

Specific Questions

Through review of the submissions, the Copyright Office intends to determine the scope of the problem, evaluate appropriate next steps and create a record from which specific legislative proposals, if appropriate, could be considered and developed. To that end, this notice of inquiry sets forth several sets of questions, organized by issue, in an effort to begin gathering relevant information. Commenters do not need to respond to all questions, but are encouraged to respond to those as to which they have particular knowledge or information. Commenters may also frame additional questions or reframe any of the questions below.

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

1.1 What are the difficulties faced by creators or other users in obtaining rights or clearances in pre-existing works?

There is no reliable, complete, all encompassing, current centralized database in which to search. It is difficult to determine if something is in the public domain. Research requires extensive research time and many man hours to research works. Many times the results of this time consuming researching can be still indefinite and questionable. Also, there are no unique identifiers. Because research is so time consuming and requires many man hours it is expensive to conduct. Uniquely identifying a single work can be difficult. Due to a lack of centralized reference information. This makes it difficult to find works. Also, some of the information one may come across can be inaccurate or out dated. Once you do locate the owners of the work, tracking owners is difficult because records are inaccurate. Owners may be deceased, changed their name or don't want to be found.

1.2 What types of creators or users are encountering these difficulties and for what types of proposed uses?

Types of Creators – Educators, Artists, film makers,

Types of Users – Librarians, Educators, Licensors, Commercial & Non profit Corporations

Types of Proposed Uses – Services allowing on-demand streaming, tethered download or conditional download access for a re-occurring subscription fee, education materials for access over a computer network, research materials, derivative works in film, historical archiving,

1.3 How often is identifying and locating the copyright owner a problem?

It is always a problem. It requires a lot of time. Time is money. Results are not assured after spending the time and money.

1.4 What steps are usually taken to locate copyright owners?

Check physical media if it exists, check internet sites (search engines, copyright office, performing rights organizations, Harry Fox Agency, All Music Guide, Muze), contact the sound recording record labels, performing rights organizations, public and private libraries

1.5 Are difficulties often encountered even after the copyright owner is identified?

Is the owner represented by a company we currently have an agreement with? Who represents the author? Is the publishing entity still in operation? Is the found record accurate or has the work been sold to another entity? Sometimes conflicting records indicate greater than 100% ownership. No way to verify the percentage split and therefore difficult to pay royalties. Transfer of ownership is not communicated or recorded in a public database.

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

2.1 How should an “orphan work” be defined?

Orphaned Work – An expression or idea put in a tangible form in which the creator/owner no longer has intent for protection or commercial exploitation either through choice or abandonment. Expressly or inadvertently abandoned.

2.2 Should “orphan works” be identified on a case-by-case basis, looking at the circumstances surrounding each work that someone wishes to use and the attempts made to locate the copyright owner?

No. This would be too time consuming and the conditions for which a work would be deemed orphaned would be subjective. It wouldn't solve the problem because it would be arguable on a case by case basis as to the attempts to locate the owner.

2.3 Should a more formal system be established? For instance, it has been suggested that a register or other filing system be adopted whereby copyright owners could indicate continuing claims of ownership to the copyrights in their works. On the other hand, the establishment of a filing system whereby the potential user is required to file an intent to use an unlocatable work has also been suggested. Would the Copyright Office or another organization administer and publish such filings?

Yes. There are two main problems that need to find reasonable solutions. We need to create a system in which copyright owners can retroactively establish their ownership over a work without the penalty of losing full economic benefits for use by other of that work during the period of neglect. The second issue that needs to be resolved is we need to create a streamlined complementary system in which subsequent creators and users can use the works which are difficult to find copyright owners without undue time and expense and the fear of enormous copyright fines. If a system were put in place in which the potential retroactive losses would be capped for the creator and at the same time the

maximum licensing fees to subsequent creators and users for the work was also capped, the grid-lock environment the industry is currently experiencing would be resolved.

2.4 For instance, would the Copyright Office publish lists of these notices on a regular basis, similar to the lists of notices of intent to enforce restored copyrights filed with the Office?

Publishing lists of registered works that were up for renewal or about to fall into the public domain is a good idea. Also, publishing lists of works in which subsequent creators or users are requesting use of but can not locate the owners of would also be a very good idea.

Questions arising from these different approaches are set forth in the next sections.

