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## **Comments Concerning Orphan Works**

TO: Karyn Temple Claggett,  
Associate Register of Copyrights, and  
Catherine Rowland,  
Senior Counsel, Office of Policy and International Affairs  
Copyright Office

*via electronic submission to  
<http://www.copyright.gov/orphan/comment-submission/>*

RE: Notice of Inquiry (77 Fed. Reg. 64555, Oct. 22, 2012)

SFWA, Inc. respectfully submits the following comments concerning the Copyright Office's Notice of Inquiry.

### **Statement of Interest**

SFWA is a membership organization of over 1,700 commercially published writers of science fiction, fantasy, and related works. Its membership includes writers of both stand-alone works and short fiction published with other works. Of particular note, SFWA's membership includes a significant number of authors' estates, and has a long-standing record of advocating for the interests of authors' estates against those who would infringe on those estates' rights for their own profit.

SFWA is not a subsidiary of any other entity, and is entirely owned by its membership. SFWA has no subsidiaries or other ownership interest in any other organization that may be affected by this Inquiry.

### **Summary of Comments**

The problem with orphan works and the use of orphan works centers on the problem of determining when a work is truly orphan

and the standards of due diligence required of the prospective user before a work can be used. The majority of the works that are now in question and are proposed to be orphan works are not, in fact, orphans by any reasonable definition.

We believe that the Copyright Office's request for comments in this matter errs in suggesting a standard for declaring a work orphan when a "a good faith, prospective user cannot readily identify and/or locate the copyright owner(s)." This standard is too low. While good faith is essential, there must be a standard of due diligence for any such search. We suggest that the Copyright Office's 2005 language requiring "a reasonably diligent search" is more appropriate.

As a working definition, we suggest: "An orphan work is an original work of authorship for which a good faith, prospective user cannot locate the owner(s) of the publishing rights it seeks after a reasonably diligent search in a situation where permission from the publishing rights owner(s) is necessary as a matter of law." For the purposes of this commentary, only textual works for which some or all of the publishing rights owners can be identified will be addressed, as SFWA believes that works in which there is no easily and inexpensively searchable identifying information, such as photographs, should be treated separately.

We believe there are several actions that the Copyright Office should undertake regarding orphan works.

**A)** The Copyright Office should define due diligence when it comes to the obligations of a prospective publisher of a work to undertake a reasonable search for the rightsholder. It should be made clear that such due diligence is necessary to determine if a work is, in fact, an orphan work. The initial assumption underlying any search for the rightsholder must be that there is a rightsholder who can be found, and not that the work is an orphan. The Copyright Office should use the rulemaking process to define due diligence.

**B)** The Copyright Office should establish an Author Information

Directory containing author contact information and information about authors' works. The Directory should draw upon existing records and allow authors to easily obtain a unique identification number, and should be searchable by anyone seeking to find a copyright holder. The same approach could be used for photographs and graphic works.

**C)** A process should be established, either through a rulemaking procedure or through statute, requiring payments for use of orphan works into an escrow fund managed by the Copyright Office or an organization it designates.

**D)** The Copyright Office should clarify and simplify the procedure for registering freelance contributions to periodicals, anthologies, and other collective works.

**E)** The Copyright Office should state, whether as part of a rulemaking on orphan works or otherwise, that failure to perform due diligence in attempting to find the rightsholder should be the most important factor considered when a court determines whether to award enhanced damages for infringement.

## **I. Orphan Works on an occasional or case-by-case basis**

### **A. Due diligence and defining Orphan Works**

Due diligence concerning orphan works centers on determining if, in fact, the work is orphan and what the prospective user must do in trying to find the holder of the copyright.

The initial assumption underlying any search for the rightsholder of a work must be that there is indeed a rightsholder who can be found, and not that the work is an orphan work.

We identify four steps that would be needed to establish both good faith and due diligence:

- 1) Identify the creator(s) and the time and place of the publication and creation of the work;
- 2) Determine if the work is still in copyright (e.g., was renewal

needed, and if so was it renewed; was the work first published in another country, e.g., the United Kingdom, where it might still be protected by copyright);

- 3) Identify the current rightsholder(s), which could be the work's author, their estate and heirs, or the person or organization to which the rights had been assigned;
- 4) Locate the current rightsholder(s).

