

The Authors Guild, Inc.

Corporate Member of the Authors League of America, Inc.

31 EAST 28th STREET • NEW YORK, NY 10016

(212) 563-5904 • Fax: (212) 564-8363

staff@authorsguild.org • www.authorsguild.org

May 9, 2005

Via E-mail and U.S. Postal Service

Jule L. Sigall
Associate Register for Policy & International Affairs
U.S. Copyright Office
Copyright GC/I&R
P.O. Box 70400
Southwest Station
Washington, D.C. 20024

Re: Notice of Inquiry Concerning “Orphan Works” – Reply Comments

Dear Mr. Sigall:

Pursuant to the Notice of Inquiry published by the Copyright Office in the Federal Register on January 26, 2005, the Authors Guild, Inc. hereby submits these Reply Comments on behalf of its 8,200 members who are published book authors and freelance journalists. Throughout its history, the Guild has -- when commenting to this office, to Congress and to the courts on copyright policy -- of necessity taken a balanced approach to copyright protections. Time and again we have weighed the need to safeguard the livelihoods of our members, which copyright helps secure, against the needs of those of our members who make use of others' copyrighted works in their own. This need for balance typically arises in matters of fair use policy, where the Guild consciously errs on the side of broad fair use (in the traditional, transformative use sense), including, in recent decades, aggressively backing the explicit extension of fair use rights to unpublished works.

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Mindful of this need for balance, we submit these Reply Comments to make five major points:

1. While orphan works present a problem to some authors, the impact of the problem on free expression and our culture appears to have been overstated by some commenters. The overwhelming majority of published writers -- 85% -- have “never” or “rarely” failed to reach a rightsholder to request permission, according to our recent Copyright Permissions Survey, a two-part survey to which more than 2,100 published writers responded.¹ We further discuss the striking results of this survey below, and provide detailed results to the more extensive Phase II of this survey in the appendix.
2. Although the problem of orphan works might be relatively small with respect to the creation of new literary works, it is certainly not insignificant. Two-thirds of respondents to the Copyright Permissions Survey who had asked for copyright permissions in the course of their writing careers believed that finding some means of allowing them to use orphan works would appreciably ease their work as writers.² The Authors Guild largely agrees with several commenters’ proposals to limit the legal liability of users of orphan works who demonstrate they made a diligent search for the rightsholders before using the works.
3. This limitation on liability and the scope of permitted uses after a diligent search for the rightsholder have to be crafted with extreme care, so they do not, in effect, amount to forfeiture of copyright. *Moreover, for uses for which there is no meaningful compensation – for example, for online digital archives of works – injunctive relief must be available as an alternative to accepting a nominal license fee.* A rightsholder who is temporarily unfindable by a particular method of diligent search should not face the penalty of having her work consigned to the quasi-public domain of such archives, which may well drain the work of all other licensing value. The prospect of such injunctive relief, fortunately, should not be daunting for the truly diligent compiler of a digital archive: instances of emergent rightsholders will be rare. Emergent rightsholders would not have a substantial affect on the value of the archive.
4. We urge the Copyright Office to establish a publicly available, searchable database in which users of orphan works would need to file a simple form affirming that they made a diligent search for the rightsholder and describing the steps they took to locate the rightsholder. Such a database would
 - a. Help keep users honest, since they would know that their affirmations of diligence would be on public display, easily accessible to the rightsholders they assert are unfindable.

¹ Authors Guild Survey of Copyright Permission Practices, conducted in April and May 2005. More than 2,100 published writers completed Phase I of the survey, and more than 1,200 published writers completed Phase II, the subsequent, far more extensive part of the survey. Some identical questions were asked in the two parts. 85% of respondents to Phase I reported “never” or “rarely” failed to reach a rightsholder; the figure was 89% of respondents to Phase II. Appendix, Q4-01.

² Appendix, Q6-01.

- b. Help identify abusers of the system. A user who failed to make a diligent search in one instance may well be a repeat offender.
- c. Help establish useful means of reaching rightsholders.
- d. Help guide the Copyright Office in establishing any new regulations with respect to the use of orphan works.

The Guild strongly opposes, however, the right of any user to piggyback another's affirmation of diligence. Affirmations of others' diligence should be no evidence of the particular user's diligence; distinct users should be responsible for their own, independent diligent search for rightsholders.

- 5. The law should not establish artificial licensing schemes.

The Authors Guild is ready and eager to provide the Copyright Office with any further assistance it can as it addresses the issue of orphan works.

Interests of the Authors Guild

Founded in 1912 as the Authors League of America, the Authors Guild is the nation's largest and oldest organization of published authors. Our membership includes journalists, historians, biographers, novelists, poets, children's book authors, academic and textbook authors. 66% of our membership writes nonfiction books, 40% are freelance journalists, and 44% write or translate fiction, poetry or drama (many members write in more than one of these categories).

The Authors Guild's mission is to promote the professional interests of authors in various areas, especially copyright, freedom of expression and publishing contracts. In the area of copyright, the Guild has worked for appropriate domestic and international copyright protection and to secure fair financial and non-monetary compensation for authors' valuable work. Guild attorneys annually advise hundreds of members about their (and their publishers') legal obligations, including those arising out of their publishing contracts.

In pursuit of this mission, the Guild co-founded and along with other writers organizations participates in the Authors Registry, a database of approximately 30,000 published and unpublished writers. As a payment agent for secondary rights royalties, the Registry has distributed more than \$3.5 million to writers in its ten years. Annually, it conveys thousands of permissions requests to registrants.

The Authors Guild appreciates that the Copyright Office seeks to address the issue of "orphan works" as defined in its Notice of Inquiry.³ In trade, business and academic publishing, writers typically have to warrant to their licensees that they have secured the necessary legal permissions to use others' copyrighted works in their manuscripts. If an author's publisher is

³ We confine these remarks to the issue of "orphan works" as defined in the Notice of Inquiry. We strongly oppose any attempt to amend the law to diminish protection for works that are not orphan works, which would threaten the basic tenets of copyright and clearly breach our international treaty obligations.

sued for infringement, the author of the offending work usually is obligated to indemnify the publisher for its costs including attorneys' fees, even if she is ultimately found not liable. For this reason, under current copyright law authors are ill advised to use works for which they can't get permission.⁴

Orphan works pose problems for some authors, and therefore to their readers, as the initial comments show they do for documentarians, archivists, librarians, broadcast and film preservationists and other creators. At the same time, our members rely on their own copyrights for their livelihoods as writers. We believe that historically strong protection of copyright has been the engine, not the obstacle, driving the enormous creative output of artists in the United States. Any diminishment of copyright for a class of works or of owners must be undertaken with extreme caution and should be narrowly tailored to advance that interest.

Nature of the Problems Faced by Authors and Journalists

Several of the initial comments to the Notice of Inquiry assert on the basis of anecdotal evidence that creators and the public are deprived of a substantial number of orphan works. The Authors Guild surveyed its membership to find out the degree to which professional writers are affected. More than 2,100 authors responded to the first part of the survey, more than 1,300 of whom have requested permission to use others' copyrighted works in their writing careers. (In the more extensive Phase II, 1,239 published writers completed the survey. More than two-thirds of the respondents had published nonfiction books for adults, and more than two-thirds had published freelance articles. More than half had published five or more books, and more than 45% had published 20 or more freelance articles. Appendix, Q1-01 through Q1-03.) The results of this copyright permissions practices survey suggest that the problem is not nearly as bad -- at least for authors of literary works -- as some of the commenters seem to believe.

