

The Sheridan Libraries

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Milton S. Eisenhower Library
Winston Tabb
Dean of University Libraries
and Sheridan Director

March 25, 2005

Jule L. Sigall
Associate Register for Policy & International Affairs
U.S. Copyright Office
Copyright GC/I&R
P. O. Box 70400, Southwest Station
Washington DC 20024

Re: Response by **Johns Hopkins University** to the Notice of Inquiry Concerning Orphan Works, 70 FR 3739 January 26, 2005

Dear Mr. Sigall:

I am writing this letter on behalf of Johns Hopkins University in response to the Federal Register notice seeking information on how the difficulty in locating the copyright owners of orphan works has adversely affected educational and research purposes.

Rather than fulfilling the Constitutional goal of providing incentives to creators— "To promote the Progress of Science and useful Arts" (United States Constitution, Art. I, Sec. 8, Cl. 8)— current laws and regulations have resulted in an imbalanced system that emphasizes the financial gains for content creators rather than use of content for the advancement of knowledge. These laws make it difficult, and sometimes impossible, for public service institutions, such as libraries, to serve the public effectively. This long-growing problem has been immeasurably exacerbated by the Copyright Term Extension Act, which has locked up the vast majority of published works, only a minute percentage of which have commercial value.

Based on the kinds of experiences described below, Johns Hopkins recommends that works for which permissions are impossible to obtain because there is no program for licensing of rights, or where the holder cannot be identified, should be available after a reasonably limited period of time for use broadly for library purposes and non-profit educational, research and scholarly purposes. Furthermore, the law should eliminate consideration of loss of value or rights fees in a fair use analysis of the use of such works, since there can hardly be monetary deprivation in cases where the copyright holder does not provide a reasonable means of obtaining permission of use and where the owner has not taken steps to exploit the commercial value of the work.

The Bloomberg School of Public Health at Johns Hopkins is providing content to the Open Courseware Initiative (<http://ocw.mit.edu>), a "free and open educational resource for faculty,

students, and self-learners around the world." For one of the courses offered through Open Courseware, the Bloomberg School of Public Health has identified about 150 objects such as images, graphs, and charts that do not have easily identified sources. The School has decided not to use these objects, largely because of the burden associated with copyright clearance.

Professor Sharon Kingsland from the Department of History of Science and Technology has encountered difficulties using photographs, such as those in archives or from obituary notices, published early in the 20th century, for which copyright ownership is unclear.

The Medical Archives and other archival repositories at Johns Hopkins contain huge amounts of photographs and materials that have enormous historical and educational value, but virtually no commercial value. In most instances, the original copyright holders are not identifiable, and many are long deceased, their rights belonging to generations of heirs who actually have no knowledge that these rights even devolved to them, as there was no commercial value to the copyright at the time of death of their predecessor, and no mention of the works was made in any estate. Yet, these works get little beneficial use because of the impossibility of obtaining use rights.

These examples demonstrate that current laws with regard to orphan works are adversely affecting the University's ability to support education, research, scholarship, outreach and lifelong learning. The impediments and obstacles, even despite best faith efforts, often result in faculty omitting materials or choosing alternate materials that may not represent the best choice. Therefore, useful historical works and information are not available to authors and publishers, as societies and journal publishers are reluctant to publish material which includes materials to which copyright pertains but for which permission cannot be obtained.

A most regrettable aspect of the current situation is that we believe the vast majority of copyright holders would likely be more than willing to offer their content for non-profit use by universities and scholars if they could be located and asked. But the potential repercussions and damages, despite extensive good faith efforts, of using copyrighted materials without permission are inhibiting libraries and universities. Far from promoting the progress of science and the useful arts, current copyright laws regarding orphan works inhibit our ability to support our scholars and a nation of learners in their education, research and personal enrichment.

Sincerely,

A handwritten signature in black ink, appearing to read "Winston Tabb", written in a cursive style.

Winston Tabb