As we note above, while searching the Author Information Directory (AID) we propose below would be part of a diligent search for a work's author, the absence of an author from the directory would not be proof that the author could not be found. Instead, the absence of an author's name in the AID must trigger a wider search, using the Library of Congress Name Authority File (NAF,) WorldCat, the Internet, and other available research tools. The search should also include contacting writers' organizations the author might have belonged to, such as SFWA and the Mystery Writers of America. In the past, such searches would have been difficult, but with changes in technology they are relatively easy (and inexpensive) to undertake.

Searches should be documented so that they can be randomly audited to confirm due diligence.

SFWA has maintained a database of literary estates of deceased science-fiction and fantasy writers and their representatives. The purpose of the database is to enable editors and publishers who want to reprint material by those authors to seek permissions and make royalty payments. The SFWA Estates Project makes it clear that it is often possible to easily find rightsholders, even after the author's death. We discuss the project in Appendix A.

We encourage the Copyright Office to undertake a rulemaking process under the Administrative Procedures Act to define the steps needed to satisfy due diligence.

## **B. Author Information Directory**

To make finding authors easier, the Copyright Office (or an entity it designates) should create and maintain an official Author

Information Directory (AID) containing author contact information and information about their works. For the initial creation of the Directory, the Copyright Office could draw upon the Library of Congress Name Authority File (NAF),<sup>1</sup> copyright records, and other relevant data bases. The Directory should provide unique identifiers for authors (AID#) and for any of their pseudonyms. The system should also be able to deal with collaborations.

When authors already have NAF records, they should be able to search the NAF and then link their contact information in the Directory to the NAF records. We encourage the Library of Congress to open up the process by which authors can contribute material to the NAF so that records can be corrected and so that it may more effectively accomplish its goals and work in conjunction with the Directory. The Copyright Office should also seed the Directory with the information it has now, marking contact addresses with the date of the entry, thereby alerting database users that an address entry may no longer be valid.

Newly registering authors without existing NAF records or AID numbers should be able to log in via a web page, supply their name, email, and relevant contact information, and be assigned their unique author identification number. They should also be able to complete an information form requesting the generation of an NAF record, based on their provided information.

Registering with the AID would not be mandatory, but should be strongly encouraged. While searching the directory would be part of a reasonable search for a work's author, the absence of an author from the directory would not be a conclusive way of establishing that the author could not be found.

There should be no fees for registration with the AID in order to encourage the widest possible participation.

## **Authors' use of Directory**

To register a work, the author would log in to a web page, supply

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<sup>1</sup> <http://id.loc.gov/authorities/names.html>

their author AID identification number, the title of the work, and any optional information that may be useful; the work would be registered and the author would receive a registration identification number for the work (a stable identifier, similar to a Digital Object Identifier).<sup>2</sup> Authors should at this time receive information stressing the importance of keeping their registration up-to-date. The registration identification number (Reg ID#) should not be based on ISBNs or other publisher-specific information, which is likely to be transitory and change over the life of the copyright. While the Reg ID# could be based on some other already-existing identifier such as unique WorldCat<sup>3</sup> record numbers, an entirely new identification system would likely work best. Whatever numbering system is used to identify works would have to identify both book-length works and shorter works published in periodicals, collections, or published individually electronically.

The Author Identification Directory would need to include a mechanism to link AID#s and Reg ID#s in a way that can properly record collaborations. The Library of Congress's database, or the WorldCat database, both of which already have this function for linking authors and titles (or uniform titles), and could be strong tools for updating the AID. Authors should be linked to all individual works of theirs they register and the database should be designed to produce well formatted results for individual authors, including all of their registered works and any ancillary material they provide.

Authors should be able to register at least the first 100 words of each work and any unusual keywords or, if Copyright Office technology permits and the author desires, the full texts of their

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<sup>2</sup> See generally The International DOI Foundation (<http://www.doi.org>); see also Paskin, Norman, "Digital Object Identifier (DIO®) System," Retrieved from the Web, January 29, 2013 (<http://www.doi.info/overview/DOI-ELIS-Paskin.pdf>); Meyer, Carol Anne, "A Primer on Digital Object Identifiers," The Digital Digest (Association of American University Press.) Retrieved from the Web, January 29, 2013 (<http://aaupdigitaldigest.wordpress.com/2011/11/10/a-primer-on-digital-object-identifiers-by-carol-anne-meyer/>).

