**Resources on Orphan Works**

*(Working draft – for comment)*

Cyberspace Law and Policy Centre, UNSW

Please send comments to David Vaile*, d.vaile@unsw.edu.au

Version 51, 21 September 2011

**Contents**

1. Articles, books, papers, submissions etc................................................................. 1

2011.................................................................................................................................. 1
   Australia/NZ .................................................................................................................. 1
   UK ............................................................................................................................... 1
   US ............................................................................................................................... 1
   Google Books............................................................................................................ 2
   EU .............................................................................................................................. 2
   Other ......................................................................................................................... 3

2010.................................................................................................................................. 3
   Australia/NZ ................................................................................................................ 3
   UK .............................................................................................................................. 5
   US .............................................................................................................................. 6
   Google Books............................................................................................................ 6
   EU .............................................................................................................................. 7
   Canada ....................................................................................................................... 8
   Other ......................................................................................................................... 8

2009.................................................................................................................................. 9
   Australia/NZ ................................................................................................................ 9
   UK .............................................................................................................................. 10
   US .............................................................................................................................. 10
   Google Books............................................................................................................ 11
   EU .............................................................................................................................. 13
   Canada ....................................................................................................................... 13
   Other ......................................................................................................................... 13

2008.................................................................................................................................. 13
   Australia/NZ ................................................................................................................ 13
   UK .............................................................................................................................. 14
   US .............................................................................................................................. 15
   EU .............................................................................................................................. 16

2007.................................................................................................................................. 16
   Australia/NZ ................................................................................................................ 16
   UK .............................................................................................................................. 17
   US .............................................................................................................................. 17

---

*Cyberspace Law and Policy Centre, UNSW Law Faculty, www.cyberlawcentre.org. This is part of a project generously supported by the Copyright Agency Ltd cultural development fund. The author also gratefully acknowledges the assistance of interns working for the centre including Pratheepa Kandaswamy, Melissa Wong, Lauren Loz, Michael Tan, Yun Wang, Jessica Lee, Yuliya Lutsky, Eunice Park, and Karina Ko, and also comments and suggestions from a number of the authors of submissions and analyses listed herein, participants in interviews and workshops, and Prof Graham Greenleaf and Catherine Bond, lead investigator and postgraduate researcher respectively on the Unlocking IP ARC research project from which this initiative arose.

**Notes:** Section 1. ‘Articles’ is sorted by year post-2005, then jurisdiction, and author. ‘Google books’ is separately listed from ‘US’ after 2007. Items in Section 2. and on are sorted by jurisdiction, then author, and year. Full text is often available from index at eg., SSRN; if not, a direct URL may be provided. *"* = recommended.
<table>
<thead>
<tr>
<th>Resources</th>
<th>2006</th>
<th>2005 and earlier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia/NZ</td>
<td>18</td>
<td>21</td>
</tr>
<tr>
<td>UK</td>
<td>20</td>
<td>21</td>
</tr>
<tr>
<td>US</td>
<td>20</td>
<td>21</td>
</tr>
<tr>
<td>EU</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>Canada</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>Other</td>
<td>21</td>
<td>21</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Legislation and interpretive materials</th>
<th>23</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia/NZ</td>
<td>23</td>
</tr>
<tr>
<td>UK</td>
<td>24</td>
</tr>
<tr>
<td>US Legislation</td>
<td>25</td>
</tr>
<tr>
<td>US Bills</td>
<td>25</td>
</tr>
<tr>
<td>EU</td>
<td>26</td>
</tr>
<tr>
<td>Individual EU country legislation</td>
<td>27</td>
</tr>
<tr>
<td>Canada</td>
<td>27</td>
</tr>
<tr>
<td>India</td>
<td>27</td>
</tr>
<tr>
<td>Japan</td>
<td>28</td>
</tr>
<tr>
<td>South Korea</td>
<td>28</td>
</tr>
</tbody>
</table>

