

My name is Donna Daugherty and I am the owner of Christian Recording Studio in Fort Oglethorpe, GA

I am very glad that the issue of orphan works is being considered.

I would like to address the issue from the recording studio perspective and what I see on a daily basis.

Your average person that is recording, is not in a situation where they can do too much research to find a song and its copyright owner. They would not be able to handle the formalities of even the 'case by case' basis that has been outlined.

They come into the studio, want to record a few songs they've been singing in church, maybe duplicate a few CDs, 50 to 500 usually. That is your typical person. These people are truck drivers, cashiers at the local market, and preachers and housewives. They barely know the full name of the song they want to record.

We turn down more business than we take, mainly because of the copyright laws. We do not have the staff to research songs for hours upon end, trying to find the rightful owner.

Our potential customer leaves and records at home instead and doesn't obtain a license or pay royalties.

The home recording studio business is rampant for this very reason. I would like to suggest that a license be required for recording studios or some type of certification to run a recording studio and have them take copyright and licensure class as well. That's another subject but one that should be addressed while you are considering Orphan Works.

It's the studio themselves that are recording without obtaining the property licensure from individual artists and publishers. The studio is the business that should be required to know the law and requirement comes with enforcement. Enforcement comes by certification. Certification comes by education in the copyright law.

There is no where that I have been able to find to obtain a certification specifically related to copyright law. What I know, I have learned myself over the years. But, to be taken seriously requires a certification in your area of specialty.

I think the answer is from the 'mom and pop' perspective, regarding what the small studios even have time to do and what a typical recording artist has time to do is within this paragraph:

Specifically, the Berne Convention and other treaties dealing with copyright that have followed forbid the imposition of formalities as a condition to copyright, principally on the grounds that failure to comply with formalities can serve as a trap for the unwary, resulting in the inadvertent loss of copyright.\1\

Suggestion:

Require the formality but don't let failure to comply result in loss of copyright. Let the owner of the work choose to comply or not.

If they comply, they receive royalties. If they don't comply, they do not receive royalties.

The question then is how would the studio or artist know if a copyright owner has complied with the formality and what is the formality?

First, I would like to suggest that compliance be based on registration of the work with a performance society such as BMI or ASCAP. Since there are many performance societies, I would like to suggest that a separate association be set up that would require the performance societies to join. Thus, individuals would search the new association for a list of all performance societies.

The formality would be that the artist is required to search at all performance societies for the copyright owner of whom they are attempting to obtain a license.

With BMI and ASCAP being the largest, the field of search is fairly narrow and would be easier to locate the artist.

I would suggest the new certification of studios and require studios to keep good documentation of searches and a list of all performance societies searched.

I would suggest that BMI, ASCAP and 10 other performance societies be searched before one could say there was non compliance by the copyright owner with the formality. This should be documented by the studio.

I would suggest that the copyright office post notices in all major newspapers and send notices to all major recording labels of the changes and give everyone 1 year to comply.

During the first 6 months, I would let the studios know that if they were unable to find the copyright owner by doing this type of search, and after the recording was complete and published, the copyright owner shows up to demand rights, then the studio is obligated to pay the royalties, even though the copyright owner had not complied within the first 6 months with the new formality.

During the next 6 months and at anytime afterward, if this same copyright owner showed up, I would tell the studios to notify the copyright owner of their opportunity to comply with the formality. But at this point the copyright owner has lost any revenue for that particular reproduction of their work.

The studio would be required to comply with the formality performance society search for each new reproduction of the work. Perhaps they did not have to pay the copyright owner the first time because the artist had yet to comply, but they could potentially have to pay the second time after the copyright owner became aware of the new compliance rule.

Thank you for your time,

Donna Daugherty
Christian Recording Studio