



National Humanities Alliance

March 25, 2005

Mr. Jule L. Sigall
Associate Register for Policy & International Affairs
U.S. Copyright Office
James Madison Memorial Building, Room-401
101 Independence Ave., S.E.
Washington, D.C. 20540

ORPHAN WORKS NOTICE OF INQUIRY – 70 Federal Register 3739 (Jan. 26, 2005)

Dear Mr. Sigall:

On behalf of the National Humanities Alliance (NHA), we would like to thank the Copyright Office for inviting comments on this important issue. NHA represents more than 80 national, state, and local nonprofit organizations, including scholarly and professional associations; higher education associations; organizations of museums, libraries, historical societies, and state humanities councils; university-based and independent humanities research centers. A list of members is attached. The Alliance was founded in 1981 to advance the cause of the humanities by promoting the common interests of its members with regard to national policy and legislation affecting scholarly research and public understanding of the humanities. The humanities encompasses a broad range of scholarly disciplines, including: languages, linguistics, literature, history, law, philosophy, archaeology, comparative religion, and ethics, and the history, criticism, and theory of the arts.

We write to you to today out of concern for many members of our community, including those engaged in teaching, scholarly research, and preservation, as they confront the problem of "orphan works" on a day-to-day basis. Their inability to identify the owners of many works that are presumptively subject to copyright, despite best efforts to do so, means that various projects must be modified or abandoned to avoid potential liability for copyright infringement. Both our members and the larger public we serve must bear the costs of the current, unsatisfactory situation.

Written works, as well as film, photographs, drawings, music and other media constitute the primary materials for scholarly books and articles; classroom curricula; film, television and radio shows and documentaries; museum and library exhibits. A growing number of internet-based projects in the humanities (including teacher resources, documentary editing projects, archives, historical sites) make rich use of images and sound files, photographs and scanned documents. When an organization, scholar or educator is forced to abandon the use of an "orphan work", out of fear of copyright infringement liability, the result may be a new work of lesser value, or a diminished educational tool.

Recognizing the importance of the "orphan works" problem, and the need for a balanced solution to it, the National Humanities Alliance endorses the approach to its resolution proposed in the comments filed by the Glushko-Samuelson Intellectual Property Law Clinic in response to this Notice of Inquiry. Briefly, this approach involves a broad definition of what may constitute an "orphan work," including both older and newer works, and both published and unpublished ones. This definition is coupled with a statutory procedure under which a would-be user is encouraged to make "reasonable efforts" to identify the copyright owner. If those efforts proved unsuccessful, the "orphan work" could be made available (or incorporated into a new work) with confidence that if the copyright owner subsequently came forward, this use could continue and the damages the owner could receive would be limited. By the same token, the copyright owner would retain the authority to license future uses of the work. In sum, this proposal promotes the cultural progress which is the ultimate objective of our copyright system. And it does so by meeting the needs of responsible users and the public without depriving individual copyright owners of their valuable intellectual property.

Thank you for your consideration of these comments. The National Humanities Alliance looks forward to participating further in this important inquiry.

Sincerely,

A handwritten signature in black ink that reads "Jessica Jones Irons". The signature is written in a cursive, flowing style.

Jessica Jones Irons
Interim Executive Director

National Humanities Alliance Member Organizations

| | |
|---|--|
| African Studies Association | Imagining America (University of Michigan) |
| American Academy of Arts and Sciences | Independent Research Libraries Association |
| American Academy of Religion | Institute for Advanced Study |
| American Anthropological Association | Institute for the Humanities (University of Michigan) |
| American Association for State and Local History | Institute for the Medical Humanities (University of Texas Medical Branch) |
| American Association of Museums | Linguistic Society of America |
| American Association of University Professors | Medieval Academy of America |
| American Comparative Literature Association | Middle East Studies Association |
| American Council of Learned Societies | Midwest Modern Language Association |
| American Dialect Society | Minnesota Humanities Commission |
| American Folklore Society | Modern Language Association of America |
| American Historical Association | National Communication Association |
| American Library Association | National Council of Teachers of English |
| American Musicological Society | National Foundation for Jewish Culture |
| American Numismatic Society | National Humanities Center |
| American Philological Association | Northeast Document Conservation Center |
| American Philosophical Association | Omohundro Institute of Early American History and Culture |
| American Political Science Association | Organization of American Historians |
| American Society for Aesthetics | Phi Beta Kappa Society |
| American Society for Legal History | Popular Culture Association |
| American Society for Theatre Research | Renaissance Society of America |
| American Sociological Association | Research Libraries Group |
| American Studies Association | Shakespeare Association of America |
| Association for Asian Studies | Shelby Cullom Davis Center for Historical Studies (Princeton University) |
| Association for Documentary Editing | Simpson Center for the Humanities (University of Washington) |
| Association for Jewish Studies | Sixteenth Century Society and Conference |
| Association of American Colleges and Universities | Society for Cinema and Media Studies |
| Association of American Geographers | Society for Ethnomusicology |
| Association of American Law Schools | Society for Music Theory |
| Association of American Universities | Society for the History of Technology |
| Association of American University Presses | Society of Architectural Historians |
| Association of Art Museum Directors | Society of Biblical Literature |
| Association of Research Libraries | Society of Christian Ethics |
| Center for Research Libraries | SOLINET Southeastern Library Network, Inc. |
| Center for the Liberal Arts (East Carolina University) | Sonja Haynes Stone Center for Black Culture and History (University of North Carolina-Chapel Hill) |
| Chicago Historical Society | The Council of the Humanities (Princeton University) |
| Coalition for Networked Information | The Franke Institute for the Humanities (University of Chicago) |
| College Art Association | The Honor Society of Phi Kappa Phi |
| Community College Humanities Association | Virginia Center for the Humanities |
| Council of American Overseas Research Centers | Woodrow Wilson National Fellowship Foundation |
| Council of Independent Colleges | |
| Council on Library and Information Resources | |
| Dictionary Society of North America | |
| Doreen B. Townsend Center for the Humanities (University of California, Berkeley) | |
| Federation of State Humanities Councils | |
| Hall Center for the Humanities (University of Kansas) | |
| History of Science Society | |