<sup>3</sup> <http://www.worldcat.org/>.

works in electronic format, to enable searches on phrases within the text for ease of location. This full text option would probably not be used widely, especially in cases where it might violate a publishing contract, but it would produce an unequivocal way of finding a text. During a search, only the search keywords would be displayed with a minimum amount of surrounding text, similar to Google's "snippet." Such a search facility should ensure searchers cannot extract anything but the minimum amount of text to make a positive ID.

Authors should also be able to enter a general description of the kind of work they create, to facilitate publishers searching for authors of unregistered work.

The registration process for both copyrights themselves and the AID should conclude with generation of a single-sheet educational flyer (or the equivalent) reminding registrants of the importance of maintaining a current, searchable contact and providing for succession of interests in a will or other document. The flyer should be enclosed with or attached to the registration confirmation message.

**Author contact information** - Current contact information for authors should, if the author so chooses, include contact information for an author's designated agent instead of for the author. The only need for filing change-of-address records would be when an agent moves their office or the author changes agents. Authors otherwise would submit a change of address form to the AID.

**Anonymous email box for copyright holders** - The Copyright Office should set up, in conjunction with the AID, an email system allowing copyright holders to receive email through an anonymous email box should they want keep their personal email addresses or mailing addresses confidential. If the Copyright Office is unable to set up such a system, it should encourage writers' organizations to create similar systems linked to the AID.

**Third-party rightsholders** - For works made for hire and other

works in which the author has transferred all rights, the title and text of works should be linked to both the author(s) of the work and the publisher/copyright holder. Such works should be designated as publisher-owned work, with contact information pointing to the proper rightsholder(s).

**Pseudonyms** - Authors with pseudonyms should be able to register each separately. Pseudonymous work could be linked to author names using the NAF database at the author's discretion. Authors may opt to make the link between the two names public or private, based on their preferences and contractual obligations. Authors should, however, be encouraged to have the link be public or to allow the link to become public after a specified number of years.

Authors who change names or create new pseudonyms and wish their old and new names to be linked would be so linked, as they are in the NAF database.

**Death of an author** - In the case of a deceased author, a notice should be sent by the literary heir(s) to the AID indicating their or their representative's contact information. Upon presentation of the author's death certificate, any email addresses and password(s) will be transferred to the literary heir(s.)

To elaborate on our suggestion above, the Copyright Office should also provide educational materials to copyright holders at the time of their initial registration of copyright and at the time of their registration with the AID that reminds copyright holders of the importance of maintaining current, searchable contact information. The material should also stress the importance of providing for the succession of their interests in their works to their literary heirs, either in their wills or in other documents. Further, the Copyright Office should draft a suggested clause for use in wills, and send a copy of that clause with each certificate of registration for copyrights claimed by a natural person. Language should be included directing executors and heirs to update the AID records.

The information sheet will encourage authors to explicitly allow for copyrights in their wills, which in turn will make establishing

ownership of a copyright by persons who wish to reuse materials considerably easier.

**Verification of registration** - There should be an option for authors who want to submit notarized registration forms or enter digital signature information into the directory of authors. What kind of authorization was used (if any) would not be public knowledge, so that anyone trying to fraudulently alter the record would be more likely to be discovered and deterred. If digital signatures are allowed (such as PGP or X.509 certificates), there should be no requirement as to what kind; authors should be allowed to enter information for any kind of digital signature.

When registering or entering data, anyone claiming authorship or copyright of a work should be required to do so under penalty of perjury.

### **Use of the Directory by potential publishers**

The AID database should be publicly searchable as part of a diligent search for the author of a work by a party seeking permission to use the work. The search engine used for this should be very flexible, allowing for Boolean keyword searches as well as searches by author, subject, and any ancillary material provided by the author or NAF.

Use of the AID by a potential publisher would provide evidence of a good faith effort to find the holder of a copyright, but must not exempt a potential publisher from an obligation to undertake a more complete search.

Potential publishers using the AID should be able to enter information they have learned about the author and what is known about the author into the Directory to facilitate searches by others. Any such information should be marked as coming from a third party and as an unconfirmed entry. Any such information should be entered under penalty of perjury.

### **C) Establish an escrow fund for use of orphan works.**

A process should be established, either through a rulemaking procedure or through statute, requiring payments for use of orphan works into an escrow fund managed by the Copyright Office or an organization it designates.

If a search that satisfies the standards of due diligence established by the Copyright Office — as suggested elsewhere in these comments — has failed to locate the copyright holder, the publisher would pay into the escrow fund an amount of statutory compensation adequate for the purpose of obtaining the rights, based upon then-customary industry rates for similar works and similar rights.

