

Anonymous nonmarital child of deceased copyright author
c/o
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Request for Comments on Orphan Works
(also, resolution of claims)
Copyright Office Statement

Comment:

The Copyright Office is attempting to resolve the issue of so called "Orphan Works" which have been represented as works for which the rights holder "cannot be found". I would simply like to point out that there are a number of quite substantial issues which need to be addressed in order for any attempt of this nature to be both successful and just.

The jurist Roscoe Pound stated that the American legal system represented "a sporting theory of justice" and many who are involved in it are for that reason, blinded to its many gross inadequacies and inappropriate framings.

Nowhere is that more apparent than with the system now in place for determining what happens with IP when people like myself, the nonmarital children of deceased, still published copyright authors, are involved.

I would like to especially call your attention to the problem created by 17 USC Section 505 which frames all copyright related disputes as legal battles with a "winner" and a "loser" with the "loser" being liable for the quite substantial legal fees of the "winner". Additionally, the 1976 Act and the subsequent CTEA, despite the inclusive statement in 17 USC 101, attempted to strip away the rights that had been given many nonmarital children by case law in a non-obvious and unconstitutional manner.

Poor people are by necessity quite risk averse. What I have encountered is the most Kafakaesque situation imaginable, a system full of catch 22s which pretends to be fair but which excludes us.

The proposals for “small claims” also illustrate the problem. It was proposed that any low cost, simple method of dispute resolution would only be available for “small claims”.

The unfortunate fact is that material misrepresentations may be far more common than is realized. This leads to a very difficult problem which demands a solution which creates a large body of legal presumptions which act to level the playing field to the largest extent possible. Such a situation is being misrepresented as being far worse than it could be IF people like myself who have had real life experience with what can only be described as a worst case scenario - can be involved. We can help make the situation just, if there is really a desire to make it so, and not simply to whitewash the problem. I think I may be unique for having experience on both sides of the issues being discussed here.

Sincerely yours,

Anonymous nonmarital child of deceased composer/copyright author.