

**Orphan Works Handout
Legislation Committee
Music Library Association**

Summary of MLA Suggestions for Possible Remedies for the Orphan Works Issue

- 1) In determining what is or is not an orphan work, clear, identifiable, and limited criteria need to be adopted so those wishing to use an orphan work will know with certainty if they have complied with the law. The definition of "due diligence" and "reasonable efforts" should be quantifiable and not open-ended.
- 2) The role of copyright registries should be seriously explored to help to protect copyright owners and to assist those who seek permission to use copyrighted material. Such a registry should be voluntary, inexpensive, and both easy to register and search for a work and copyright owner.
- 3) A registry of orphaned works should be established to notify copyright holders of interest in their works.
- 4) A specific number of years from the time of registry should be designated, so that it is possible to know with certainty when a work will pass into the public domain.
- 5) Further, should a work be out-of-print or otherwise unavailable from the copyright holder for a specified period, it should be available to another entity for a modest fee, or in the case of an identified orphan work, for free.
- 6) In the case of libraries, individual requests for copies of orphan works should be available for individual use, study, and research without restriction.
- 7) Music and sound recordings should not be treated any differently from other materials.
- 8) Unpublished works should be subject to the same copyright terms as published works.

Summary of MLA Suggestions for Consequences of the Orphan Works Designation

- 1) In the case of the creation of digital libraries, interlibrary loan, and the preservation of collections containing orphan works, libraries ... should be exempt from legal consequences, if they have made limited reasonable efforts to locate the copyright holder.
- 2) In the case of providing wide public access through a digital library, the library should give public notice for a specified time that they intend to make the work widely accessible. If no copyright holder notifies the library, the work would be available for inclusion in the digital library. Should a copyright holder of an orphan work be discovered later after reasonable efforts to locate the holder, after public notice, and after use of the orphan work, both the library and the copyright holder would be able to continue to use the work, but the right to use the work will not be extended to any other parties.
- 3) No tax or escrow account should be established for orphan works, since the vast majority of these works have little or no commercial value and such an account would further impede their reissue.

UNITED STATES COPYRIGHT OFFICE REPORT ON ORPHAN WORKS

C. Recommended Statutory Language

SECTION 514: LIMITATIONS ON REMEDIES: ORPHAN WORKS

- (a) Notwithstanding sections 502 through 505, where the infringer:
 - (1) prior to the commencement of the infringement, performed a good faith, reasonably diligent search to locate the owner of the infringed copyright and the infringer did not locate that owner, and
 - (2) throughout the course of the infringement, provided attribution to the author and copyright owner of the work, if possible and as appropriate under the circumstances, the remedies for the infringement shall be limited as set forth in subsection (b).
- (b) LIMITATIONS ON REMEDIES
 - (1) MONETARY RELIEF
 - (A) no award for monetary damages (including actual damages, statutory damages, costs or attorney's fees) shall be made other than an order requiring the infringer to pay reasonable compensation for the use of the infringed work; *provided*, however, that where the infringement is performed without any purpose of direct or indirect commercial advantage, such as through the sale of copies or phonorecords of the infringed work, and the infringer ceases the infringement expeditiously after receiving notice of the claim for infringement, no award of monetary relief shall be made.
 - (2) INJUNCTIVE RELIEF
 - (A) in the case where the infringer has prepared or commenced preparation of a derivative work that recasts, transforms or adapts the infringed work with a significant amount of the infringer's expression, any injunctive or equitable relief granted by the court shall not restrain the infringer's continued preparation and use of the derivative work, provided that the infringer makes payment of reasonable compensation to the copyright owner for such preparation and ongoing use and provides attribution to the author and copyright owner in a manner determined by the court as reasonable under the circumstances; and
 - (B) in all other cases, the court may impose injunctive relief to prevent or restrain the infringement in its entirety, but the relief shall to the extent practicable account for any harm that the relief would cause the infringer due to the infringer's reliance on this section in making the infringing use.
- (c) Nothing in this section shall affect rights, limitations or defenses to copyright infringement, including fair use, under this title.
- (d) This section shall not apply to any infringement occurring after the date that is ten years from date of enactment of this Act.