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National Library of Medicine
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TO: Jule L. Sigall
Associate Register for Policy & International Affairs
U.S. Copyright Office

FROM: Donald A. B. Lindberg, M.D.
Director

SUBJECT: Orphan Works

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We appreciate the opportunity to comment on issues regarding “orphan works,” where the copyright owners are difficult or impossible to locate. We commend the U.S. Copyright Office for initiating an examination of this important topic that has become of increasing concern for libraries and others who provide information services to the public. Due to more available copyright protections provided by the Copyright Act of 1976 and the extension of copyright terms in recent years a growing amount of material is covered by copyright; yet it may be difficult to determine the rights holders or to locate them. As a result, an increasing amount of information cannot be used for productive purposes because arranging for the appropriate permissions becomes difficult or impossible.

While the use of such material has become more problematic from a copyright standpoint, the transition to a digital world affords us new and creative opportunities to expand public access to information. The National Library of Medicine has been at the forefront of digitizing information in keeping with its historical mission to acquire, organize, and disseminate the biomedical literature. The enormous usage of the materials that we place freely online is indicative of the desire by the public for high quality information. In the process of trying to exploit the full potential of information technology for delivering information to the public we have encountered difficulties with orphan works in several areas.

For example, a few years ago we did a two-case exhibit at NLM on AIDS Ephemera. We have not been able to prepare an on-line exhibit based on this physical exhibit, because much of the ephemera were prepared or commissioned by small, grass-roots AIDS activist organizations, many of which have since disbanded or changed their names, making tracking them very difficult.

At the same time, we actively serve the public by providing materials from our historical paper collections. Handling requests for items where copyright owners are either not known or we are unable to locate them is burdensome and often without positive result. The National Library of Medicine (NLM) is making the archival collections of leaders in biomedical research and public health available on its

Profiles in Science® web site. The site, launched in September 1998, promotes the use of the Internet for research and teaching in the history of biomedical science. Many of the collections have been donated to NLM and contain published and unpublished items, including books, journal volumes, pamphlets, diaries, letters, manuscripts, photographs, audiotapes, video clips, and other materials.

In mounting materials on Profiles, we attempt to identify and locate copyright owners through extensive research, and to make at least three attempts, if possible, to locate the rights holder. We have found that in approximately 6% of cases we are unable to locate the copyright owner. If after these attempts we have not been successful in locating the holder, we do web-publish the materials with the disclaimer:

"The National Library of Medicine's *Profiles in Science* program has made every effort to secure proper permissions for posting items on the web site. In this instance, however, it has not been possible to determine the current copyright owner. If you have information indicating who the copyright owner may be, please contact us at profiles@nlm.nih.gov."

These materials are chiefly letters from individuals. As we interpret the law, we are not halted from publication after we have demonstrated a good-faith effort to locate the rights holder. The need to make at least three valid attempts to locate the copyright holder, though, is very time-consuming and expensive and slows down the project considerably.

We are aware that the library community is developing specific proposals for how best to address the problems associated with orphan works. We believe that these recommendations will be useful to the Copyright Office's deliberations on this matter and encourage you to give them your full consideration.