| 3. Conventions, Treaties, International Agreements etc. | 28 |

<table>
<thead>
<tr>
<th>4. Cases</th>
<th>28</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia/NZ</td>
<td>28</td>
</tr>
<tr>
<td>UK</td>
<td>29</td>
</tr>
<tr>
<td>US</td>
<td>29</td>
</tr>
<tr>
<td>EU</td>
<td>30</td>
</tr>
<tr>
<td>Canada</td>
<td>30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5. Government reports and related materials</th>
<th>30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia/NZ</td>
<td>30</td>
</tr>
<tr>
<td>UK</td>
<td>32</td>
</tr>
<tr>
<td>US</td>
<td>32</td>
</tr>
<tr>
<td>Europe</td>
<td>33</td>
</tr>
<tr>
<td>Canada</td>
<td>35</td>
</tr>
<tr>
<td>Other Reports</td>
<td>36</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6. Technical aspects (identification, searching...)</th>
<th>36</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identifiers and metadata</td>
<td>36</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>7. Other resources</th>
<th>36</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local digitisation projects</td>
<td>36</td>
</tr>
<tr>
<td>Position statements etc. by peak organisations</td>
<td>36</td>
</tr>
<tr>
<td>Commentary</td>
<td>37</td>
</tr>
</tbody>
</table>
1. Articles, books, papers, submissions etc.

2011

**Australia/NZ**

**Brennan**, David and **Fraser**, Michael. ‘The Use of Subject Matter with Missing Owners – Australian Copyright Policy Options’ (August 2011), discussion paper for workshop at UTS on 22 September 2011.


**UK**


**US**

**AP.** ‘NY judge gives Google, lawyers more time to talk’, Bloomberg Businessweek, 15 September 2011. At: http://www.businessweek.com/ap/financialnews/D9PP265G2.htm


Google Books


EU


Associazione Italiana Editori. ‘The ARROW project presents its results: Substantial benefits from using ARROW in retrieving copyright information compared to manual search’ (10 March 2011) Available at: http://www.arrow‐net.eu/sites/default/files/ARROW%20Results.pdf


Other


2010

Australia/NZ

ARC Centre of Excellence for Creative Industries and Innovation. Opening Australia’s Archives National Roadshow: Collective Minutes (September-October 2009), summary of meetings around Australia to discuss the Opening Australia’s Archives project. Available at: http://www.ip.qut.edu.au/materials/openingarchives/Opening%20Australia%20Archives%20-%20Sept09%20Minutes.pdf [Includes detailed discussion of libraries' concerns in relation to orphan works.]


Copyright In Cultural Institutions (CICI). Flexible dealing and cultural institutions – Statement of Principles regarding the use of section 200AB of the Copyright Act (1968): an industry standard and user guide for the cultural sector (September 2010), CIC secretariat, National Library of Australia. Available at:


Dang, Khai and Fang, Dennis (Blake Dawson). ‘Ushering in the age of open content’, (9 February 2010), commentary on Gov 2.0 report "Engage: Getting on with Government 2.0" Available at: http://www.blakedawson.com/Templates/Publications/x_article_content_page.aspx?id=57639


Fitzgerald, Brian, Coates, Jessica, et al. Opening Australia’s Archives: Open Access Principles for Australian Collecting Institutions, Version 1 (December 2010), ARC Centre of Excellence for Creative Industry and Innovation and QUT Faculty of Law. See p.10. Available at: http://www.ip.qut.edu.au/open_archive_principles [a very high level principle statement, and some strategies for dealing with OW]


Weatherall, Kimberlee. ‘ACTA - Australian Section by Section Analysis’ (2010) Available at: http://works.bepress.com/kimweatherall/21

UK

Arthur, Charles. ‘Digital economy bill rushed through wash-up in late night session: Government drops clause on orphan works but inserts amendment criticised as over-broad which could block sites based on 'intent'', Guardian online (8 April 2010). Available at: http://www.guardian.co.uk/technology/2010/apr/08/digital-economy-bill-passes-third-reading