85% of the respondents to Phase I of the survey who have sought permission to use others' copyrighted works, and 89% of the respondents to Phase II, "never" or "rarely" failed to reach the rightsholder they sought.⁵ All in all the survey demonstrates that the copyright permissions regime functions pretty well for writers.⁶

Published writers would like to see something done to allow use of orphan works, however. Two-thirds of respondents who had sought the right to use others' copyrighted works agreed that their work as writers would be appreciably eased if the orphan works issue were effectively addressed.⁷ 45% of such writers agreed that easier use of orphan works would appreciably improve the quality of their published work.⁸

⁴ The use we describe here naturally does not include fair use, which is a complete defense to infringement.

⁵ Appendix, Q4-01. These figures roughly correspond to those submitted by Brigham Young University in its initial comments (owner not identified in 6% of cases).

⁶ Of those authors who have sought permission, 90% have "never" or "rarely" been refused permission. Appendix, Q3-01.

⁷ Appendix, Q6-01.

⁸ Appendix, Q6-02.

Limitation of Liability for the Truly Diligent User Makes Sense

Although the survey demonstrates that the problem of orphan works occurs much less often than many appear to assume, we strongly believe the public should not lose access to the significant number of works that are “orphaned.” It is essential to narrowly tailor a solution to the orphan works problem that is mindful of its prevalence and that is based on empirical evidence, not assumptions. Above all, the law must not take away the rights of owners who could be found by a truly diligent search. An owner who cannot be readily located should not be deemed guilty of “neglecting” or abandoning his or her work. In our huge and complex society, a John Smith who wrote a novel ten years ago that is out of print today could well value his copyright and deserves the opportunity to reap the rewards of the work he created, even if he is difficult to track down.

The Authors Guild favors action that would allow the use of orphan works efficiently while protecting the interests of all concerned parties. We largely agree with the approach proposed by the Association of American Publishers, the Association of American University Presses and the Software & Information Industry Association (the “AAP Comments”) and with numerous other commenters. The best way to give users access to orphan works and to fully protect copyright is to limit the liability of any user who demonstrates a good faith, diligent effort to locate the owner. Specifically, we propose that the Copyright Act be amended to eliminate statutory damages, profits, attorneys’ fees and criminal liability against copyright infringers who demonstrate they made a diligent, unsuccessful search for owners and could not find them. The user’s liability should be limited to the equivalent of a fair and reasonable license fee.⁹

Limiting damages to a reasonable license fee protects both the economic interests of owners who later come forward to claim their works and of users who act diligently and in good faith.

Scope of Use and Availability of Injunctive Relief in Certain Cases

Because of the potential for abuse, a diligent searcher should not be permitted to grant secondary use licenses. Potential derivative works licensees should have to make their own diligent search for the owners of orphan works. Nor should subsequent users be able to rely on an earlier user’s search, for the reasons set forth in the AAP Comments. Given the increasing access to information technology provides, it would not seem at all remarkable for a later search, even one that followed the same steps as an earlier search, to turn up a rightsholder that was previously obscure.

We agree with the AAP Comments that that statute should preserve certain infringement remedies – attorneys’ fees, statutory damages – against a diligent searcher who unreasonably refuses to pay a fair license fee. We would go farther, however, and preserve the right to injunctive relief in certain cases in the interest of justice. For example, certain commercial and

⁹ The Authors Guild strongly agrees with the AAP Comments that states and municipalities, which under current law are subject only to injunctive relief if they infringe copyright, should not be allowed to avail themselves of the “diligent search defense” unless they waive their sovereign immunity from damages for infringement.

nonprofit entities that submitted initial comments have asserted their intent to digitize entire libraries. Most of them advocate changing the law to make it possible for them to freely digitize and distribute orphan works permanently.

We appreciate the value of such archives. But in those rare cases in which an orphan work rightsholder comes forward, the on-going existence of free or nominal-cost digitized copies could do irreparable harm to the financial value of an out of print work. A reasonable license fee, if interpreted to be some percentage of the income such a use might generate, could well be nominal. The continued online availability of the work, however, could render the copyright valueless. This seems a severe penalty for being temporarily unreachable by the particular user's diligent means. In such instances, the rightsholder should be able to obtain injunctive relief – enjoining continued use of the work -- in lieu of a reasonable licensing fee.

We also advocate additional remedies, including injunctive relief, against a diligent searcher who wrongfully claims credit for the authorship of the orphan work.

Diligent Search Requirements

We do not believe that the statute or regulations can or should determine what constitutes a diligent search; there are too many unique owners, situations and potential users for this to make sense. As some commenters have observed, most affected industries have already established ways to search for obscure owners, and they should be allowed to continue establishing standards and methods. When there is a dispute, the courts are best equipped to determine whether a search was adequately diligent based on evidence of industry standards and the totality of circumstances. Therefore, we agree with the AAP Comments that Congress should not prescribe minimum or “safe harbor” standards for what constitutes a diligent search.¹⁰

Some commenters propose that copyright owners be required to take affirmative steps to register their ownership in works after a period of time – from five to 28 years from copyright appears to be the range of proposals – or else lose their rights to control or get fair compensation for their works.¹¹ One group even argues for mandatory renewal registration 50 years after copyright, a proposal this group has already gotten introduced in Congress.¹² These commenters suggest that an “opt in” system would bring every rightsholder who values their copyright to make themselves known and available, thereby eliminating the orphan works problem.

These proposals are unjustifiably overbroad, and they would unfairly affect individual owners much more than corporations and institutions. Moreover, they would not help substantially more good faith users than if the statute were amended to limit liability for diligent searchers, but they would harm many more owners than the liability limitation. By requiring affirmative action by copyright owners, they would amount to a reinstatement of the registration

¹⁰ If the Copyright Office should help coordinate industry discussions among interested parties to establish “best practices” for conducting diligent searches, the Authors Guild is quite willing to participate.

¹¹ A variation proposed by some libraries, Google, and digital archivists such as JSTOR suggests owners of orphan works should permanently lose some or all of their exclusive rights if they cannot initially be identified or located.

¹² H.R. 2601, the Public Domain Enhancement Act.

requirement abolished in the 1976 Act, likely violating our international treaty obligations to eliminate formalities that interfere with the enjoyment and exercise of copyright. We urge the Copyright Office to reject this approach.

Affirmation of Diligent Search Database

We favor the establishment of a searchable database of would-be users' affirmations of diligent searches for rightsholders prior to their use of the works. The affirmations could be simple to complete online and would include, to the extent known, the title of the work, the name of the author, rightsholder (if different), a description of the work, the proposed use and the steps user has taken to find the author. If these affirmations were posted in a searchable database similar to the Copyright Office's post-1977 registration records, obscure owners who value their copyrights could learn of a potential licensee's intent or use and contact that party to negotiate. For potential users, the wealth of information about search methods the database would provide would be invaluable. In disputes over the adequacy of a search, the parties would have ample access to industry standards. The affirmations should remain searchable in the database indefinitely, to help later users and orphan works owners, as well as to Congress and the Copyright Office.