A. Case-by-Case Approach

The “ad hoc” or “case-by-case” approach, like that adopted in Canada, would set forth parameters for the level of search that would need to be undertaken in order to establish that a particular work is “orphaned.” Ensuing questions include the nature of those parameters.

A.1 Should the focus be on whether the copyright holder is locatable?

Yes. Initially locating the owner should be the focus but if this is unsuccessful, the focus needs to change to other solutions.

A.2 What efforts need be made to locate a copyright holder before it can be determined that the owner is not locatable?

A copyright is an exclusive right given to owners of creative works by a government. The government should know who it is giving exclusive rights to. If the copyright owner is not available through government records, in my opinion, the search should end there. One could argue that the search could continue to private industry but there is little incentive for private industry to provide the government information it should already have.

A.3 Would a search of registrations with the Copyright Office (or any other registries as described below in section B) and an attempt to reach the copyright owner identified on the work if any (plus any follow up) be sufficient?

Yes.

A.4 What other resources are commonly consulted to locate a copyright owner, and what resources should be consulted?

In the world of sound recordings, we commonly consult physical products, larger publishing organizations, record labels, copyright office, internet site, internet search engines and performing rights organizations. I don't think it should be necessary to consult private industry organizations when trying to determine ownership for a protection the government is granting someone.

A.5 Do resources like inheritance records, archives, directories of authors or artists need to be searched?

No. These are not public records. Also, in the future everyone is going to be an author or artist. Digital technology will enable everyone to make copyrightable works easily and inexpensively. Only those that are registered should be protected. People will not put their lifetime output of all their digital copyrightable works in their inheritance records. People will not desire to protect most of what they create because creation of copyrightable works will be so effortless using advancements in new technology.

Example: I would not put the photos in my Ofoto account in my will. All of those photographs are protected by copyright but they are too inconsequential to me that I would not bother entering them in to my will. All of those photos would be unavailable to the public after my death even though I don't desire their protection.

A.6 Should there be an obligation to place an advertisement seeking the owner?

This technique is unlikely to yield many results in a timely manner. It is not entirely useless suggestion. It should be considered as one of many possible ways to try to identify copyright owners.

A.7 Should factors such as the age of the work (which is discussed below), how obscure the work is or how long it has been since a publication occurred be taken into consideration?

Yes. All of these factors would hint to possible explanations as to why the owner is so difficult to locate.

B. Formal Approach

Another approach, like that used in the 1909 Act, would require registration or some sort of filing by copyright owners to maintain their copyrights past a certain age and to assist in locating copyright owners.\9\

B.1 Would such a new registry or registries be created separate from the existing system of copyright registration (akin to the designated agent registry under section 512 of the Copyright Act) where copyright owners could identify themselves so that users could more easily find them?

We believe there should be some formal registry. We don't see a need for a separate registry. One single location should contain the listing of all copyrightable works.

B.2 Should such a registry(ies) be privately owned or administered by a government agency like the U.S. Copyright Office?

Our initial feeling is that a copyright is an exclusive right that a government gives to an owner of a creative work. It should therefore be the government that ultimately is responsible for keeping track of these works and the owners for which they have given this right. However, we all know the government is not the most efficient or reliable organization. Perhaps by privatizing this registry, it would allow for the formation of competing private companies that could streamline the availability of this data.

If privatization is considered, it needs to be handled very carefully. The public should not have to pay for this information. These private organizations need to be funded in such a way that they are not gate keepers of what should be public information.

B.3 What would such a registry look like?

It will take some work but this is how I imagine the registry should be designed. Every person seeking to register should be given a unique ID. That ID would be theirs forever. The copyright office would require the person to provide them the obvious basic information such as who they are and where they live, phone number and e-mail etc.... In addition, they would request a next of kin or back up contact person. In the event that the person can not be located, the office would request an person for which they can try to communicate with in case all other efforts to locate the person fail. This alternate person can be a blood relative, lawyer, spouse, etc... The copyright office would set up an electronic mailbox for each person.

On a periodic basis the copyright office would contact the person via e-mail to ask them to visit the copyright office's website to renew or manage their registered works. If the e-mail bounces, the message will also be forwarded to the electronic mailbox set up for the person. This will so if the person switches e-mail addresses or moves they can still get their messages if they want by logging in to their Copyright office mailbox. In addition, post cards could also be sent out on a periodic basis letting them know to visit the copyright office website to manage their registered works. If any post cards are returned, this will be noted in their file.