Orphan works must be paid no less than the rates and royalties paid for other works included in the publisher's project. In this context, projects would include lines of publication as well as single volumes. For instance, in the case of a line of reissued novels (in any format, including electronically), any orphan novels included in the line would have to receive the same terms as other works. The same principles would apply to use of orphan stories used in a magazine or anthology.

Any such payments should be posted on a Copyright Office Web site to enable claimants to contact the escrow fund administrators. A small portion of the money placed in escrow could be used to cover the administrative costs of the fund.

The escrow process should not grant or license exclusive rights to a work, with only non-exclusive rights granted.

We believe the system used for collection of reproduction payments from broadcasters and redistribution of them as royalties to music publishing companies serves as an example that could be followed for managing payments for orphan works. Regardless of the mechanism chosen, the escrow holder must have open and examinable books and must be an organization not subject to bankruptcy.

If no claim is made within ten years, the funds in escrow would be sent to an organization able to distribute the funds to rightsholders. For written works, we strongly suggest using the Author's Coalition,<sup>4</sup> which processes foreign reproductive rights payments, or a similar organization designated by the Copyright Office. Works republished via this avenue should be republished unedited for style or content.

We believe a similar system could be enacted for photographs and drawings.

**D. The Copyright Office should clarify and simplify the procedure for registering freelance contributions to periodicals, anthologies, and other collective works.**

All registrations of collective works should provide complete identification data — by author's name, date of initial publication (whether or not in the particular collective work), and title — of each individually copyrightable contribution, regardless of how the application treats those contributions. The ownership of copyright as of the date of publication of the collective work shall also be clearly stated for each copyrightable contribution. The registration should include the author's AID# if at all possible.

Should the individual works be temporarily copyrighted to the owner of the collective publication and reassigned to their authors following initial publication, the owner of the collective publication shall be required to enter that information and provide contact information for the authors.

All registrations of collective works shall be done electronically and in a text-searchable form and format.

All of the data gathered on the registration form shall be immediately made searchable in the same database as for the subject work (the AID textual database for textual works and whatever database is established for photographs and drawings for photographs and drawings.)

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<sup>4</sup> <http://www.authorscoalition.org>

## **E. Clarification of damages standard**

SFWA recommends that the Copyright Office state that its official position, whether as part of a rulemaking on orphan works or otherwise, is that failure to perform due diligence in attempting to find the copyright holder when republishing works claimed to be orphan works should be the most important factor considered when a court determines whether to award enhanced damages under § 504 or any other compensatory system adopted for infringement of works that turn out **not** to be orphans (regardless of the presumption or assertion of the infringer).

## **II. Orphan Works in the Context of Mass Digitization**

Copyright protection helps writers pay their bills and thus encourages creation of new works. It is vital that copyrights held by writers and their heirs be protected.

While we recognize that it is important to preserve orphan works, we feel that the current rush to digitization on the basis that many books will be lost is, at best, overstated. In many important ways digital records are far more vulnerable than are paper records. Ultimately, ensuring public access to those works is important, but it is not worth jeopardizing the copyright regime that made those works possible in the first place. Orphan works provisions that encourage publishers and others to carefully find and curate the important works of the past—but also seek to find and compensate copyright holders—will both accomplish curation and preserve copyright. Orphan works provisions that encouraged mass digitization and mass publication of everything regardless of value will not. The Google Books lawsuit is still being adjudicated, but we feel that Google’s scanning on a massive scale, or any similar project, cannot be fair use. If Google’s scanning is found to be fair use, or HathiTrust’s<sup>5</sup> program to publish selected orphan works is found to be legal, it becomes even more essential that an accurate

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<sup>5</sup> See: <http://www.hathitrust.org/>, and Jennifer Howard, “Judge Hands HathiTrust Digital Repository a Win in Fair-Use Case,” *Chronicle of Higher Education*, October 10, 2012, <http://chronicle.com/blogs/ticker/judge-hands-hathitrust-a-win-in-fair-use-case/50462>. Retrieved from the Web, February 1, 2013.

directory of contact information be created and that use of the directory be required, as we suggest above with the AID.

