



COMMENT **ORPHAN WORKS**

Our coalition is made up of authors, artists and illustrators

1. Nature of the Problems Faced by Subsequent Creators and Users.

Some times the road to finding the owner of a copyright and the status of the work can be a bit difficult but with the Internet it is not usually insurmountable. We mainly create our own works and exploit those but when we have needed to use other's, it has been accomplished. We could see how someone might run into a bump or two and then stop and throw up their hands and say it is all too difficult but we feel the rights of the copyright owner should be respected and due diligence done.

2. Nature of “Orphan Works”: Identification and Designation.

The definition of an Orphaned Work should be one whereby the creator of the work is no longer alive, its heirs not easily found or contactable, the works of this same creator are not licensed generally and in use or distribution. An example, an author of one book dies, no heirs, searches have found nothing, etc.—that book could be defined as an “orphaned work”. Another example, a well-known author, passes away and leaves his rights to his heirs, has 25 books published and in distribution and selling but has one that he has never done anything with—that one would not be an “orphaned work”.

We feel that a case-by-case basis is needed. Due to the nature and various circumstances of each work and the creators of the works, there is not going to be any shoe-in approach that will make sure that works that are properly protected that should be

or one that might not be really “orphaned” but easily noticed that this is the case. The Canadian approach seems to be the best one and would make sure that both sides are covered in regards to rights protected and actual “orphaned works” used. The notices are not really workable as who would be on the distribution of those notices, certainly not every creator of copyrights so it is likely something would be missed in this process.

3. Nature of “Orphan Works”: Age

No comments on this at this time.

4. Nature of “Orphan Works”: Publication Status

We feel that it should only apply to published works, not unpublished works.

5. Effect of a Work Being Designated “Orphaned”

No other comments than above, at this time.

6. International Implications.

Having a system whereby a copyright owner has to show they are using their works would not only be unconstitutional in the US but it would go right against the Berne Convention and be a step backwards. Over the years, we have moved towards compliance with Bernie.