

Mr. Jule L. Sigall, Associate Register for Policy & International Affairs,

In answer to your January 26 "Notice of Inquiry", I have written a short comment on my Blog. I attach a copy below, however I would suggest reading it at the Blog permalink below

<http://k.lenz.name/LB/archives/001003.html>

to get working hyperlinks.

My Name: Dr. Karl-Friedrich Lenz

Title: Professor, Aoyama Gakuin University, Tokyo

Blog: k.lenz.name/LB

Yours sincerely

Karl-Friedrich Lenz
<http://k.lenz.name/LB>

Please find the comment attached below:

-----snip-----

I wrote here about a year ago about the Japanese solution to the problem of orphaned works (that is works where it is difficult to locate the copyright owner).

Now I would like to have a swing at some of the questions raised by the American copyright office in a recent consultation.

The questions largely break down in the definition of "orphaned works", the effect of a designation as "orphaned" and international implications under the Berne Convention.

The definition used in Article 67 of the Japanese copyright law is:
<blockquote>

"Where a work has been made public, or where it is clear that it has been offered to or made available to the public for a considerable period of time, (...) provided that, after the due diligence, the copyright owner cannot be found for the reason that he is unknown or for other reasons."</blockquote>

The "available to the public for a considerable period of time" only means cases where a work has not been published or where it is not clear whether it has been published. When the author has published a work, elapse of considerable time is not necessary.

The effects of a designation as orphaned are

<blockquote>"the work may be exploited under the authority of a compulsory license issued by the Commissioner of the Agency for Cultural Affairs and upon depositing on behalf of the copyright owner compensation the amount of which is fixed by the Commissioner as corresponding to an ordinary rate of royalty,"</blockquote>

while Paragraph 2 states that

<blockquote>"(2) Copies of the work reproduced in accordance with the provision of the preceding paragraph shall bear an indication to the effect that the reproduction of these copies has been licensed in accordance with the provision of that paragraph and give the date when the license was issued."</blockquote>

As I said last year, this clause was used widely during World War 2, when European copyright owners were treated as "cannot be found after due diligence".

However, like the similar Canadian system, this might be of interest when drafting some kind of rule on orphaned works in American law.