We recognize that when works are scanned legally as part of legitimate archives that are maintained for purposes of preservation and scholarship, it is beneficial. The past underlies the present, and the writing of the masters of the past influences and informs writers working today. It is vital that new writers and readers have the opportunity to acquire the works of earlier writers in a fair and legal marketplace and that researchers have access to the earlier work. But if such archives are used for commercial purposes to make money, that is a different story. It will be up to the courts to decide what kinds of digitization and publication of orphan works is acceptable.

Such works will have to be scanned and stored, and insisting on a strict “opt in” policy probably will not allow for that — at least in part because many heirs do not realize that they own a copyright. We realize that eventually all works will fall into the public domain, and are in the end the common heritage of mankind. At the same time, while a work is still under copyright protection, anyone wanting to reprint the work should, if at all possible, find and pay the owner of the copyright.

### **III. Other Comments**

#### **A) The Copyright Office should engage in a formal rulemaking to resolve issues related to Orphan Works**

As an administrative agency within the legislative branch, the Copyright Office has the authority to issue rules under the Administrative Procedures Act, and has done so in the past.<sup>6</sup> Although this current inquiry process is helpful in getting exposure

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<sup>6</sup> See, e.g., Copyright Office, United States Library of Congress, *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*, 77 Fed. Reg. 65,260 (26 Oct 2012) (final rule), *to be codified at* 37 C.F.R. 201.40(*see generally* <http://www.copyright.gov/laws/rulemaking.html>)

to issues, it is *not* helpful in actually resolving any of the controversies, and risks becoming as extended as the study process under the 1909 Act leading up to the 1976 Act.<sup>7</sup>

We simply do not have twenty years to resolve, or even to narrow, the problems with orphan works. There is already substantial litigation, hardening of positions based upon immediate interests related to subsets of the entire population of potential “orphan works,” and a plethora of proposed “solutions” that apply to those subsets being proposed as universal solutions. There are already authors (and their estates) being mistreated by re-users who assert that certain works are “orphans” when an e-mail query to SFWA’s Estates Project, which is described more fully in the Appendix A of this Response, would have discerned full contact information for the respective authors. Conversely, there are already works needlessly falling into a true orphan status for want of authoritative guidance.

The inquiry process, while perhaps helpful for those who know nothing at all about orphan works, is not sufficient. Even the definition of “orphan work” offered in the previous report on the previous inquiry<sup>8</sup> has proven inadequate; it has seldom guided debates or practices since that time, and appears to have been given no weight in litigation or other forms of dispute resolution. The proposed legislation arising from that report — both that proposed by the Copyright Office and that proposed by others — went exactly nowhere... and would have been subject to intensive lobbying on the basis of financial advantage to copyright exploiters, which is inconsistent with the constitutional imperative behind copyright.<sup>9</sup>

SFWA believes that the best path toward resolving as many of the issues raised by orphan works as possible is through the

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<sup>7</sup> See generally <http://www.copyright.gov/history/studies.html> (collecting studies authorized under, among others, S. Res. 53 (86th Cong. 1960)).

<sup>8</sup> Register of Copyright, United States Library of Congress, Report on Orphan Works (Jan 2006), *available at* <http://www.copyright.gov/orphan/orphan-report-full.pdf> (hereinafter *Orphan Works Report*).

<sup>9</sup> U.S. Const. Art. I, § 8, *cl.* 8.

rulemaking process. Rulemaking’s major advantage over legislation is its ability to respond to changes in context. For example, the legislation proposed in the previous report would, if it had been expeditiously adopted, expire three years from now, requiring a complete new round of legislation.<sup>10</sup> Further, administrative rulemaking is more able to adapt to changes in search capability, in market structure, and in technological capabilities than is legislation. One of the principle needs for any resolution of problems with orphan works — however they are defined and however that resolution is implemented — will be guidance on how to (and how much to) search for the current owners. A legislative approach will prove insufficient and easily outdated; just imagine how legislation in 2005 might have defined “search engine,” particularly for nontextual works (such as a scanned image of a printed book).

## **B) Copyright Office digitization efforts**

SFWA applauds the Copyright Office’s recent digitization efforts and hopes that it has the funds to fully carry out its plans to digitize all of its physical records. One of the recurring problems in researching the copyright status of a work is the cumbersome process of searching the Copyright Office’s paper records, which can be quite expensive.