To further protect owners' interests, the statute or regulations could require that the notice of intent be filed a reasonable period of time before the use is made. In their initial comments, the Science Fiction and Fantasy Writers Association recommends six months. That might be reasonable in some cases, but in others would-be users such as magazine writers might need clearance more quickly than that to meet their deadlines. We think this matter requires further study.

The Law Should Not Impose Artificial Licensing Schemes and Arbitrary Damages Limits

We believe the limited liability for diligent searchers approach makes better sense than the "ad hoc" system of regulatory licensing used in Canada. First, a liability limit would not require the establishment of any new bureaucracies. Second, the Canadian model imposes a license fee on users whether or not an owner comes forward. This fee amounts to an unnecessary tax on users if no owner comes forward, and it could especially hinder libraries wishing to digitize orphan works in their collections. Third, by encouraging the parties to negotiate a license fee, the proposal would let relevant industry standards instead of an unrelated third party determine the fairest outcome. A arbitrary statutory limit, such as the \$100 to \$500 suggested by some commenters, would effectively penalize owners who could not be found, necessarily leading to unfair results, and ignores the reality that Congress or the Copyright Office cannot determine what any given market will bear. We strongly oppose any such limits.

Respectfully submitted,

Paul Aiken
Executive Director

APPENDIX:
Authors Guild Survey
of Copyright Permission Practices
*Phase II*¹³

1239 Completed Responses

Part 1: Publication Profile of Respondents

Q1-01: Respondent's Publication History, by Category.

My published work includes (check all that apply)

1 Nonfiction book(s) for adults	832	67.15%
2 Nonfiction book(s) for children or young adults	251	20.26%
3 Novel(s) for adults	458	36.97%
4 Fiction for children or young adults	304	24.54%
5 Freelance articles	850	68.60%
6 Short stories	357	28.81%
7 Poetry	208	16.79%

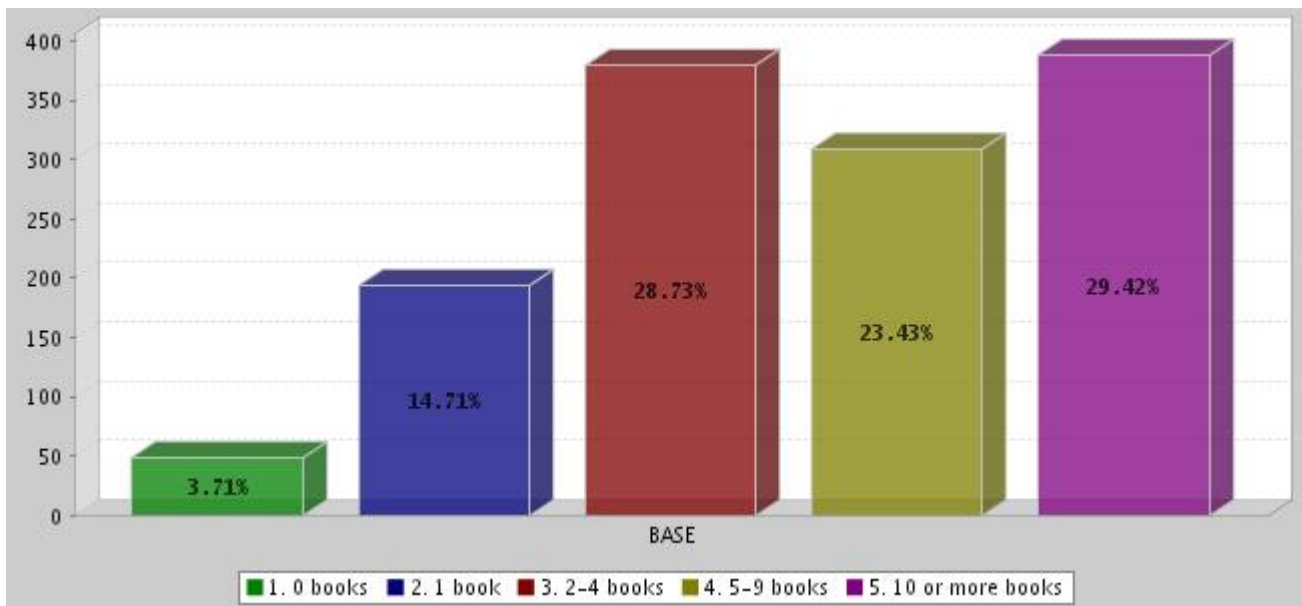
Total appropriately exceeds number of respondents

¹³ The Authors Guild expects to provide full results as to Phase I and Phase II at its website, www.authorsguild.org, shortly. Phase I results are more limited and, where the questions are similar, are not materially different from Phase II results.

Q1-02: Respondent's Publication History, Books

I have published

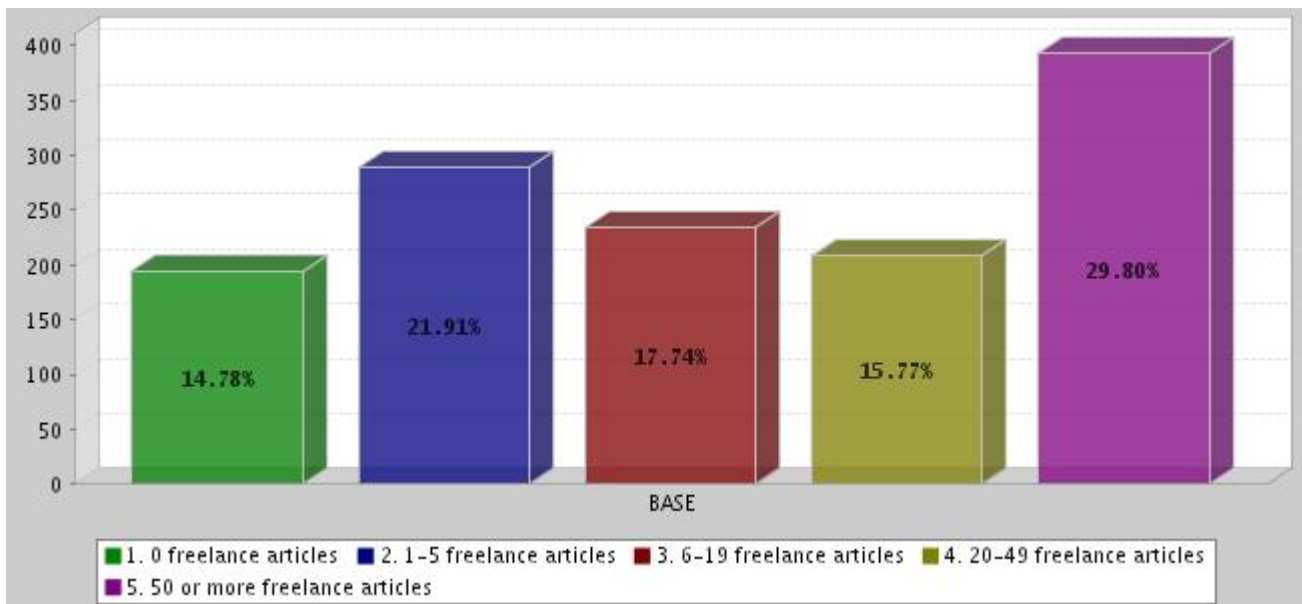
1	0 books	49	3.71%
2	1 book	194	14.71%
3	2-4 books	379	28.73%
4	5-9 books	309	23.43%
5	10 or more books	388	29.42%
	Total	1319	100%