If there is no activity at all on the account (bounced e-mails, returned post cards, no one has logged in or check their e-mail) after a certain age of the works and a certain amount of elapsed time of account inactivity, those works will be considered to be orphaned. The works would first go into a "pre-orphaned" status. During this time, the public could make official requests to the copyright office for use of the works. A "pre-orphaned" fee would be paid for use of this work. The requester could then get the right to use the work at that minimum fee without fear of litigation. If at a later date, the author of that work suddenly makes himself known, they can re-register their work and move it out of "pre-

orphaned” status back into normal status. The author would be able to collect any minimum fees from usage request but could not demand higher licensing fees from existing requesters for a set period of time (say 2 years). Any new requesters would be need to negotiate directly with the author.

When the work is “pre-orphaned” the copyright office would post the official requests publicly on websites and other public forums.

If a work is in the “pre-orphaned” status for a set number of years, it will finally be officially “orphaned”. Just prior to this, the copyright office would post publicly that this work will be orphaned on a certain date unless the original creator, owner or practitioner representing either the creator or owners contact the copyright office.

B.4 What kind of information should be required from such a filing?

Copyright owner identification: Name, current address, current e-mail, current telephone, fax, cell etc.... website, social security number/EIN #, lawyer/agent, birth date, beneficiary info, publishing org, performing rights org

Copyrighted Work Information: Work, Composer/Authors names, publishing org, performing rights org, known commercial usages/publication (UPC, ISBN, etc..).Title,

The biggest concern is what happens if someone moves, changes e-mail or phone number. There needs to be a back up method for this person to receive requests. A couple of ideas come to mind. The first is to have the copyright office mail a postcard to the recipient and monitor those that are sent back. Post cards not received will be stored in a P.O. Box for the copyright owner to claim at a later date. Similarly, e-mail that bounces can be stored in a e-mail account at the Copyright office in which the copyright owner can access through the copyright office’s website.

B.5 Should the identification of a person to whom permission requests can be sent be required? What other information should be included?

Yes this is required. See above.

B.6 Also, how would the registry identify the “works” at issue, especially in light of the current multimedia age where works can take on many forms and spawn multiple derivative works?

This will always be difficult. Especially with all the new technology that is available and its ease of use.

B.7 And, even more importantly, how could fraud and abuse of such a registry be avoided--i.e., what is to prevent someone from fraudulently claiming works as his own?

Fraud is a difficult issue. I am not sure how to deal with this.

Such a registration system could be optional as well as mandatory. Where, under a mandatory system, copyright owners could be required to make a filing in order to preserve their rights and/or prevent their works from being deemed “orphan,” under an optional registry, registration might provide additional benefits. Alternatively, under an optional system failure to register could carry certain penalties or limit remedies available to the right holder.

B.8 If registration were mandatory, on the other hand, would failure to register create a rebuttable presumption that the work is “orphaned,” or would it conclusively be deemed “orphaned”? (Questions as to the effect of a designation as an “orphan work” are set forth below in section 5).

Yes it should be mandatory to preserve your rights but we can't create a system where the one would automatically lose the rights to their works for ever just because they failed to register. We need to create a system that allows someone who wants to use a work to pay a minimum fee to protect them from liability from an unregistered author. At the same time, the author should not be severely penalized for not registering. There should be the ability to register their works anytime during the duration of the works copyright protection. However, that author would only receive the minimum payments of those who used the work while it was unregistered. This way the author does not lose out completely for his mistake and the person who wanted to use the work can do so without fear of liability.

B. 9 If optional, the registry might serve as just one factor in determining whether the copyright owner was locatable. How helpful would such a registration system be in determining whether a work was in fact “orphaned”?

If registration is optional there needs to be an incentive to register. Without an incentive, the registry will be useless. If a system were put into place in which the author could register their work initially. Then periodically, the copyright office would attempt to contact the author and ask them if they want to maintain the protection on their work. The author could clearly indicate his intentions. If the author could not be located, that work could be orphaned, however, the system should allow the author to retroactively update his original registry if he let his work lapse in to its orphaned state. During the time the work was in this orphaned state, the author would only receive minimum payments for use of his work as an incentive to keep his work actively registered with the copyright office.

