

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

February 27, 2005

Dear Ms. Sigall;

I am writing in response to your request for comments on Orphan Works (Federal Register 70:16 p.3739-3743). This situation is affecting me right now.

I have just co-authored a book on the literature of the Pacific Northwest. We intend to quote excerpts from about 200 works of literature. Roughly speaking, fifty of them are out of copyright, one hundred of them are connected to identifiable authors or publishers, and the remaining fifty come from authors who are presumably dead and publishers that have long since vanished from the scene.

Since I am also a librarian I have considerable research in searching for such things. What am I supposed to do when I want to quote a book that was, for example, published in 1929 by a publisher who hasn't appeared in a business directory in half a century? It is very likely that the authors or their heirs would be delighted to have the work included where a new audience can find it, but can I rely on that? If one cranky heir appeared and took me to court, the legal fees, even if I won, might surpass the profits from the book.

Your suggestion of a formal system of "intent to publish" seems like overkill to me. It appears to me that if an author can prove a "good faith effort," (i.e. he has written to libraries and historical societies in the relevant area and come up dry), seems like enough. If a copyright holder appears after publication and can't prove that the author should have been able to find them in a reasonable search, their redress should be limited to insisting that the material be removed from future editions. (If the book were a money-maker and the material were significant, that would leave plenty of room for the parties to negotiate.)

To insist on elaborate copyright searches, or worse to leave the situation as it is, is not protecting orphan materials. It is forcing those orphans to remain in obscurity, which is not what the authors, publishers, or readers want and deserve.

Thank you for your attention.

Best wishes,

Robert Lopresti