Q1-03: Respondent's Publication History, Freelance Articles

I have published

1	0 freelance articles	195	14.78%
2	1-5 freelance articles	289	21.91%
3	6-19 freelance articles	234	17.74%
4	20-49 freelance articles	208	15.77%
5	50 or more freelance articles	393	29.80%
	Total	1319	100%

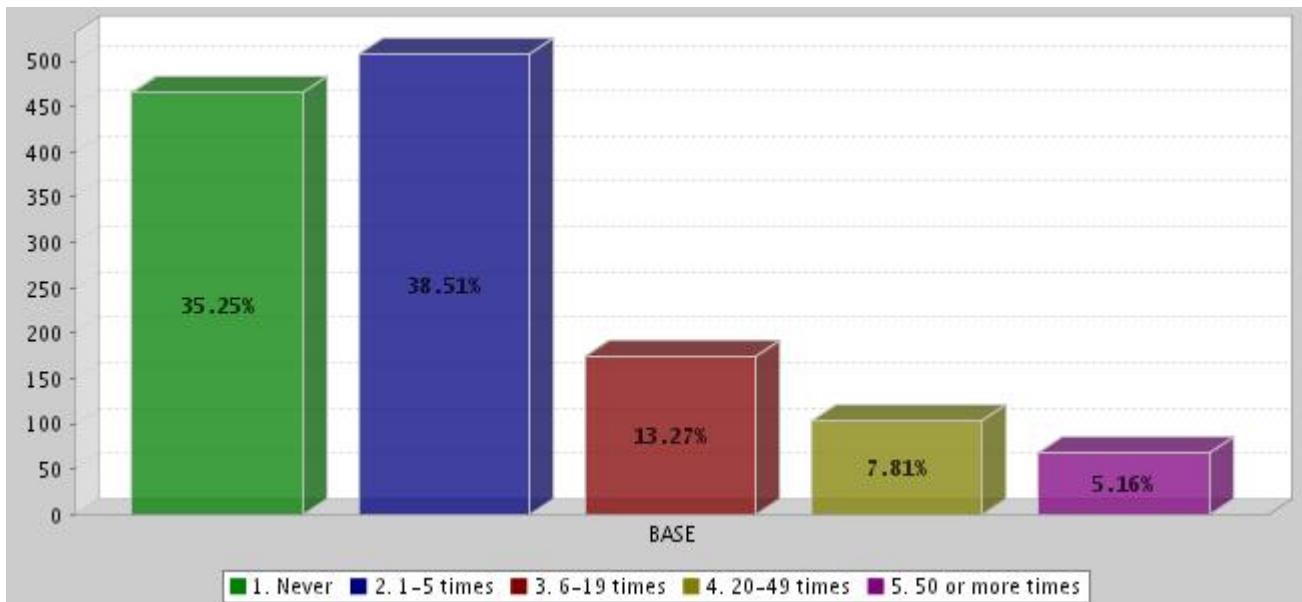


Part 2: Respondents' Experience with Permissions.

Q2-01: Number of Copyright Permission Requests

I have, in my career as a published writer, requested (either directly or through an assistant or publisher) permission to use others' copyrighted works

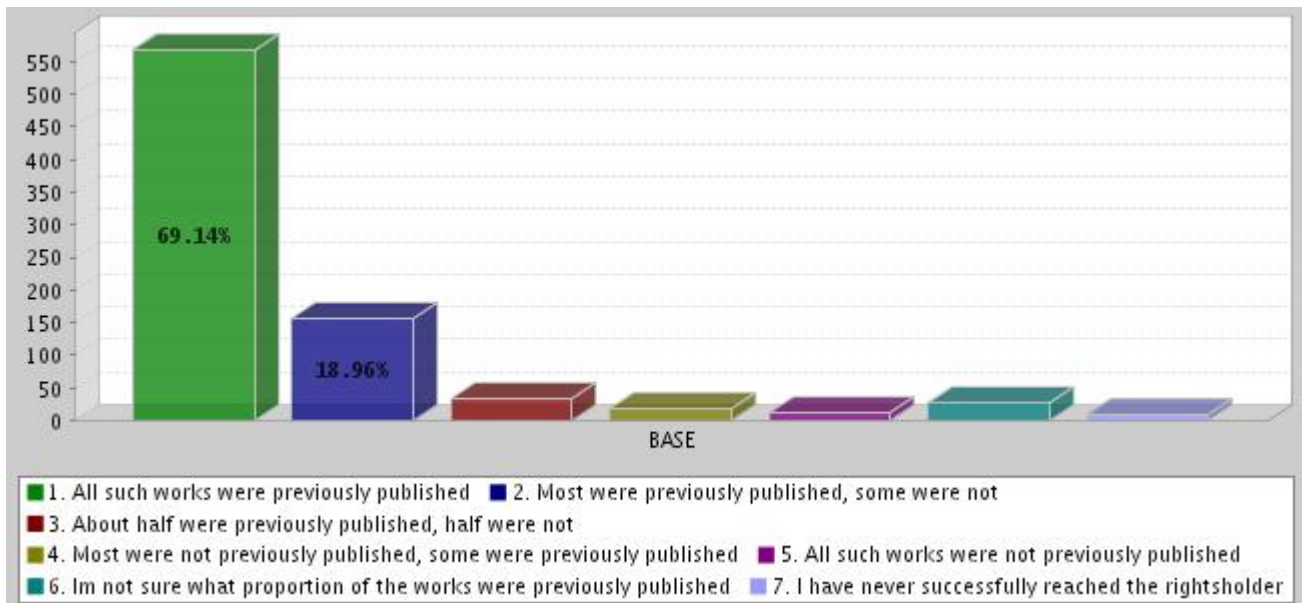
1	Never	465	35.25%
2	1-5 times	508	38.51%
3	6-19 times	175	13.27%
4	20-49 times	103	7.81%
5	50 or more times	68	5.16%
	Total	1319	100%



Q2-02. Successfully Reached Rightsholder: Target Works by Publication Status

The following best characterizes the work(s) I sought to use for which I successfully reached the copyright owner or other rightsholder:¹⁴

1 All such works were previously published	569	69.14%
2 Most were previously published, some were not	156	18.96%
3 About half were previously published, half were not	33	4.01%
4 Most were not previously published, some were previously published	18	2.19%
5 All such works were not previously published	11	1.34%
6 I'm not sure what proportion of the works were previously published	26	3.16%
7 I have never successfully reached the rightsholder	10	1.22%
Total	823	100%



¹⁴ Asked only of respondents who indicated in Q2-01 that they had asked for copyright permission in their writing careers.