Making registration optional would not help one determine if a work has been orphaned. It would simply be another database that would not improve the situation we currently have at the copyright office.

B.10 Would the registry then qualify as just another place that a potential user should look to find the owner?

If registration was optional, this would be the case. Which we do not feel will improve the current situation.

B.11 If so, how practicable would such a system be?

This would not be very practicable without proper incentives.

B.12 What incentives would a copyright owner have to use such a system?

One needs to set up a system where the author would only receive minimum rates for works they have not registered. These minimum fees would be paid by people who want to use the work but can not locate the author and would like to be cleared of liability for using such a work if at a later date the author of the work makes himself known.

B.13 Should the owner be permitted to acquire any additional benefits from registering, such as additional damages or a penalty for willful use of a work?

Yes. This would be one good incentive.

B.14 Does this tread too closely to the copyright registration system? What would the effect be on the user?

If done as described above, we could develop a system that would protect the user but at the same time not overly punish the author for his lapse in administration duties.

B.15 For instance, if a user did not check the registry, would it prevent the user from claiming that the work was orphaned?

To avoid liability, the user must check the registry. If the user can not locate the work, they can avoid liability by making a formal request to the copyright office of their desire to use the work and pay the minimum fee. The copyright office would record the formal request and store the fee for future registration of the work by the author. The author would be allowed to collect on the fee for that work only this minimum fee for uses of his work up to the point of registration. After registration, the author could license the work for whatever the free market would bare.

B.16 Would there be sufficient incentive for copyright owners to register in a permissive system?

No, there would not be sufficient incentive for copyright owners to register. Additional incentives need to be created for a registry system to work.

3. Nature of "Orphan Works": Age

3.1 Should a certain amount of time have elapsed since first publication or creation in order for a work to be eligible for "orphaned" status?

Yes. Time is one factor that should be considered when trying to decide if a work is eligible for “orphaned” status. It should not be the only factor however.

3.2 If so, how much time? It might be helpful, in determining what an appropriate time period would be, to note some of the different benchmarks for term requirements that history and international conventions suggest. For example, under the 1909 Act, a work was to be renewed in the 28th year after publication. Current copyright law provides a presumption after the shorter of 95 years from publication or 120 years from creation that the work is in the public domain unless the Copyright Office's records indicate otherwise (and the Copyright Office issues a certified report to that effect).\10\ Current copyright law provides another benchmark in the right to terminate grants of transfers or licenses after 35 (and up to 40) years after the grant or publication date.\11\ Under existing international treaties, the term of protection for works measured other than by the life plus fifty term is generally fifty years from publication. The Copyright Term Extension Act of 1998 extended terms in the U.S. by 20 years, but at the same time recognized that certain uses should still be allowable in those last twenty years, namely uses by libraries and archives of certain works that are neither available at a reasonable price nor subject to normal commercial exploitation.\12

The original work should be registered with the copyright office sometime within the first 28 years from its creation date or 14 years from first publish date. If the work is not registered during this time, it should be eligible for “orphaned” status. After 28 years elapses, I think the work should fall into a “pre-orphaned” status. This status would allow people to make official requests to the copyright office and pay minimum fees for the use of the work so that those fees could be collected at a later time if the author does eventually register the work. If work is still unclaimed in the “pre-orphaned” status for a certain period (say another 14 or 28 years), then the work will be officially orphaned.

3.3 Would the last twenty years of the copyright term, or any of the other benchmarks or time periods noted above, be an appropriate measure for eligibility as an “orphan work”?

See the answer to 3.2

3.4 (a) Should it be the same for all categories of works, or different depending on the nature of the work?

No. All copyrightable works should be treated the same.

3.4. (b) What if the term for a particular work is unknown or uncertain?

Like certain aspect to patent law, only creators can certify when a work was created. Practitioners can not certify this date. Practitioners can only certify when a work was first sold, registered, or published. Both creators and publishers need an incentive to state accurately these dates. If they state incorrect dates and it can be proven that these dates

are incorrect and the information was done with deceptive intent, then the work should have its copyright protection removed. If dates are incorrectly quoted but it can be proven that it was done without deceptive intent, the act can be forgiven with a small penalty placed on the overall duration of the copyright protection. Many of the concepts just described exist in patent law. Perhaps some of the core concepts could be considered for copyright law.

