

Dear Jule L. Sigall
Associate Register for Policy and International Affairs

I am writing in response to your request for public comment on an issue raised by copyrighted works whose owners are difficult or impossible to locate. I am retired from Stanford University, but spend some of my time in obtaining and curating computer history artifacts in our department, as part of the educational mission of the university. I have been an author of books that have provided substantial income, an editor-in-chief of major computer science journal -- the ACM Transactions on Database Systems, and a member of ACM's publication Board. I am, of course, also purchaser and reader of journals and books. The note represents solely my own opinion.

My direct concern with an overly restrictive law, namely disallowing the copying of orphan documents, is that it will not be enforced in practice, and as such engender disrespect not only for that law, but for valid copyright rules as well, and even for the rule of law in general. Since individual and corporate authors that cannot be located are unlikely to complain about copies being made, flouting such a law will not be punished. The expectation is actually that such an author, who obviously has no commercial interest in the work, would gladly permit such copying - getting some fame and recognition is worth much more than exclusivity.

Today a simple search on the web can easily locate extant copyright holders. Placing the negative result of such a search with the copied document would be adequate evidence of the orphan status of the document.

Without an orphan exception, individuals will be the main disrespecters of the law, often placing such documents on publicly accessible web pages. Responsible organizations, as those that maintain public archives, will be much more restricted, since they not want to get into trouble. Hence the restriction will, in practice, affect good citizens much more negatively than those that flout the law.

I request that you carefully consider the effect of the signal you would send by promoting unenforceable laws and regulations.



San Francisco, 12 March 2005

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