

response

This is a response to comment 538 by Diana Ponce:

I understand Ms. Ponce's concerns that providing a classification for orphaned copyrighted works will diminish the strength of the copyright and make it harder for her and her colleagues to be adequately compensated for use of their work. I believe that a properly implemented orphaned works policy will, in fact, have the opposite effect for the following reasons:

- 1) The concept of orphaned works implies that
 - a) The owner of the copyright cannot be easily found because the owner has moved, died, or dissolved the business, merged with another business.
 - b) The person attempting to use the work wishes to get permission to use the work.
- 2) The first step in adequately dealing with orphaned works is to create a clearinghouse to identify copyright holders. While I don't presume to suggest how the clearinghouse ought to work, if someone has registered at the clearinghouse, and the contact information is still valid, any of their work is presumed to be not orphaned. Furthermore, the clearinghouse could be set up to have instructions to act as a royalty agency, or that the contact information for the copyright holder be a royalty agency, along the lines of ASCAP.
- 3) The second step in adequately dealing with orphaned works is to create low cost searchable databases of copyrighted material with links back to the clearinghouse, so that it becomes easier to track owners and make it harder for users of copyrighted work to claim that is orphaned.

Granted, most of this will take time to develop, and most work creators that are no longer in the business of creating new works will probably not get registered. I would to argue that for most of these creators, there is no longer any expectation of additional income from their copyrighted work and if their work were to fall into the public domain, the financial impact to the creator would be no worse than if their work were lost and forgotten. However, a properly constructed clearinghouse for non-orphaned works should require limited activity by the copyright holders.

I am a volunteer with the Project Gutenberg Distributed Proofreaders, <http://www.pgdp.net>, and we are very careful to make sure that the projects we release to the Project Gutenberg Library is in the Public Domain. Even though there are many works from the time period after 1922 that have their copyright lapse, it is difficult to ascertain what is or is not public domain. I think that with the extensions of copyright period now exceeding the creator's lifetime by multiple generations, and no mechanism to identify works that no longer have clearly identifiable owners, we are only dooming most recent created works to oblivion.

Bruce Albrecht