

March 25, 2005

Ms. Jule L. Sigall  
Associate Register  
Policy & International Affairs  
Copyright CG/I&R  
P. O. Box 70400  
Southwest Station  
Washington, DC 20024-0400

RE: Orphan Works

Dear Ms. Sigall,

Aloha from Hawaii. At this time, I wish to add my comments regarding the issues raised about "Orphan Works." This is a complicated issue with a growing interest from many artists. Without going into great detail, I throw my thoughts about this matter into the hat.

I am an employee of the Hawaii State Public Library System. I address this issue of "Orphan Works" from the point of view of a film historian. I have spent many years researching and collecting rare and unique films of the past.

There are different ways of looking at the issues of the artist wishing to use abandoned materials ("Orphan Works") as a part of new art project. I address the six points listed in the Federal Register document: Notice of Inquiry, January 26, 2005 (Volume 70, Number 16, pages 3739-3743.)

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

My first impression is that a copyright work is a commercial product. There is a creator of the product. There is an owner of the product. And there is a copyright holder of the product. Hopefully, all persons are the same individual.

To simplify matters, let's say that the copyright holder is the creator of the product. The copyright holder is the "parent" of this new product. Being the parent of the new product requires responsibility of maintaining copyright custody of the product. If the "parent" abandons the copyright product, then it becomes public domain.

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Here is another way of looking at copyright ownership. The copyright work may be treated in the same manner as the ownership of personal property (i.e.: owner of a house or business property). Once the owner abandons the property, there is a public listing and it is up for sale. Should we have the copyright of "Orphan Works" available for purchase?

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

“Orphan Works” should be identified on a case-by-case basis.

There should be two filing systems. First a system whereby the copyright owners can indicate continuing claims to ownership to the copyright of their works. Second, a system whereby the potential user is required to file an intent to use the works. These two filings will be fair to both parties of interest.

## 3. Nature of “Orphan Work”: Age

This is an area I am currently researching. The laws are in place regarding the length of time of copyright. At the end of the copyright, the work becomes public domain.

## 4. Nature of “Orphan Works”: Publication Status

An unpublished work is an unpublished work. Copyright laws should not have any affect on unpublished works.

## 5. Effect of a Work Being Designated “Orphaned”

I believe that if the original copyright holder of the original work does not maintain his interest in his copyright, he loses his rights to the ownership of copyright work.

The idea of a government agency collecting licensing fees on behalf of the copyright holder is an interesting one. I like the proposal of the University of Washington College of Law. I would like to read this proposal upon its completion.

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## 6. International Implications

At this time, I will not comment on international use of “orphan works”. I need additional information about international copyright law.

I am aware that my comments are basic and simple. I am also aware that the abandonment of copyright works is an important one, especially in relationship to motion picture film. As I write this letter, important films are deteriorating, becoming lost forever.

A committee needs to be put together and study the areas of concern. This committee’s finding needs to be made available to the public. If a committee is put together, I would like to be a part of it.

Thank you for your time and consideration.

Steven Fredrick

