* Have the license cover all published works found in archives, period. If you must exclude works, require rightsholders to clearly enumerate those works, in electronic form. Make false representations about having the right to control a work punishable as a form of perjury -- none of this DMCA-style business where anyone can claim to be an author's representative and order a takedown with no penalties for being sloppy.

* Break the deadlock: in the event that the writer and publisher both claim the rights to payments under the license, ask Congress to mandate a 75/25 split in the writer's favor.

* Publish a list of orphan works ranked by usage to make it easy for writers' organizations to figure out which creators are worth locating

* Solve the problem of orphan works by statute: create a notice-and-takedown procedure (with appropriate penalties for abuse, see above) for removal of digitized works in publicly available online archives that are erroneously believed to be unpublished.

* Comprehensively cover data-mining, indexing and search under the license terms