Mr. Jule L. Sigall
Associate Register for Policy & International Affairs
U.S. Copyright Office
James Madison Memorial Building, Room-401
101 Independence Ave., S.E.
Washington, D.C. 20540

ORPHAN WORKS NOTICE OF INQUIRY – 70 Federal Register 3739 (Jan. 26, 2005)

Dear Mr. Sigall:

On behalf of the National Humanities Alliance (NHA), we would like to thank the Copyright Office for inviting comments on this important issue. NHA represents more than 80 national, state, and local nonprofit organizations, including scholarly and professional associations; higher education associations; organizations of museums, libraries, historical societies, and state humanities councils; university-based and independent humanities research centers. A list of members is attached. The Alliance was founded in 1981 to advance the cause of the humanities by promoting the common interests of its members with regard to national policy and legislation affecting scholarly research and public understanding of the humanities. The humanities encompasses a broad range of scholarly disciplines, including: languages, linguistics, literature, history, law, philosophy, archaeology, comparative religion, and ethics, and the history, criticism, and theory of the arts.

We write to you today out of concern for many members of our community, including those engaged in teaching, scholarly research, and preservation, as they confront the problem of "orphan works" on a day-to-day basis. Their inability to identify the owners of many works that are presumptively subject to copyright, despite best efforts to do so, means that various projects must be modified or abandoned to avoid potential liability for copyright infringement. Both our members and the larger public we serve must bear the costs of the current, unsatisfactory situation.

Written works, as well as film, photographs, drawings, music and other media constitute the primary materials for scholarly books and articles; classroom curricula; film, television and radio shows and documentaries; museum and library exhibits. A growing number of internet-based projects in the humanities (including teacher resources, documentary editing projects, archives, historical sites) make rich use of images and sound files, photographs and scanned documents. When an organization, scholar or educator is forced to abandon the use of an "orphan work", out of fear of copyright infringement liability, the result may be a new work of lesser value, or a diminished educational tool.
Recognizing the importance of the "orphan works" problem, and the need for a balanced solution to it, the National Humanities Alliance endorses the approach to its resolution proposed in the comments filed by the Glushko-Samuelson Intellectual Property Law Clinic in response to this Notice of Inquiry. Briefly, this approach involves a broad definition of what may constitute an "orphan work," including both older and newer works, and both published and unpublished ones. This definition is coupled with a statutory procedure under which a would-be user is encouraged to make "reasonable efforts" to identify the copyright owner. If those efforts proved unsuccessful, the "orphan work" could be made available (or incorporated into a new work) with confidence that if the copyright owner subsequently came forward, this use could continue and the damages the owner could receive would be limited. By the same token, the copyright owner would retain the authority to license future uses of the work. In sum, this proposal promotes the cultural progress which is the ultimate objective of our copyright system. And it does so by meeting the needs of responsible users and the public without depriving individual copyright owners of their valuable intellectual property.

Thank you for your consideration of these comments. The National Humanities Alliance looks forward to participating further in this important inquiry.

Sincerely,

Jessica Jones Irons
Interim Executive Director
National Humanities Alliance
Member Organizations

African Studies Association
American Academy of Arts and Sciences
American Academy of Religion
American Anthropological Association
American Association for State and Local History
American Association of Museums
American Association of University Professors
American Comparative Literature Association
American Council of Learned Societies
American Dialect Society
American Folklore Society
American Historical Association
American Library Association
American Musicological Society
American Numismatic Society
American Philological Association
American Political Science Association
American Society for Aesthetics
American Society for Legal History
American Society for Theatre Research
American Sociological Association
American Studies Association
Association for Asian Studies
Association for Documentary Editing
Association for Jewish Studies
Association of American Colleges and Universities
Association of American Geographers
Association of American Law Schools
Association of American Universities
Association of American University Presses
Association of Art Museum Directors
Association of Research Libraries
Center for Research Libraries
Center for the Liberal Arts (East Carolina University)
Chicago Historical Society
Coalition for Networked Information
College Art Association
Community College Humanities Association
Council of American Overseas Research Centers
Council of Independent Colleges
Council on Library and Information Resources
Dictionary Society of North America
Doreen B. Townsend Center for the Humanities (University of California, Berkeley)
Federation of State Humanities Councils
Hall Center for the Humanities (University of Kansas)
History of Science Society
Imagining America (University of Michigan)
Independent Research Libraries Association
Institute for Advanced Study
Institute for the Humanities (University of Michigan)
Institute for the Medical Humanities (University of Texas Medical Branch)
Linguistic Society of America
Medieval Academy of America
Middle East Studies Association
Midwest Modern Language Association
Minnesota Humanities Commission
Modern Language Association of America
National Communication Association
National Council of Teachers of English
National Foundation for Jewish Culture
National Humanities Center
Northeast Document Conservation Center
Omohundro Institute of Early American History and Culture
Organization of American Historians
Phi Beta Kappa Society
Popular Culture Association
Renaissance Society of America
Research Libraries Group
Shakespeare Association of America
Shelby Cullom Davis Center for Historical Studies (Princeton University)
Simpson Center for the Humanities (University of Washington)
Sixteenth Century Society and Conference
Society for Cinema and Media Studies
Society for Ethnomusicology
Society for Music Theory
Society for the History of Technology
Society of Architectural Historians
Society of Biblical Literature
Society of Christian Ethics
SOLINET Southeastern Library Network, Inc.
Sonja Haynes Stone Center for Black Culture and History (University of North Carolina-Chapel Hill)
The Council of the Humanities (Princeton University)
The Franke Institute for the Humanities (University of Chicago)
The Honor Society of Phi Kappa Phi
Virginia Center for the Humanities
Woodrow Wilson National Fellowship Foundation