British Library/Various authors. ‘Driving UK Research? Is Copyright a help or a hindrance? A perspective from the research community’, essays and submissions collated by British Library (July 2010). Available at: http://pressandpolicy.bl.uk/imagelibrary/downloadMedia.ashx?MediaDetailsID=628 http://www.ethos.ac.uk/001_EThOSnet_Home.html


Goldenfein, Jake. ‘The Digital Economy Act 2010 (UK) and Orphan Works’ (20 May 2010), blog post on Fortnightly Review of IP Media And Law, blog hosted by IPRIA and CMCL at University of Melbourne. Available at: http://fortnightlyreview.info/2010/05/20/the-digital-economy-act-2010-uk-and-orphan-works/


Stop43.org.uk. The New Thinking (May 18, 2010). Available at: http://www.stop43.org.uk/docs/the_new_thinking.pdf
**US**

Pallante, Maria. ‘Orphan Works, Extended Collective Licensing and Other Current Issues’, *Columbia Journal of Law & the Arts*, Volume 34, Number 1, (Fall 2010) p.23.  


**Google Books**


Fry, Robin. ‘Forget the teenagers, we're all infringers now’, *Copyright World* No. 196, (December 2009/January 2010), pp. 34.


EU


**Canada**


**Other**


2009

**Australia/NZ**


**Copyright Agency Ltd,** “Getting Permission to Copy” (March 2009). Website FAQ. Available at: http://www.copyright.com.au/assets/documents/Permission copy.pdf


Williams, Mark. ‘Copyright and the pseudonymous or anonymous author : the right to remain other’ Copyright Reporter 27 (3) (October 2009), Australian Copyright Council, pp. 63–81.


**UK**


**US**

Bibb, Megan. ‘Applying old theories to new problems: how adverse possession can help solve the orphan works crisis’, Vanderbilt Journal of Entertainment and Technology Law, Volume 12, Number 1, (Fall 2009) p.149.


**Google Books**


Lang, Bernard. ‘Copyright’s New Clothes — after H. C. Andersen — ... or is it Old Clothes?’, presentation for panel: ‘How to best recognize Orphan Status’, European Commission, Public Hearing on Orphan Works, Brussels (26 October 2009). Available at: http://ec.europa.eu/internal_market/copyright/docs/copyright-infso/orphanworks/Lang_en.pdf


**EU**


**Canada**


**Other**


**2008**

**Australia/NZ**


**Illustrators Australia.** ‘US Orphan Works Bill” (2008), referring to submissions by Illustrators Partnership of America to US Congress. No longer online.


**UK**


US


Lang, Daryl. ‘Photo advocates divided over orphan works’ (2 May 2008), Photo District News website. Available at http://www.pdnonline.com/ or http://www.pdnonline.com/pdn/research/article_display.jsp?vnu_content_id=1003801084


Rangnath, Rashmi. ‘Publishers and PicScout make our case for orphan works’, (14 March 2008), Public Knowledge policy blog entry. Available at: 
http://www.p ublicknowledge.org/node/1455 [image recognition as a solution?]

Available at: http://www.stockartistsalliance.org/orphan-works


EU


Other


2007

Australia/NZ


**UK**


**US**


EU

[See also Reports section.]


Other


2006

Australian/NZ


**Daniels,** Helen (Assistant Secretary, Copyright Law Branch, Attorney-General's Department). ‘An Overview of the Government’s Copyright Reform Agenda’, presentation at ACIPA’s 11th Annual Copyright Conference (17 February 2006).


**Fitzgerald,** Brian F., **Fitzgerald,** Anne M., **Perry,** Mark, **Kiel-Chisholm,** Scott D., **Driscoll,** Erin P., **Thampapillai,** Dilan, and **Coates,** Jessica M. *Open Access to Knowledge (OAK) Law Project Report No. 1: Creating a legal framework for copyright management of open access within the Australian academic and research sector* (2006). QUT Faculty of Law, OAK Law Project, Brisbane, Qld. See para 2.119–2.123, pp.50–51. Available at: http://eprints.qut.edu.au/6099/


UK


US


EU

Canada

Other

2005 and earlier

Australia/NZ


*Australian Copyright Council. Response to the issues paper on Fair Use (June 2005). See p. 3 para 12 and pp. 7–8, para 34-38, supporting Canadian model. Available at: http://www.copyright.org.au/admin/cms-acc1/_images/18679514704c97fbf05eb70.pdf


Lindsay, David. ‘Fair Use and Other Copyright Exceptions: Overview of Issues’ (2005) 23(1) Copyright Reporter 4.


