

Comment Regarding “Orphan Works”

1. Nature of the Problems Faced by Subsequent Creators and Users

As both an author and creator I find the current copyright policy to be incredibly overly burdensome.

I understand as a copyright holder myself that the protection of copyright requires some affirmative action on my part for protection. But the automatic renewal is ludicrous.

As a historian and archivist I work with old historical moving images. Under the current system it is literally impossible to clear any historical works for use in the future. For me this means that relevant historical content must be eliminated for fear of running afoul of some unknown and undiscoverable entity.

Not only is there no organization that will help with clearing these one-off works or little known original items but there is no self-service place to look yourself.

Items that are not renewed by the 30th year after publication should be orphaned. Renewal does not have to be an onerous process. I'd suggest a web based process much like the Patent office uses. The copyright holder can positively assert their desires and those of us that seek to use these old works will finally be able to locate the right person for clearance.

Let me give you an example of how ridiculous the current worldwide system is. Some foreign museums and archives are burning rare historical works because they are orphaned and they cannot clearly clear the copyright. This is a travesty and shameful but they are complying with the current system the way it stands.

One archive in particular has hundreds of hours of rare movie footage but since they can't figure if there is any copyright protection on these films they are literally rotting in the can and in a few years will be gone forever. These are films taken during World War II and there is no comparable replacement.

I truly believe that the current system is a disgrace and must be changed because without a change in the current copyright we should just throw away all of our history.

2. Nature of “Orphan works”: Identification and Designation

I'm a big fan of the keep it simple rule. I believe that there must be an affirmative claim by a copyright holder in a central database to protect past works. If it does not exist in the database, it's an orphan.

3. Nature of “Orphan Works”: Age

It seems that a two decade initial copyright protection term is more than reasonable considering that the renewal could be so simple to complete.

4. Nature of "Orphan Works": Publication Status

Only published works. Can't we for once make a system clear and simple? An item can either be registered or not registered.

5. Effect of a Work Being Designated "Orphaned"

Without registration and renewal the work should pass into the public domain. Again, I'm a copyright holder and I would understand if I did not complete my task of renewing my copyrights. It is a very simple principal and process to understand. Receiving the protections of copyright protection should require some responsibility. If we are smart enough to create it we should be smart enough to protect it.

If a copyright holder missed the initial deadline you could give a one year grace period under which someone could have access to the work without penalty during that grace period until the original creator renewed it and after that moment, the copyright protection would be renewed from that date forward.

6. International Implications

Make the changes effective for domestic works. I don't know how you want to handle this issue. It is a ridiculous mess that someone made in the past. Let's haul them back in to fix it. <G> I think this falls under the lemming principal. If everyone wrote a poor copyright law we'd have to also?

Steve Rhode