despite being a "private" advantage for the Google enterprise), the field has been cleared for nonprofit projects to explore the same territory, whether the HathiTrust or other consortia. And the impetus to do so is again the dominance of an online information and learning environment. Added to the fair use Codes mentioned above, is a very comprehensive and authoritative book-length guide for libraries and archives: Peter B. Hirtle, Emily Hudson, and Andrew T. Kenyon, *Copyright and Cultural Institutions: Guidelines for*



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*Digitization for U.S. Libraries, Archives, and Museums* (Ithaca, NY: Cornell University Library; October 2009). Hirtle's subsequent publications have continued to explore this important theme for libraries as their activities in digitization have grown (see under "selected publications," <http://www.vivo.cornell.edu/display/individual23436>).

As in the case of occasional use of OWs, the same principle should apply within any solution devised: enhance rather than supersede existing "rights" in copyright law for the educational community (if any solution pursued at all).

At the present time, CCUMC itself is not positioned to define potential orphan works solutions that are more than narrowly parochial to our members' interests and expertise. However, we believe that a promising direction for a general solution meeting a larger user class is found in the European Union *Directive [...] on Certain Permitted Uses of Orphan Works*, cited in the Copyright Office's notice of inquiry in the *Federal Register*. Your notice summarizes the main features of this Directive, and a detailed review of its text suggests that with some adaptation, the same approach could make sense in the U.S. in a way that would benefit "publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and public service broadcasting organisations [...] in order to achieve aims related to their public-interest missions" (the *Directive*, Article 1, p. 15). Allowing for differences in terminology, this is the same universe of non-individual service users to which CCUMC members belong.

In closing, we expect to be able to offer further discussion on more specific points in the future, most likely in response to comments made by other respondents to the Copyright Office's notice of inquiry.

Thank you for your attention and consideration,

Sue Parks  
President, CCUMC

Jane Hutchison  
Chair, CCUMC Government Regulations and Public Policy Committee