UK


US


Hirtle, Peter B. ”Recent Changes To The Copyright Law: Copyright Term Extension,” Archival Outlook, January/February 1999. Contains the first version of the ‘Copyright Term and the Public Domain’ chart now maintained at: http://www.copyright.cornell.edu/resources/publicdomain.cfm


Lessig, Lawrence, et al. ‘Save the Music/Creative Commons Orphan Works Comments’, Proceedings before the US. Copyright Office Notice of Inquiry on “Orphan Works” (Mar. 25,
2. Legislation and interpretive materials

**Australia/NZ**

**New Zealand Parliamentary Counsel’s Office.** *Television New Zealand Amendment Bill 89-2* 2009, version 2 as reported from the Commerce Committee on 28 October 2010. Amends the


Regulations 38 to 42 of the Copyright Act 1912–1966

UK


in committee 8 February 2010] or

Explanatory Notes to the Digital Economy Bill [HL] as brought from the House of Lords on 16 March 2010 [Bill 89]. Available at:

Digital Economy Bill [HL], House of Lords, Hansard of 8 April 2010, 2.49 pm, col. 1713. (Discussion of the last minute exclusion of Clause 43 and Schedule 2 Orphan Works provisions.) Available at:
http://www.publications.parliament.uk/pa/id200910/ldhansrd/text/100408-0009.htm#10040856001067

US Legislation

Preservation of Orphan Works Act, Title IV of the Family Entertainment and Copyright Act of 2005, ‘to provide for the protection of intellectual property rights, and for other purposes,’ Pub. L. No. 109-9, s. 202, 119 Stat. 218, 226, 227 enacted April 27, 2005. Available at:


Copyright Renewal Act of 1992, Title 1 of Copyright Amendments Act of 1992, ‘To amend title 17, United States Code, the copyright renewal provisions, and for other purposes,’ Pub L No. 102-307, 106 Stat. 264 (26 June 1992). See Bill S.756 of 102nd Congress. Available at:
http://thomas.loc.gov/cgi-bin/bdquery/z?d102:s.00756:. (See also Title 2, ’National Film Preservation Act of 1992’.)

Copyright Act of 1976, Pub. L. No. 94-553, (19 October 1976), 90 Stat. 2541. Title 17, United States Code. See esp. ss. 107 (fair use), 108(h), 109, 115(b)(1), 504(c)(2). Available at:
http://www.law.cornell.edu/uscode/html/uscode17/

United States Constitution, Article 1, section 8. Available at:
http://www.law.cornell.edu/constitution/

See SourceWatch for further materials pre-2009.

US Bills


Copyright Modernisation Act of 2006, ‘To amend title 17, United States Code, to provide for licensing of digital delivery of musical works and to provide for limitation of remedies in cases in which the copyright owner cannot be located, and for other purpose,’ H.R.6052, bill introduced to 109th Congress, Title II (2006). Available at: http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.06052: or http://www.govtrack.us/congress/bill.xpd?bill=h109-6052


EU


Individual EU country legislation


See also the Scandinavian Extended Collective Licensing (ECL) system “under which national legislation permits accredited collecting societies to license use of non-members’ works on approved terms,” noted in Sterling 2009 and Sterling 2008 paras 12.24, 12.32–12.37.

Hungary, proposed law. See EU Parliamentary Note.

