

## Science Fiction and Fantasy Writers of America, Inc.

Damon Knight, Founder, 1922-2002



P.O. Box 877, Chestertown, MD 21620

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Jule L. Sigall  
Associate Register for Policy & International Affairs  
U.S. Copyright Office Copyright GC/I&R  
P.O. Box 70400  
Southwest Station, Washington, DC 20024  
via email to: orphanworks@loc.gov  
RE: Orphan Works Study (70 FR 3739)

In reviewing the responses to the Copyright Office's call for comments on orphan works, Science Fiction and Fantasy Writers of America, Inc. (SFWA) is encouraged that so many of the solution proposals shared common themes. SFWA believes that the following elements are crucial to a solution that is fair to all sides of the issue (authors and other creators, editors and other gatekeepers, publishers and others who bring work to the public, readers and society as a whole who benefit from having copyrighted work available).

We believe the following elements are essential to any solution:

- A database of information about creators (with voluntary participation but official recognition from the Copyright Office).
- That a would-be user of a possibly orphaned work perform an adequate search for the legal owner (adequacy being not onerous, but ensuring it finds owners for all but the most difficult, truly orphaned works).
- That as a final step after an adequate but failed search, the would-be user publishes an official notice of intent to use, for a sufficient time (e.g. 3-6 months) in a centralized and officially recognized venue; such intent to use would list the specific uses; the user (and the user alone) would be bound to those uses.
- That before use, the user escrows industry-based fair market value of the work with a central and officially recognized escrow agent; escrowed funds would be turned over to the legal owner or after a long period of time (e.g. 10 years) turned over to a group representing creators of like work. (Also recognizing that fair market value for many kinds of works, such as publicly made postings to web chat rooms, etc., may be very small.)
- That such grants be for limited use -- only for common purposes, only for the purpose requested, only by the requester, for a limited time (e.g. 5 years), after which the user would repeat the process.
- That better laws and recommendations be drafted to handle unclear and difficult to trace forms of transfers, such as bankruptcy and death.
- That group registration be improved.

We feel that solutions lacking these qualities will open the orphan process up to significant abuse.

It is difficult to balance the rights of creators and society. Our own internal committee represented polar views on the matter, so we are aware of the difficulty, and the delicate implications of any small change in terms. We urge that solutions to this problem be crafted without haste, with careful deliberation, and in wide consultation with representatives from all the constituencies served.

We thank the members of our internal committee for their ability to convene rapidly and come to a consensus solution of our own as previously proposed, despite the polar range of views. We also thank the other authors' groups who have endorsed our detailed proposal of March 23, 2005, including the Society of Children's Book Writers and Illustrators, Mystery Writers of America, Western Writers of America, and Novelists, Inc.

We thank the Copyright Office for considering this important matter and look forward to working with all the stakeholders in this process to make copyrights more valuable to everyone.

Respectfully submitted,

Science Fiction and Fantasy Writers of America, Inc.