

UNITED STATES COPYRIGHT OFFICE

NOTICE OF INQUIRY  
CONCERNING  
ORPHAN WORKS

Published at 70 Fed. Reg. 3739 (January 26, 2005)

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REPLY COMMENTS OF

COPYRIGHT CLEARANCE CENTER, INC.

May 9, 2005

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Copyright Clearance Center, Inc. ("CCC"), submits these reply comments in response to the more than 700 initial comments received by the Copyright Office pursuant to its Notice published at 70 Fed. Reg. 3739 (January 26, 2005) in connection with the issue of orphan works. CCC submitted original comments dated March 25, 2005.

CCC commends the Copyright Office for the thorough nature of its Notice, which resulted in hundreds of thoughtful and interesting comments addressing orphan works, from simple anecdotes of the difficulties presented by orphan works to complete legislative proposals for resolving those difficulties. In these reply comments, CCC seeks to briefly elaborate on its initial comments, which focused principally on the appropriateness of establishing a voluntary works/ownership Registry to help alleviate a substantial portion of those orphan works difficulties, while both supporting the principles underlying rightsholders' rights and expanding the ability of users to use works.

A large number of the initial comments submitted to the Copyright Office resonated with CCC's proposal that a voluntary Registry, properly designed, outfitted and operated, would fill a void in maintaining current contact information for copyright rightsholders (long after completion of registration at the Copyright Office), and some comments extended the suggestion to a group of interoperable registries or systems, each focusing on a single form of copyrighted works (text-based, music, motion pictures, images, fine arts, etc.). That web of voluntary registries would become an important research source for potential users of possibly orphaned works, while remaining customer-friendly for the rightsholders who might record their contact information there.

At the same time, a number of initial comments recommended the establishment of one or more registries, also voluntary, where actual uses of or statements of intent to use possibly orphaned works might be recorded, either as actual notice to rightsholders or as fixed records of a user's efforts to find the rightsholders of the works in which they are interested. In CCC's view, such user-side registries, if established, would operate most

efficiently if integrated in some fashion with the rightsholder-side registries, resulting in innovative, dynamic orphan works “information warehouses” where the operators of the registries (whether the Copyright Office, contractors to the Copyright Office, or entirely private parties) would be able to match records more readily. This new system would function as a central “meeting place” for both rightsholders and users, even if the registries did not act as brokers of transactions themselves. Even voluntary registries, with time, care and experience, would likely both reduce (but, given the anecdotes reported, never eliminate) the number of issues facing users of orphan works, and provide the copyright system with a steady record of the existence and impact of orphan works (and, when successful, their reconnection to their “parents or guardians”).

Like several other of the collective organizations that specialize in managing large numbers of copyrighted works and that submitted initial comments, CCC believes that any structure of registries (by whomever operated) would be best served by calling on the skills and experience of those of us who function in this domain every day. We have already developed rights-oriented, as well as works-oriented, databases of relevant information and, possibly more importantly, have established the relationships, and recognize the patterns which would help smooth the path of an orphan work (or of a use thereof) back to its rightsholder. CCC, as a trusted intermediary between rightsholders and users, enjoys a uniquely valuable perspective on these questions. We don't manage rights clearance as an incident to our “regular job”; rather, it is our job and one of which we are proud.

As the Copyright Office considers the comments and reply comments that it receives in response to its Notice of Inquiry, we believe that it will perceive patterns that point toward methods of addressing and ameliorating the issues raised by orphan works. Clearly, many such substantial issues exist. However, we also believe that an “Orphan Works Conference” or roundtable process, as contemplated or implied by many of the comments, but sharply focused as the CONTU process was in the 1970s, could enable multiple constituencies and stakeholders, along with potential registry managers (including CCC), to work in concert toward resolving those issues while respecting the balance of interests inherent in copyright law.

We look forward to assisting the Copyright Office and the other participants in this effort by helping to design the registries that appear likely to form a cornerstone of any resolution to these issues.

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