Canada


India

Copyright Act 1957 (India), s. 31A. Available at: http://www.copyright.gov.in/Documents/Copryightrules1957.pdf
Japan

South Korea
Korea, Copyright Act, s47. Available at: http://eng.copyright.or.kr/law_01_01.html

3. Conventions, Treaties, International Agreements etc.


General Agreement on Tariffs and Trade (GATT) was modified in the US by Uruguay Round Agreements Act (URAA). [The URAA restored copyright in foreign (non-US) works that as of 1 January 1996 had fallen into the public domain in the US because of a failure to comply with US formalities.]


4. Cases

Australia/NZ
Section 4. Cases


UK

US

-- Google Book Search:


See also: Settlement FAQ. Available at: http://books.google.com/googlebooks/agreement/faq.html;


-- Other:


Worldwide Church of God v. Philadelphia Church of God, Inc., 227 F.3d 1110 (9th Cir. 2000)
EU

Canada


5. Government reports and related materials

Australia/NZ


National Library (NZ) in collaboration with New Zealand Government. *Creating a Digital New Zealand: New Zealand’s Digital Content Strategy* (August 2007). Available at:

**UK**


See also summary of responses, at: http://www.ipo.gov.uk/response-copyrightexception.pdf


**US**

**Various authors**. *Initial submissions to the Orphan Works inquiry* (2005), US Copyright Office. Available at: http://www.copyright.gov/orphan/comments/index.html


**Europe**

**European Commission**


**European Commission.** Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions (August 2008) [SEC(08) 2372]. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0513:EN:NOT


Ficsor, Mihály (Hungarian Patent Office). *Note: How to Deal with Orphan Works in the Digital World? An Introduction to the New Hungarian Legislation on Orphan Works* (15 October 2009), paper for “Workshop on Copyright - Tackling orphan works and improving access to works for visually impaired persons”, Legal Affairs Committee; **European Parliament,**


European Union


Europeana Group. ARROW - Accessible Registries of Rights Information and Orphan Works, web site. Available at: http://group.europeana.eu/web/guest/details-arrow/. See also ARROW project web site, at: http://www.arrow-net.eu/


Canada


Section 5. Government reports and related materials

Other Reports


6. Technical aspects (identification, searching...)

Harry Ransom Center [U Texas] and University of Reading Library. Firms Out of Business (undated, accessed January 2011), online search tool. Available at: http://www.fob-file.com and for explanation: http://tyler.hrc.utexas.edu/fob_about.cfm. See also The WATCH File (Writers and Artists and Their Copyright Holders) http://tyler.hrc.utexas.edu/


*Hirtle, Peter B. Copyright Term and the Public Domain (3 January 2011), chart first published in Hirtle 1999, now maintained at: http://www.copyright.cornell.edu/resources/publicdomain.cfm

MILE (Metadata Image Library Exploitation) Orphan Works Database (undated, accessed January 2011). Available at: http://orphanworks.ssl.co.uk/

Identifiers and metadata

EIDR http://eidr.org/


ISAN http://www.isan.org/portal/page?_pageid=168,1&_dad=portal&_schema=PORTAL

7. Other resources

Local digitisation projects


Australian War Memorial, CEW Bean project (2003–). See van Dyk 2010, and more recent discussion.

Position statements etc. by peak organisations

Association of American Publishers (AAP). Statement of Allan Adler, vice president for legal and government affairs of AAP to the US House of representatives Judiciary Committee’s Subcommittee on Courts, the Internet and Intellectual Property concerning The U.S. Copyright Office Report on Orphan Works (8 March 2006). Available at: http://www.publishers.org/main/Copyright/attachments/Orphan_Works_Testimony_3-5-06.pdf; see also summary at http://www.publishers.org/main/Copyright/CopyKey/copyKey_01_04.htm


eIFL (NGO working with libraries worldwide to enable access to digital information in developing and transition countries), ‘Orphan Works’, section in eIFL Handbook on Copyright and Related Issues for Libraries (October 2009). Available at: http://www.eifl.net/eifl-handbook-copyright-and-related-issues


LACA: the Libraries and Archives Copyright Alliance (UK). Position statement on orphan works (December 2007). Available at: http://www.cilip.org.uk/policyadvocacy/copyright/statements

Commentary