We recommend that the Copyright Office prioritize digitization of works in the 1923–63 time frame when timely renewal of a copyright was required to prevent a work from entering the public domain. We would also like to see integration of the Copyright Office’s databases so that a simple search would be able to turn up the initial copyright of a work and any subsequent renewal. Many works published in the 1923–63 time frame have fallen into the public domain, but there is no easy way to tell, because, although

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<sup>10</sup> *Orphan Works Report*, *supra* note 8, at 127 (sunset provision of ten years in proposed 17 U.S.C. § 514(d)). This is independently troublesome because in the world of copyright litigation, this ten-year sunset is *not* sufficient to complete the appellate phase of any litigation begun based upon infringements more than four years or so after the proposed § 514 became law — and the ill-chosen wording may, or may not, have applied to cases pending on the sunset date.

many of the renewal records have been digitized, they are still not easy to search effectively. Many of these works are incorrectly labeled as orphans. Digitization of these records would clarify, as much as possible, the copyright status of works from this period and help prevent them being incorrectly claimed as orphan works.

We recommend that, as a specific part of its rulemaking efforts, the Copyright Office make a rule regarding accessibility of its initial registration records, of its renewal records, and of recordations regarding registered copyrights, and how that accessibility — and the varying reliability of those records — affects inferences that a work has become an orphan. This rulemaking should also specifically require recordation of the efforts undertaken to search for a particular copyright holder, and state that mere duplication of a prior unsuccessful search is **not** adequate demonstration of due diligence.

## **Conclusion**

SFWA believes that the problems raised by orphan works and works that are alleged to be orphan works must be resolved quickly. Far too many publishers and other users of works have simply declared works orphan and proceeded with various projects. The Copyright Office needs to use the rulemaking process to quickly define due diligence in searching for copyright holders and establish the AID or another system that will facilitate finding rightsholders.

Respectfully submitted for SFWA,

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Charlie Stross, Author.

## **Appendix A**

### **SFWA's Estates Project: A proof of concept**

In 2008, I was asked by the SFWA Board of Directors to assume the position of Estates Liaison. The duties of that position were simple enough in concept: I was to compile and maintain a database of the literary estates of deceased science-fiction and fantasy writers and their representatives. The purpose of the database was to enable editors and publishers who wanted to reprint material by those authors to seek permissions and make royalty payments.

This is important for a number of reasons, not the least of which is the preservation of classic and important works of fantastic literature. It can also represent a significant advantage in battling online piracy.

The execution of the position can be more complicated, as there are times when the heirs of an author are scattered widely and family dynamics are not always conducive to making decisions.

Nevertheless, there are numerous resources available to someone who knows how to use them: networking with others in the publishing field who may have worked with the deceased, obituaries, online genealogical records, even social media (if you have names of family members). In many cases, I have been able to trace an heir the same day I received a query with only a few exchanges of e-mails or phone calls. In other cases, I have been unable to track a family even after many hours of searching, but the ratio of successes to failures is better than ten to one. In less than five years, I have been able to build the list of estates I was given from 120 names to more than 460.

The process, as a general rule, is this: SFWA receives a query from a publisher about an estate. If that estate is one we don't already have, I initially send out an inquiry to several e-mail groups made up of a few hundred people conversant in the science fiction and fantasy publishing field – bibliographers, scholars, biographers and critics, as well as professional writers, editors and publishers, all

with a keen interest in the field's history.

While waiting for replies, I look online for references to the author's family and/or representation. Sometimes an article will mention an agent's name, and the search ends there. Other times a newspaper obituary placed online will mention surviving family members; this gives me information that I can then use to search for personal blogs, posts in public areas, membership in social media sites and even online phone listings.

As a rule, this is sufficient to find at least one member of the author's family, and that is enough for me to make arrangements to put them in contact with the publisher who initially contacted SFWA so that arrangements can be made.

Sometimes, though, it's not that easy. Recently, we received a query for an author who died intestate almost twenty years ago. His widow died only a year or so later. I began the search as I usually do, and it led to an individual who had been searching unsuccessfully for family members for several years. We compared notes and came to the realization that there were no surviving family members on either side; i.e., the estate was legitimately orphaned, the only "heir" being the State of New York.

It comes down to due diligence. It isn't enough to do a single Google search, or ask just one person. Due diligence isn't all that hard, and in many cases isn't terribly time consuming. It is, however, necessary in order to adhere to the letter of the law, and certainly to uphold its spirit. More than that, though, it is the right and honorable thing to do, if only to show the proper respect to those whose work you want to re-publish.

Bud Webster,  
Liaison, SFWA Estates Project