Q2-03. Successfully Reached Rightsholder: Target Works by Category

In those instances in which I successfully reached the copyright owner or other rightsholder, I was trying to use (check all that apply)¹⁵

1	Personal papers (correspondence, notes, diary entries, etc)	141	6.29%
2	Business papers (an enterprise's letters, memos, financial records, etc.)	40	1.78%
3	A portion of a novel	127	5.66%
4	A portion of a nonfiction book	419	18.69%
5	A portion of a dramatic work	39	1.74%
6	Some or all of a newspaper or magazine article	199	8.88%
7	Some or all of an academic article	153	6.82%
8	Some or all of a short story	57	2.54%
9	Some or all of a poem	257	11.46%
10	A song lyric	255	11.37%
11	A photograph	267	11.91%
12	An illustration (other than a photograph)	183	8.16%
13	Other	105	4.68%

Total appropriately exceeds number of respondents

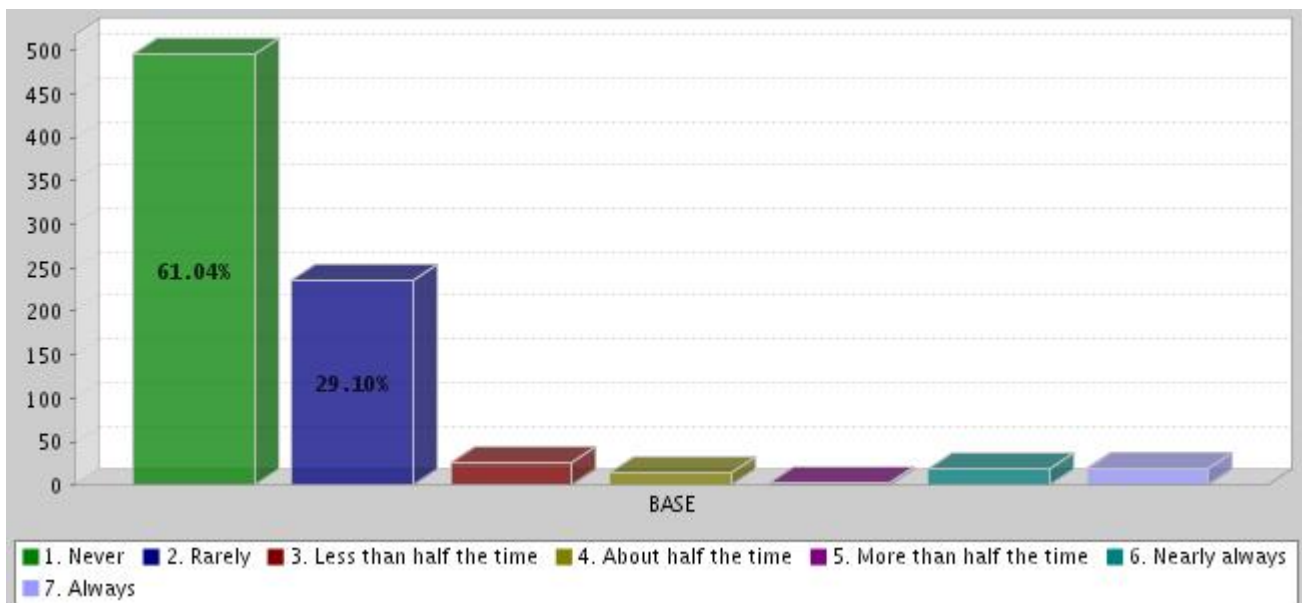
¹⁵ Asked only of respondents who indicated in Q2-01 that they had asked for copyright permission in their writing careers.

Part 3: Rightsholder Refusals

Q3-01. Encountering Rightsholders Who Refuse

In my experience, after I have successfully reached the rightsholder, that rightsholder has refused to give me permission to use his/her work¹⁶

1	Never	495	61.04%
2	Rarely	236	29.10%
3	Less than half the time	26	3.21%
4	About half the time	14	1.73%
5	More than half the time	2	0.25%
6	Nearly always	18	2.22%
7	Always	20	2.47%
	Total	811	100%

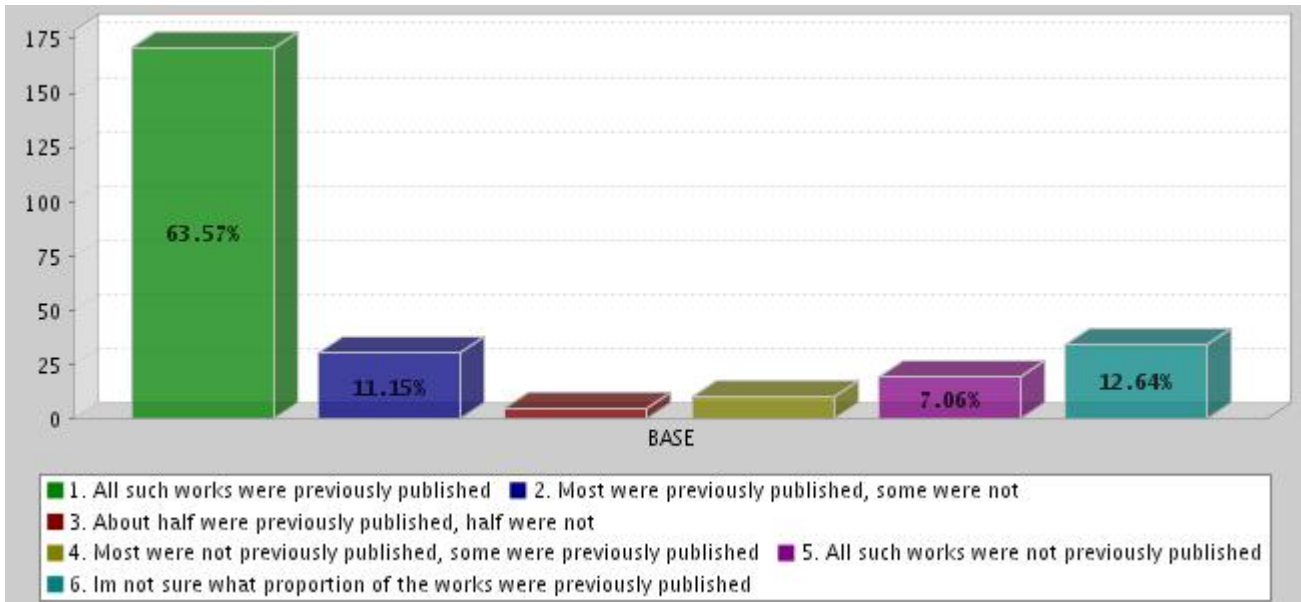


¹⁶ Asked only of respondents who indicated in Q2-01 that they had asked for copyright permission in their writing careers.

Q3-02. Rightsholders Refusals: Target Works by Publication Status

*The following best characterizes the work(s) I sought to use for which permission was refused:*¹⁷

1 All such works were previously published	171	63.57%
2 Most were previously published, some were not	30	11.15%
3 About half were previously published, half were not	5	1.86%
4 Most were not previously published, some were previously published	10	3.72%
5 All such works were not previously published	19	7.06%
6 I'm not sure what proportion of the works were previously published	34	12.64%
Total	269	100%



¹⁷ Asked only of respondents who indicated in Q3-01 that they had had permission denied.