3.5 (a) If the copyright owner is not known or cannot be found, there will certainly be instances where the date of creation or death of the author will be unknown.

In the absence of the creator, practitioners such as lawyers and estates can only quote facts about published, sold or registered dates. The creation date should be given preferential treatment to incentivize the creators to document creation dates. Without the creator stating the creation date, practitioners can only guess when the work was created. In order to avoid over extended copyright protection, we can't guess on the creation date. If the first publish date is all that exists, it needs to be accepted that some loss of copyright protection will occur from the maximum protection duration however this is a very good incentive to have the creator of the work document his creation dates in some way.

3.5 (b) Can it be presumed at a certain point that a work has entered into the period in which it can be recognized as an orphan work?

Yes. The work should have a certain set period of time where it is fully protect, with or without registration. This could be considered the Registration years. After this point, if the work is not registered it will fall into a "pre-orphaned" status. The public will be able to use the work but will be required to pay minimum fees in case the author makes their selves know by registering the work. After a set period of "pre-orphaned" status, if the work has still not be registered, it will become orphaned.

\10\ 17 U.S.C. Sec. 302(e) (2003).

\11\ Sec. 203.

\12\ Sec. 108(h). Specifically, this provision provides that in the last twenty years of the term of any published work, a library or archive, including a nonprofit educational institution that functions as such, may make any copyright use of the work (other than create derivative works) for purposes of preservation, scholarship or research, if it has determined on the basis of reasonable investigation, that (i) the work is not subject to normal commercial exploitation, (ii) a copy cannot be obtained at a reasonable price, and (iii) the copyright owner or its agent has not provided notice with the Copyright Office that neither (i) or (ii) applies to the work.

\13\ For instance, the U.K. law cited above provides a complete defense against liability if the owner cannot be found after reasonable inquiry and the date of expiration is uncertain but it's reasonable to presume that the copyright has expired. See supra note 8.

4. Nature of “Orphan Works”: Publication Status

4.1 Should the status of “orphan works” only apply to published works, or are there reasons for applying it to unpublished works as well?

I agree that this should only apply to published works.

4.2 In Canada, for example, the system for unlocatable copyright owners only applies to published works. What are the reasons for applying it to unpublished works?

I can't think of any.

4.3 If “orphan work” status would apply to unpublished works, how would such a system preserve the important right of first publication recognized by the Supreme Court in Harper & Row?

It couldn't. So it should not be considered.

4.4 What are the negative consequences of applying such a system to unpublished works?

This should not apply to unpublished works. Society is not losing the benefits of works that it does not know about. Even if one could make an argument that Society does miss out, the work would eventually fall into the public domain.

5. Effect of a Work Being Designated “Orphaned”

5.1 However a work is identified and designated as “orphaned,” what would be the effects of such designation?

There are both potential positive and negative effects to this. The positive affects are many. To name just a few, it would enable new creators to build from the past. Creating derivative works with as much or more value than the original work. These new works can be created free of fear of enormous copyright violation fines. Also free of excessive administrative work to determine if a work is available for use.

The negative affect could be that a creator could lose out on the full commercial potential of their work due to a lack of discipline in the management of their intellectual property.

However, if the system was designed correctly, there could be safety nets put in to place in which the author of the work could retro actively register their work and collect minimal fees for the use of the work while the work was unregistered.

5.2 Under systems for a mandatory, formal registry of maintained works, like the 1909 Act, the right to assert one's exclusive rights vis [a]grave vis others could similarly be lost, in whole or in part, if the work was not contained on the registry. Should this loss of rights apply only to the particular work at the time of use, or only to the particular use or user, or would it affect a permanent loss of rights as against all uses and users?

I think when a work is officially orphaned, it should be lose its whole copyright protection. Prior to officially orphaning a work, it should in a “pre-orphaned” status in which it would lose only part of its copyright protect for the time it is unregistered. If the author registers the work during the “pre-orphaned” status, the author could collect any minimum fees already paid and re-instate his full copyright protection for the life of the work or until they orphan the work at a later date. And of course, there should be a set period of time in which the work should get protection without registering initially.

