

I am writing as a copyright owner, copyright enforcer, and a user. While I predominantly deal with graphics, occasionally I do deal with written work. I also work in an academic library and have to be sure students are following the copyright law.

I am concerned that many people today do not adequately attempt to find the copyright owner. They also do not understand what copyright is. While it's a shame to let works go unused because an owner cannot be found, there are also incidences where someone has told me that they "searched everywhere" for the copyright owner before using a graphic. Why was it then that I was able to find the copyright owner – and the terms of use – within 5 minutes of searching for the owner? The key to the Orphan works issue is the term "DILIGENT SEARCH". Unless the Copyright Office is planning to start an office to do the diligent searches, the term becomes subjective. My idea of a diligent search may not be the same as another's. Is a diligent search the same as putting in the work's name in a google search? Some people think that is sufficient as a search. Unless you spell out WHAT a diligent search is, you are going to have issue.

In reading some of the responses on this site, I was struck by one consistency with the people who were for making orphan works available freely – they all said that they would use the item except they did not have the funds for it or for a continued search for ownership. Almost all of them were considering using the item commercially or in conjunction with work they were doing. Copyright protection is supposed to be used to protect the owner from someone else profiting from their hard work. If the person who wants to use the copyrighted item can't afford to pay for the search or the item, why should they be just given the opportunity to use them for free? What incentive is it to actually search for the owner and give the owner his or her due?

I'm sorry. If you change the law and allow Orphan works to be freely accessible to anyone who wants to use them, you remove the incentive to find the actual owner, and you remove the intent of the copyright law which is to protect the owner. I would rather see an orphan works become extinct than to see someone stealing the work from another simply because they say they cannot find the owner. So you want to use an older software program because it makes your job easier, and you don't have a license to use it – it doesn't make it right for you to use it without paying for it. It's still theft.