Q3-03. Rightsholders Refusals: Target Works by Category

In those instances in which permission was refused, I was trying to use (check all that apply)¹⁸

1	Personal papers (correspondence, notes, diary entries, etc)	35	13.01%
2	Business papers (an enterprise's letters, memos, financial records, etc.)	8	2.97%
3	A portion of a novel	25	9.29%
4	A portion of a nonfiction book	62	23.05%
5	A portion of a dramatic work	11	4.09%
6	Some or all of a newspaper or magazine article	34	12.64%
7	Some or all of an academic article	12	4.46%
8	Some or all of a short story	13	4.83%
9	Some or all of a poem	46	17.10%
10	A song lyric	55	20.45%
11	A photograph	55	20.45%
12	An illustration (other than a photograph)	34	12.64%
13	Other	29	10.78%

Total appropriately exceeds number of respondents

Q3-04. Rightsholders Refusals: Reasons for Denials

In those instances in which permission was refused, I believe the rightsholder denied my request because (if you've had permission refused more than once, check all responses that apply)¹⁹

1	The rightsholder wanted more money than I (or my publisher) was offering	159	59.11%
2	The rightsholder wanted to make a competing use of his/her work	63	23.42%
3	The rightsholder wanted the right to review or edit the text incorporating his/her work	35	13.01%
4	The rightsholder wanted to protect the public image of an individual	38	14.13%
5	The rightsholder wanted to protect the privacy of an individual	16	5.95%
6	The rightsholder wanted to protect the public image of a business	28	10.41%
7	Other	69	25.65%

Total exceeds number of respondents.

¹⁸ Asked only of respondents who indicated in Q3-01 that they had had permission denied.

¹⁹ Asked only of respondents who indicated in Q3-01 that they had had permission denied.

Q3-05. Rightsholders Refusals: Adaptations by Requestors

In those instances in which permission was refused, I (if you've had permission refused more than once, check all responses that apply)²⁰

1 Paraphrased the text	73	27.13%
2 Made use of the work in a way that I believed to be consistent with fair use rules	74	27.51%
3 Altered my work to avoid the copyrighted work entirely	116	43.12%
4 Found a different novel or nonfiction book to excerpt	58	21.56%
5 Found a different poem or song lyric to use	52	19.33%
6 Found a different photograph or other illustration to use	86	31.97%
7 Other	28	10.41%

Total appropriately exceeds number of respondents

Q3-06. Rightsholders Refusals: Categories of Requestors' Works

In those instances in which permission was refused, I was writing the following type(s) of work (check all that apply)²¹

1 Nonfiction book for adults	178	66.17%
2 Nonfiction book for children or young adults	25	9.29%
3 Novel for adults	33	12.27%
4 Fiction for children or young adults	9	3.34%
5 Freelance article	33	12.27%
6 Academic article	14	5.20%
7 Short story	5	1.86%
8 Poem	1	0.37%
9 Other	45	16.73%

Total appropriately exceeds number of respondents

²⁰ Asked only of respondents who indicated in Q3-01 that they had had permission denied.

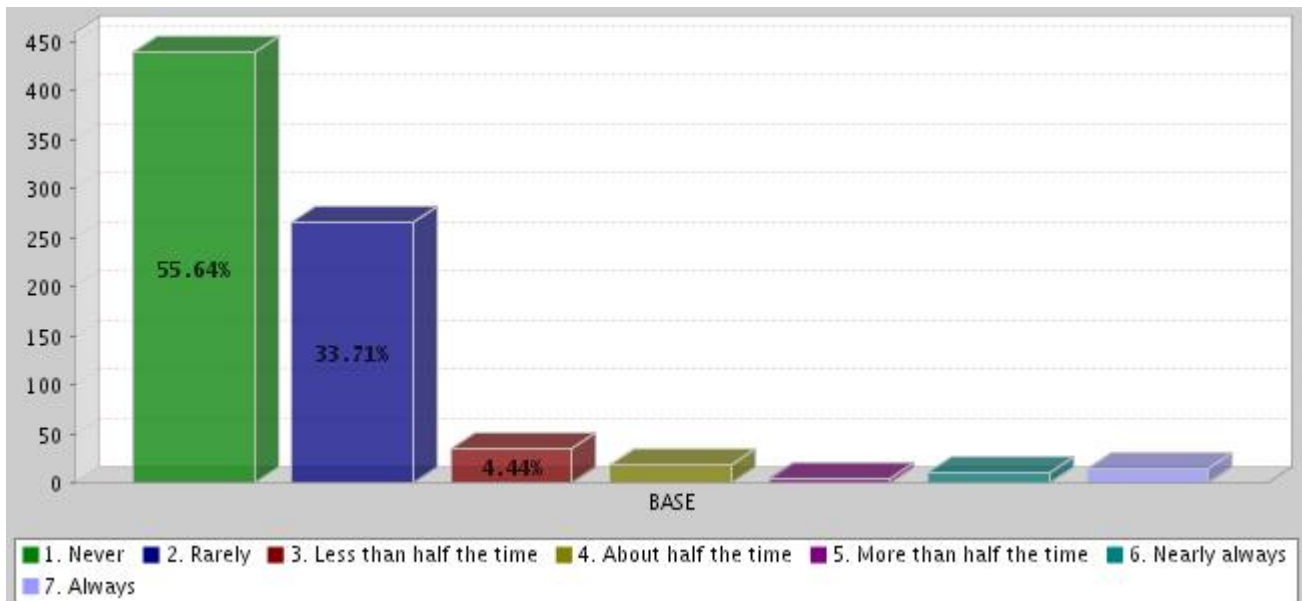
²¹ Asked only of respondents who indicated in Q3-01 that they had had permission denied.

Part 4: Orphan Works

Q4-01. Encountering Orphan Works

I, or someone acting on my or my publisher's behalf, have been unable to reach the copyright owner or other rightsholder to request such permission²²

1	Never	439	55.64%
2	Rarely	266	33.71%
3	Less than half the time	35	4.44%
4	About half the time	18	2.28%
5	More than half the time	5	0.63%
6	Nearly always	11	1.39%
7	Always	15	1.90%
	Total	789	100%

