

Jule L. Sigall  
Associate Register for Policy & International Affairs  
U.S. Copyright Office  
Copyright GC/I&R  
P.O. Box 70400  
Southwest Station  
Washington, DC 20024

Dear Mr. Sigall,

We present this relatively brief set of comments on the subject of copyrighted “orphan works” on behalf of the Consortium of College & University Media Centers (CCUMC) and its Government Regulations & Public Policy Committee.

CCUMC is in the process of consulting with our membership in order to make CCUMC’s recommendations as detailed and practical as possible. We expect to offer a more detailed response either during the forthcoming period for “reply comments,” or possibly at a Copyright Office hearing on “orphan works,” should one or more of these be held.

At this time we raise a few general issues, and a direction for dealing with them, shaped by the most common working experience of our membership.

CCUMC is comprised primarily of higher education media and technology support centers often called “media centers,” but which go by various other names and are administered not only by libraries but also by information technology divisions on their campuses. Our interests and needs are both addressed and championed by corporate members as well, including both technology and educational media companies.

Originally CCUMC was a smaller group of media centers with major collections of films, usually shared for loan, often through rental services, among the higher education community. Over the years CCUMC’s scope expanded to technology services. Many of the media collections still being administered by its members are not always connected to libraries or archives but are instead managed by another office related to technology (such as a media or TV production facility). Nonetheless, a common goal shaped by academic needs is to use media creatively as a teaching vehicle to convey concepts, and sometimes as “cultural artifacts” which are themselves the subjects of study.

Because of CCUMC members’ orientation to media and its conveying technology, grounded originally in film, we limit our focus here to narrower concerns than we realize the full range of users and uses of “orphan works” might have, and which we might also be expected to support.

Leaving aside the eventual definition of “orphan works”, (hereafter OW,) of vital interest to our higher education community are these categories:

Unclaimed motion pictures from the 1920s (and soon the 1930s) that have important consequence for cinema, historical and social studies. The Copyright Office mentioned this category in its Federal Register announcement, referencing the statement of concern made by Larry Urbanski of the American Film Heritage Association (available in his letter to Congress posted at <http://homepages.law.asu.edu/~dkarjala/OpposingCopyrightExtension/letters/AFH.html>).

Educational market films from all decades, but mostly the heyday of the 16mm film format, whose owners and distributors often cease business without passing these assets on to other corporate entities, or do so to those without any interest in continuing to market them. Sometimes these films are converted to video (often to a video format that itself becomes obsolete, such as 3 / 4" videocassette), but suffer the same eventual fate. CCUMC members with current or former "university film rental centers" often have some of these very titles in their collections.

Other concerns include still images in the form of slides, photographs, even maps or other tangible graphic media, for which no current marketing company can likewise be identified. In this day of multimedia production and education, having these materials freely available to convey and combine in new educational ways would be a boon.

As for a minimal policy on use, especially geared to higher education, we would suggest the following for OWs that have been properly identified:

The right to restore and/or convert an OW as necessary—film, video, or still image format—from legitimate existing copies and formats held in any appropriate and recognized higher education service collection.

The right to engage in nonprofit dissemination of such restored/converted OW titles as copies for educational activities among the higher education community.

All further uses of OW titles, beyond this dissemination among institutions and their users in copies, remain subject to the use restrictions of Title 17 until such time as these works enter public domain. That is, they would be freely treated by users—without need of seeking permission for creative uses that have economic value, and therefore having to comply with any license scheme developed for such uses—as if the OW were invested with fully enforceable copyrights possessed by works with current market value and distribution. But we propose this treatment only as a minimum type of independent use; more latitude in the use of OWs may be desirable and practical.

The general educational use rights suggested here could be made subject to review, revision and possibly rescinded upon subsequent verification of a rights holder that was not initially identified by a formal evaluation mechanism when the work involved was deemed to be OW.

Granting of the foregoing rights would in effect broaden the user group of similar works no longer available in "unused replacement. . .at a fair price" or "obsolete" in format,

under Title 17, sec. 108-- which limits the right of replacement to authorized libraries and archives, and the use of replacement copies to those facilities when created in digital form.

As regards the educational uses of OW media titles, CCUMC would see a major role for the higher education community in supporting a formal mechanism for determining the status of "orphan works." Many of our own membership deal with this dilemma on a daily basis, and have developed collective expertise and insight into the problems involved.

A formalized method of evaluating, inventorying and tracking OW titles should be developed that is as simple, direct and resistant to trivial abuse as possible. In today's networked world, and especially for the media works in which CCUMC is interested, we believe that a transparent, high-profile mechanism to handle these activities should be able to avoid conflict with principles of the Berne Convention or other international agreements.

In closing, we repeat that CCUMC expects to elaborate at a later date practical issues related to the foregoing suggestions, and to address at least some of the Copyright Office's formal questions within the Federal Register announcement.

At this time, however, we thank you for your initial attention to our concerns.

Sincerely,

Brian Burns,  
Chair, Government Regulations  
& Public Policy Committee

Jeff Clark  
Immediate Past Chair,  
Government Regulations &  
Public Policy Committee