

Re: Comment on Orphan Works (70 FR 3739)

Dear Copyright Office,

Here, I am not going to address any of the specific questions that appeared in the Federal Register Volume 70, Number 16, Page 3739 to 3743. I am not going to repeat countless proposals made by other people. Instead, I will make a general comment on your approach as manifested in your 56 questions about the problem with orphan works.

What you are going to do is just silly. It is your office that created the problems with orphan works at the first place. Asking people for input to solve the problems that you originally started is like asking people to rebuild your house after you intentionally tore it down.

You may ask what you did that started the problem. There are two things that you did that totally destroyed the delicate balance between the authors and the public. You removed the requirement to place copyright notice on a work in order to obtain copyright and to register the same work for copyright. Without notice and registration, there is no effective way to determine the date and owner of copyright. It is just that simple thing to do and yet, you do not want to do it.

Second thing is that you extended the copyright term ad infinitum. You extended copyright term in 1976 (law became effective in 1978). You again extended copyright term in 1998. I shudder to think what you will do as the extended copyright term starts to expire in 2019. You may be tempted to extend copyright term again. This creates the problem with orphan works. That is the simple explanation for the problem. And, there is simple solution to it: Shorten the copyright term.

I am illustrating the magnitude of the problems that originated from your office. Every year, many million or even several billion pictures are made in the U.S. using all different kinds of technologies that are available to both amateur and professional photographers. That sounds good at first. But as the years go by, people will find it increasingly difficult to locate the author of the pictures and determine the date of copyright in these pictures. Also, as the old technologies become obsolete, pictures in the old technologies face the danger of being obliterated. Eventually, copyright that is designed to promote the progress of science and arts becomes Grim Reaper for these orphaned pictures. Is that what you really want to do?

However, none of the above will matter. You chose to stay within the prison of Berne Convention. You are afraid to break away from the prison. You are afraid to think outside the box of Berne Convention and other treaties. You have no courage to wrestle the problem with bare hands. Instead, you will create exceptions to exceptions to exceptions in copyright law to the point that the copyright law and regulations will seem to be as thick and absurd as tax law and regulations. Because you don't want to leave the prison of Berne Convention, you choose to create sanctuary within prison (i.e., Section 108(h)). But then, you create smaller prisons within sanctuary (i.e., Section 108(h)(2)(A) to 108(h)(2)(C)) and the whole process repeats.

To repeat what I said above, the solution to the problem of orphan

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works is to require copyright notice and registration and to shorten copyright term to no more than 50 years. You will be amazed how the simplicity can conquer the complexity.

Sincerely,

Joseph Pietro Riolo

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