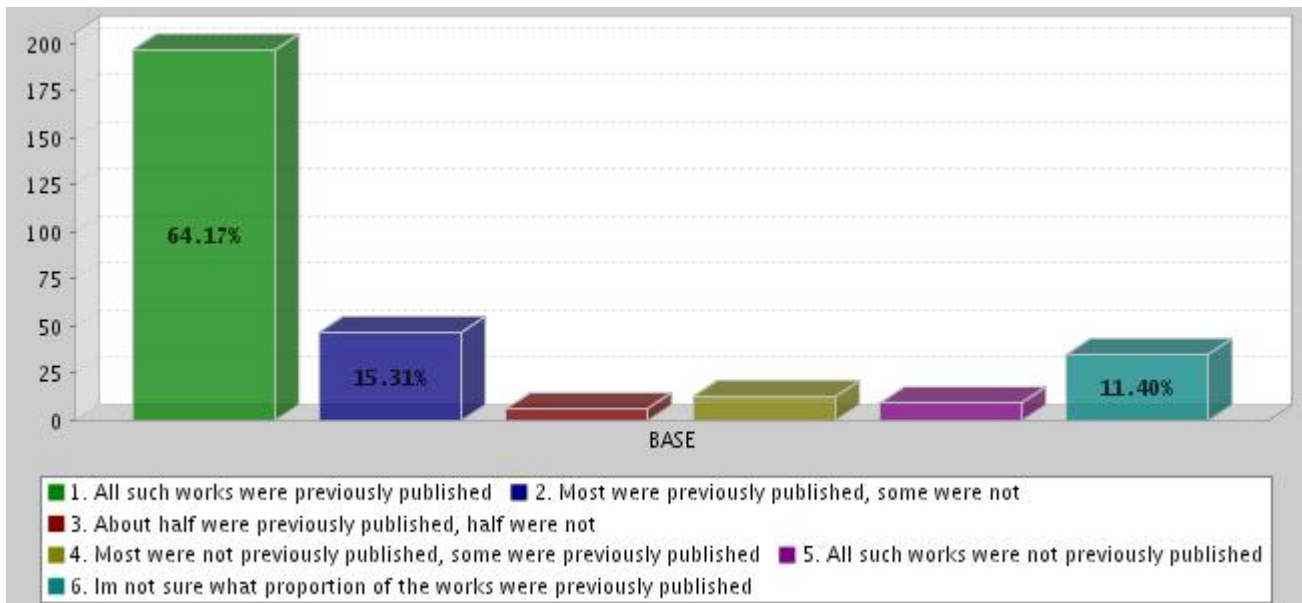


²² Asked only of respondents who indicated in Q2-01 that they had asked for copyright permission in their writing careers.

Q4-02. Orphan Works by Publication Status

*The following best characterizes the work(s) I sought to use for which I could not reach the rightsholder:*²³

1 All such works were previously published	197	64.17%
2 Most were previously published, some were not	47	15.31%
3 About half were previously published, half were not	6	1.95%
4 Most were not previously published, some were previously published	13	4.23%
5 All such works were not previously published	9	2.93%
6 I'm not sure what proportion of the works were previously published	35	11.40%
Total	307	100%



²³ Asked only of respondents who indicated in Q4-01 that they had encountered orphan works.

Q4-03. Orphan Works by Category

In those instances in which I could not reach the rightsholder, I was trying to use (check all that apply)²⁴

1	Personal papers (correspondence, notes, diary entries, etc)	33	17.75%
2	Business papers (an enterprise's letters, memos, financial records, etc.)	12	3.91%
3	A portion of a novel	10	3.26%
4	A portion of a nonfiction book	108	35.18%
5	A portion of a dramatic work	5	1.63%
6	Some or all of a newspaper or magazine article	46	14.98%
7	Some or all of an academic article	28	9.12%
8	Some or all of a short story	14	4.56%
9	Some or all of a poem	63	20.52%
10	A song lyric	38	12.38%
11	A photograph	74	24.10%
12	An illustration (other than a photograph)	52	16.94%
13	Other	31	10.10%

Total appropriately exceeds number of respondents

Q4-04. Orphan Works: Adaptations by Requestor

In those instances in which I could not reach the rightsholder, I (check all that apply)²⁵

1	Paraphrased the text	63	20.52%
2	Made use of the work in a way that I believed to be consistent with fair use rules	145	47.23%
3	Altered my work to avoid the copyrighted work entirely	109	35.51%
4	Found a different novel or nonfiction book to excerpt	35	11.40%
5	Found a different poem or song lyric to use	40	13.03%
6	Found a different photograph or other illustration to use	80	26.06%
7	Other	34	11.07%

Total appropriately exceeds number of respondents

²⁴ Asked only of respondents who indicated in Q4-01 that they had encountered orphan works.

²⁵ Asked only of respondents who indicated in Q4-01 that they had encountered orphan works.

Q4-05. Orphan Works: Categories of Requestors' Works

In those instances in which I could not reach the rightsholder, I was writing the following type(s) of work (check all that apply)²⁶

1 Nonfiction book for adults	214	69.71%
2 Nonfiction book for children or young adults	28	9.12%
3 Novel for adults	35	11.40%
4 Fiction for children or young adults	9	2.93%
5 Freelance article	44	14.33%
6 Academic article	15	4.89%
7 Short story	4	1.30%
8 Poem	3	0.98%
9 Other	32	10.42%

Total appropriately exceeds number of respondents

²⁶ Asked only of respondents who indicated in Q4-01 that they had encountered orphan works.

Part 5: Copyright Clearance Practices

Q5-01. Means of Reaching Rightsholders

I've tried to reach rightsholders, whether successfully or not, by (check all that apply)²⁷

1 Contacting the work's publisher	658	86.81%
2 Contacting the publisher of another of the author's works	137	18.07%
3 Copyright Office search	62	8.18%
4 Online research	227	29.95%
5 Directory assistance on the telephone	109	14.38%
6 Hiring a genealogist to find the author's heirs	4	0.53%
7 Hiring other research assistance	45	5.94%
8 Other	191	25.20%

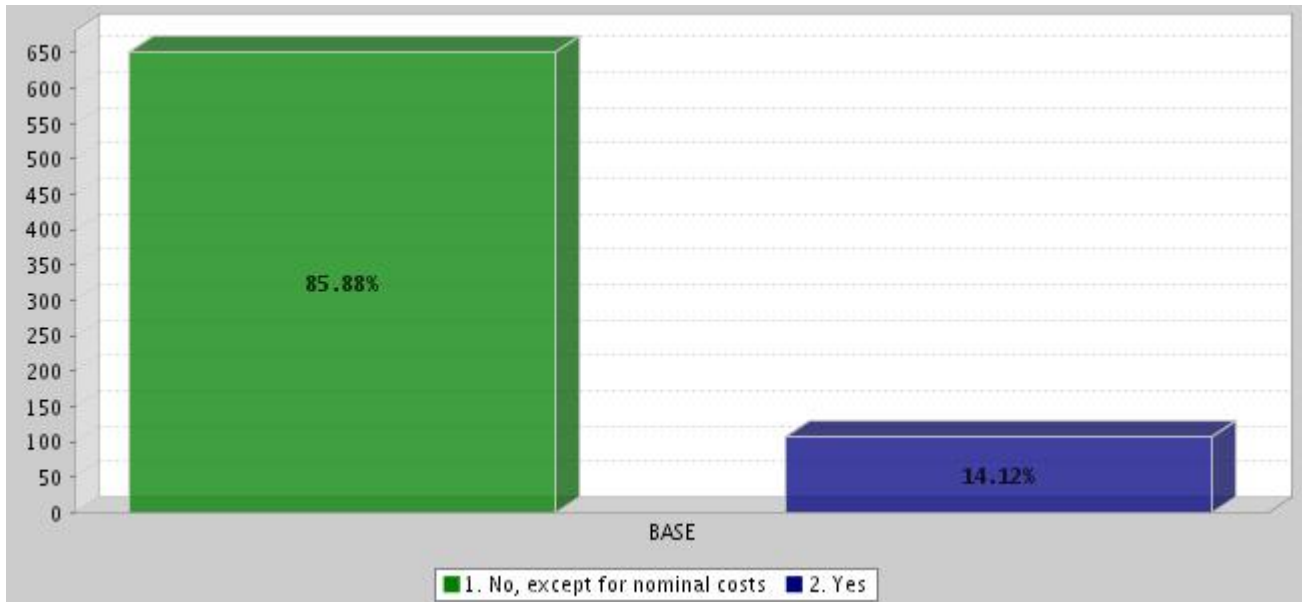
Total appropriately exceeds number of respondents

²⁷ Asked only of respondents who indicated in Q2-01 that they had asked for copyright permission in their writing careers.