5.3 Other possibilities include imposing a limitation on remedies for owners whose works are “orphaned”--without affecting the copyright itself. For instance, under the Canadian approach, the Copyright Board sets the license fees and other terms for the use and collects the payments on behalf of the copyright owner should one ever be identified. Under that approach, users could be confident that their use of the work would not subject them to the full range of remedies under the Copyright Act, but only an amount akin to a fee for use. At the same time, copyright owners would not be concerned about the inadvertent loss of rights from failure to pay the fee or take other requisite action. Domestically, the Copyright Clearance Initiative of the Glushko-Samuels Intellectual Property Law Clinic of American University's Washington College of Law is currently developing a proposal that would limit the liability for users of orphan works and not result in any loss of copyright per se on the part of the copyright owner.¹⁵ Under that proposal, only a recovery of a reasonable royalty would be allowed in infringement actions with respect to orphan works where good faith efforts have been made to locate the copyright owner. Are there other approaches that might be used?

This is a good approach. There may be some need to make small adjustments.

5.4 If a reasonable royalty approach is used, how should it be determined in any given case?

It would be a flat fee based on certain criteria such as gross revenue of derivative works based on the original work, the breadth of distribution, gross auxiliary revenue streams such as advertising, subscription fees, etc... generated with the use of this work.

5.5 To settle disputes as to the appropriate fee, is traditional Federal court litigation the right dispute resolution mechanism, or should an administrative agency be charged with resolving such disputes or should another alternative dispute resolution mechanism be adopted?

Yes. An administrative agency or alternative dispute resolution mechanism should be developed. Litigation in Federal court is just too costly to everyone involved. There should be some very straight forward guidelines in which compensation of orphaned works or pre-orphaned works that should not be disputed if certain Intellectual property management tasks have not been done over the certain time periods in the life of the work.

\15\ Pursuant to that proposal, copyright law would be amended to limit liability for the use of works where the user has been unable to locate the copyright holder after making good faith efforts. Liability could be limited to a “reasonable royalty” or the like, or could be akin to the limitation of U.S. Federal Government liability to “reasonable and entire compensation as damages * * *, including minimum statutory damages.” 28 U.S.C. Sec. 1498(b) (2003). Complex issues raised by that proposal include how to determine what constitutes “good faith efforts” to locate the copyright owner and how to determine and/or settle what a reasonable royalty would be.

5.6 Are there other measures that could be applied in cases of orphan works?

Yes but the Canadian model is probably a very good place to start.

5.7 How would these, or any of the others described above, affect the incentives for authors of such works, particularly small copyright owners or individuals who might bear a greater burden than copyright owners with more resources?

The burden any party might feel could be alleviated through several methods. The first would be to set up a system that has more than two statuses. Where it is not just you have protection or you lost protect. There needs to be opportunities that allow you to regain your full protection and only lose part of your protected rights due to your lapse of intellectual property management. These smaller loses would not severely punish the authors for their oversight is managing their copyrights but incentivize them to maximize the benefit to society their works have by keeping society informed of the available usage of their works.

6. International Implications

6.1 How would the proposed solutions comport with existing international obligations regarding copyright? For example, Article 5(2) of the Berne Convention generally prohibits formalities as a condition to the “enjoyment and exercise” of copyright. For any proposed solution, it must be asked whether it runs afoul of this provision. Would a system involving limitations on remedies be consistent with the enforcement provisions of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) or the prohibition against conditioning the enjoyment or exercise of copyright on compliance with formalities of TRIPS and other international agreements to which the U.S. is party?

Being compliant with international law is important. However, one can imagine that getting the world to agree on something before it is implemented is going to create an impossible situation in which the best decision may not be the one everyone can agree on. It is important to try and stay compliant with international law but there will become a point in time where the United States will need to do what it believes to be the right decision for its system. The U.S. has is the biggest creator of creative works in the world. Individualism is celebrated in our culture. We can't let the world or other cultures overly influence what we as a society do to incentivize our people to generate creative works and fuel our entire economy.

It reminds me of truth behind the statement, “If you ask a large group what they want for lunch, you will end up with hot dogs and beans”. Basically, the end result is not the best result, it is just the one everyone could agree to.

Or the statement “A good compromise is when everyone leaves the negotiation table unsatisfied”

6.2 Would such proposals satisfy the three-step test set forth in TRIPS, Art. 13, requiring that all limitations and exceptions to the exclusive rights be confined to “certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder”?

I think there will be conflicts with international law. We need to be careful to figure out which consequences to the inconcistancies we as a society can live with.

6.3 Are there any other international issues raised by a proposed solution?