Resources on Orphan Works

(Working draft 37 – for comment – not for publication)

Cyberspace Law and Policy Centre, UNSW

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(Notes: Section 1. Articles etc. 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 generally 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.)
1. Articles, books, papers, submissions etc.

2011

**Australia/NZ**


**UK**


**US**


**EU**


**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.]


Australian Copyright Council, ‘Response to Minister for Finance and Deregulation the Hon Lindsay Tanner MP & Special Minister of State and Cabinet Secretary Senator the Hon Joseph Ludwig, Report Of The Government 2.0 Taskforce, Engage: Getting On With Government 2.0,’ (February 2010), submission. See p.10 re: treating PSI separately from Orphan Works. Available at: http://www.copyright.org.au/admin.—cms-acc1/_images/10210748194c97fc2a2f9dc.pdf


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


**UK**


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/](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**

**Clifford Chance.** ‘The Single Market Act: 50 measures to boost the EU economy’ (November 2010), client briefing paper. Available at: [http://www.cliffordchance.com/publicationviews/publications/2010/11/the_single_marketact50measuresstoboostth0.html](http://www.cliffordchance.com/publicationviews/publications/2010/11/the_single_marketact50measuresstoboostth0.html)


**van Gompel,** Stef & **Hugenholtz,** P. Bernt. ‘The Orphan Works Problem: The Copyright Conundrum of Digitizing Large-Scale Audiovisual Archives, and How to Solve It.’ *Popular Communication - The International Journal of Media and Culture* 8 no.1 (2010): 61–71. Available at: [http://www.ivir.nl/publications/vangompel/the_orphan_works_problem.pdf](http://www.ivir.nl/publications/vangompel/the_orphan_works_problem.pdf) (preprint), and [http://www.informaworld.com/smpp/content~db=all~content=a919084373](http://www.informaworld.com/smpp/content~db=all~content=a919084373)

**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 to copy.pdf

**Copyright Society of Australia.** ‘Australia and the Future of Copyright: proposals for new approaches’, Seminar with Professor Adrian Sterling (3 June 2009). http://www.copyright.asn.au/events/f09n02.htm. See also Sterling’s paper at http://www.blaca.org/BLACA%20Future%20of%20copyright%20120309.doc


*McCausland, Sally.* ‘Getting public broadcaster archives online: Orphan works and other copyright challenges of clearing old (but in copyright) cultural material for digital use.’ (2009)
Section 1. Articles etc. – 2009


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


Korn, Naomi/Collections Trust and Strategic Content Alliance (JISC, British Library, BBC, National Health Service, Becta, and Museums, Libraries and Archives Council). In from the


**Google Books**


Copyright Agency Ltd (CAL). 'Major changes to Google Book Settlement will affect Australian rightsholders', media release (undated, 2009?). Available at: http://www.copyright.com.au/Latest_News/Major_changes_to_Google_Book_Settlement_will_affected.aspx


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**


**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/esearch/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.publicknowledge.org/node/1455](http://www.publicknowledge.org/node/1455) [image recognition as a solution?]


**EU**


**Other**


**2007**

**Australia/NZ**


UK


US


EU
[See also Reports section.]


Other

2006

**Australia/NZ**

**Australian Copyright Council.** “Information Sheet G51, Owners of Copyright: How to Find” (July 2006). Available at: http://www.copyright.org.au/admin/cms-acc1/_images/5153494894c8dbfefe32b.pdf


**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).


**Rimmer, M.** “Finders Keepers: Copyright Law, and Orphan Works”, presentation for ALCC/CICI Orphaned Works Forum (22 May 2006). Available at

UK


US


Thompson, Coree. ‘Orphan Works, U.S. Copyright Law, And International Treaties: Reconciling Differences To Create A Brighter Future For Orphans Everywhere’, Arizona Journal of


**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/18679514704c97fb05eb70.pdf](http://www.copyright.org.au/admin/cms-acc1/_images/18679514704c97fb05eb70.pdf)


**Australian Vice Chancellor’s Committee** (AVCC). ‘Entering the Digital Age: Fair use and other copyright Exceptions’ An examination of fair use, fair dealing and other exceptions, AVCC.


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.


**EU**

**Canada**


Harris, Lesley Ellen. Editorial *Copyright & New Media Law* Newsletter (July 2005) . Available at: http://www.library.yale.edu/~llicense/ListArchives/0507/msg00096.html


Kraan, Wilbert. ‘Identifiers, migrating metadata and orphaned objects’ (16 December 2003). The Centre for Educational Technology Interoperability Standards (CETIS), UK. Available at: http://zope.cetis.ac.uk/content2/20031216172927

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 *Television New Zealand Limited Act* 2003 (NZ), and adds a new Schedule and amends the
Copyright Act 1994 (NZ). Available at:


Regulations 38 to 42 of the Copyright Act 1912–1966

UK


*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](http://www.publications.parliament.uk/pa/id200910/ldhansrd/text/100408-0009.htm#10040856001067)

**US Legislation**


United States *Constitution*, Article 1, section 8. Available at: [http://www.law.cornell.edu/constitution/](http://www.law.cornell.edu/constitution/)

See SourceWatch for further materials pre-2009.


**US Bills**


_Previously introduced as **H.R.5439**, below._


**EU**


Individual EU country legislation


Hungary, proposed law. See EU Parl Note.

Canada


India

Copyright Act 1957 (India), s. 31A. Available at: http://www.copyright.gov.in/Documents/Copyleftrules1957.pdf

Japan


South Korea

Korea, Copyright Act, s.47. 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**


UK

US

-- Google Book Search:


http://books.google.com/googlebooks/agreement/ and

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

-- Other:


Kahle v Ashcroft 2 USPQ2d 1888 (2004). Available at:
http://cyberlaw.stanford.edu/about/cases/kahle_v_ashcroft.shtml and

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**


UK


US

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


Europe

European Commission

Orphan Works

Resources List

33 of 37

working draft – February 2011


European Parliament


and improving access to works for visually impaired persons”, Legal Affairs Committee;


**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/

**Europeana Foundation/Europeana v1.0 Project.** *Europeana Public Domain Charter* (May 2010). Available at: http://group.europeana.eu/web/europeana-project/publications/

**Canada**

**Copyright Board of Canada.** *Our Mandate* (undated), web page. Available at: http://www.cb-cda.gc.ca/about-apropos/mandate-mandat-e.html.

**Copyright Board of Canada.** *Unlocatable Copyright Owners* (2001) brochure. Available at: http://www.cb-cda.gc.ca/unlocatable-introuvables/brochure2-e.html

**Other Reports**


6. Other resources

Technical aspects

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](http://www.fob-file.com) and for explanation: [http://tyler.hrc.utexas.edu/fob_about.cfm](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/](http://tyler.hrc.utexas.edu/)


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

*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](http://www.copyright.cornell.edu/resources/publicdomain.cfm)

Local digitisation projects


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

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](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](http://www.publishers.org/main/Copyright/CopyKey/copyKey_01_04.htm)


at: http://www.stm-assoc.org/


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