Q5-02. Incurring Expenses in Reaching Rightsholders

Have you incurred any expense in trying to reach a rightsholder?²⁸

1	No, except for nominal costs	651	85.88%
2	Yes	107	14.12%
	Total	758	100%



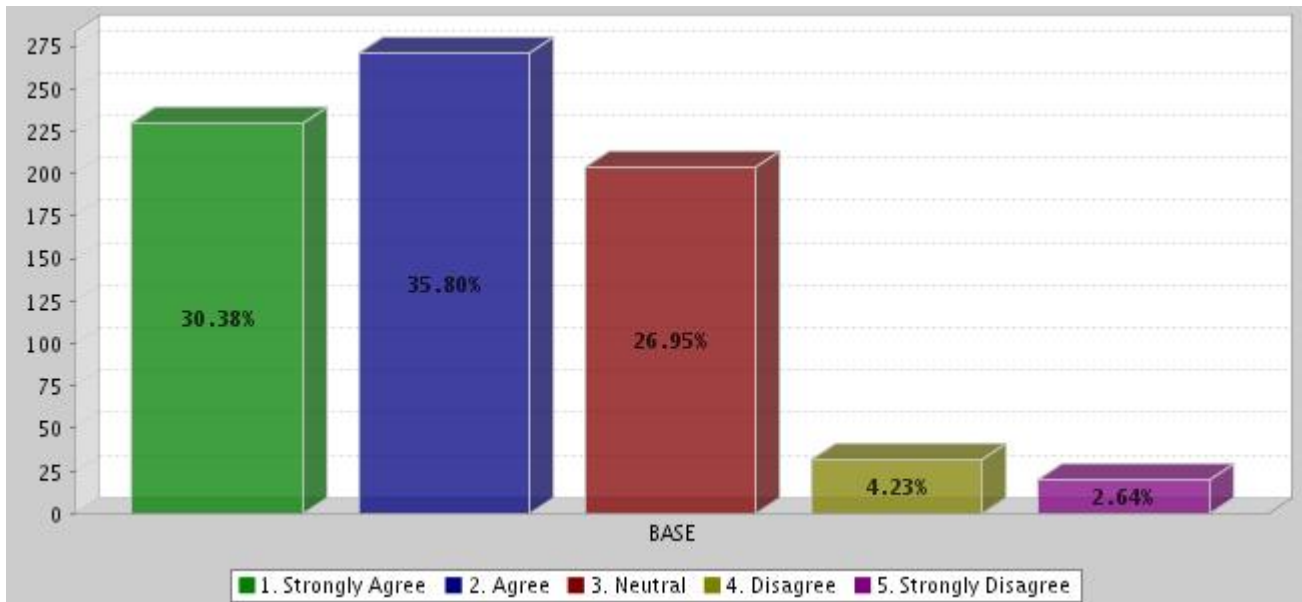
²⁸ Asked only of respondents who indicated in Q2-01 that they had asked for copyright permission in their writing careers.

Part 6: Desirability of Change

Q6-01. Affect of Change in Law on Conduct of Work

If there were a method to use a copyrighted work (whether published or not) for which the rightholder could not be reached after a diligent search, it would appreciably ease my work as a writer.²⁹

1	Strongly Agree	230	30.38%
2	Agree	271	35.80%
3	Neutral	204	26.95%
4	Disagree	32	4.23%
5	Strongly Disagree	20	2.64%
	Total	757	100%

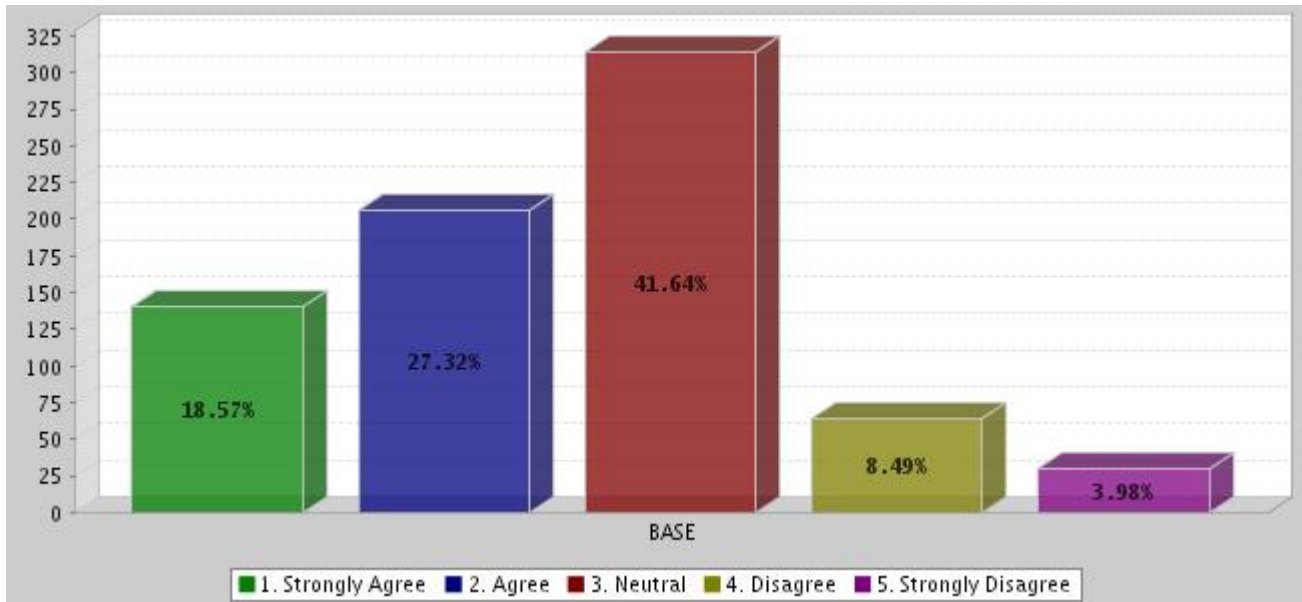


²⁹ Asked only of respondents who indicated in Q2-01 that they had asked for copyright permission in their writing careers.

Q6-02. Affect of Change in Law on Quality of Published Work

If there were a method to use a copyrighted work (whether published or not) for which the rightsholder could not be reached after a diligent search, it would appreciably improve the quality of my published work.³⁰

1	Strongly Agree	140	18.57%
2	Agree	206	27.32%
3	Neutral	314	41.64%
4	Disagree	64	8.49%
5	Strongly Disagree	30	3.98%
	Total	754	100%



³⁰ Asked only of respondents who indicated in Q2-01 that they had asked for copyright permission in their writing careers.