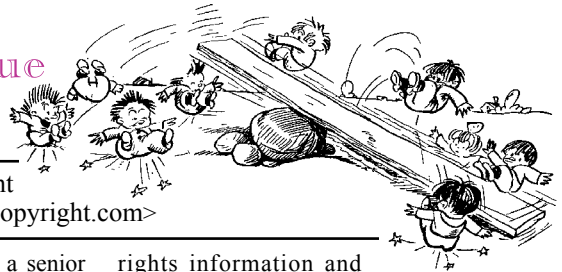


Orphan Works: A Look at the Issue from Varying Perspectives



by **Edward W. Colleran** (Senior Director, Rightsholder Relations, Copyright Clearance Center, 222 Rosewood Drive Danvers, MA 01923) <ecolleran@copyright.com>

One of the most vexing copyright issues facing librarians and other content users who respect copyright is identifying and then finding rightsholders for photographs, articles and other works in order to get permission to use them and pay the associated royalties. When the rightsholder search comes to a dead-end, you've got an "orphan work." From a moral perspective, the orphan works challenge is a little like shopping at a store when the cashier has left his post: You want to pay for your goods, but no one's there to accept your money.

In the following pages you'll read articles on orphan works reflecting the different perspectives of content creators and users. From the user perspective, we have an article from **Karen Oye**, Head of Customer Services at **Case Western Reserve University**. She works in a demanding environment serving nearly 10,000 students, 75 percent of whom are at the graduate level where library staff devote significant staff resources to identifying rightsholders and securing permissions.

Karen discusses the orphan works pressures faced by information professionals and the various approaches taken by different organizations, such as the **Library of Congress** (of which the **Copyright Office** is a part), to help address the problem.

"But if you are an archivist trying to find the original photographer from a 1940s image," she writes, "or an author trying to locate an architect from a now-defunct firm so you can use a measured drawing, or an author trying to locate another author without benefit of any publisher's trail, you may never reach your desired result. More than likely, driven by fear of a later infringement claim, or the daunting task of detective work and high research fees, you'll give up entirely on your quest."

In another article, **Eugene Mopsik** and **Victor Perlman** of the **American Society of Media Photographers** delve into the problem at one of its most consistently challenging points: securing permission to use photographs.

"A fundamental fact is that most images are published without attribution attached to the image...." they write. While the problem in the print world of newspapers, magazines and books is challenging, "the situation in the virtual world is even worse. Most Websites provide no credit or attribution whatsoever. Multiplying the problem exponentially is the fact that, according to industry service providers, as much as 90 percent of the visual images appearing on the Web are posted without authorization or knowledge of the copyright owner."

In a third article, **Dan Duncan**, a senior government affairs manager at **The McGraw-Hill Companies**, will give an update on proposed orphan works legislation under consideration by the **U.S. Congress**. He'll review the debates, discuss the major players and constituencies involved and look ahead to the prospects for legislation being passed into law in the next session of **Congress**, including the possibility of an omnibus copyright bill.

Orphan works also is a global issue. This is because it's the creation of the preeminent copyright treaty — the **Berne Convention** — with its requirement that copyright exists from the moment a work is created even if the creator makes no effort to protect it. Canada and the E.U., including the U.K., are also looking for ways to reduce the number of orphan works or limit the legal consequences of using an orphan work without authorization.

Another approach has been developed by **Copyright Clearance Center**. In early December, the not-for-profit copyright licensing company launched a beta version of **DiscoverWorks.org** — a global hub for rights data that allows people to freely exchange information on a full range of copyrighted works as part of a worldwide, online community. Content users, creators and others can contribute to this open resource where anyone can find or share

rights information and other useful details on books, photos, graphic art, music, videos, textile designs and any other type of copyrighted material.

CCC's goal is for rightsholders and content users to create a community of those who respect copyright and contribute rights information on an ongoing basis. Developed as a wiki, **DiscoverWorks.org** will serve as a resource that helps users find rightsholders and helps rightsholders avoid the assumption that their works have become orphaned. CCC has posted information about millions of copyrighted works and is continually adding more. The goal: given the nature of the wiki approach, participation will increase and **DiscoverWorks.org** will grow and evolve in the hands of the community.

"The consensus seems to be that we need practical change concerning orphan works," writes **Oye**, "that matches our practical actions in today's digital age, yet continues our principles of copyright balance of protection and encouragement."

In this issue of **Against the Grain**, we hope to provide greater insight into the orphan works issue from a variety of viewpoints, potential legislation and possible solutions that address the needs of both users and creators of copyrighted works. 🐾

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