

From:
To:
Date: Fri, Mar 25, 2005 5:22 PM
Subject: Comment on Orphan Works

Orphan works create a real problem for scholars and educators. Because many orphan works lack economic value, their current ownership is frequently untraceable and permission to copy is therefore unavailable at any price. This makes it impossible for orphan works to be distributed for class reading assignments.

A good example of this phenomenon is the work of Lon Fuller--a prominent legal scholar who retained the copyright in his law review articles. For many years, permission for classroom copying of Fuller's works could be obtained from the lawyers who handled his estate, but Fuller died many years ago, and there is no longer any contact person for obtaining permission. Because most university copy shops required written permission, the result is that most of Fuller's works cannot be made available to students in course reading materials.

Fuller's works are just one example of this problem. Another version of the problem exists with respect to defunct scholarly journals. In many cases, the copyright to the contents of the journal was held by a scholarly association that no longer exists. As a result, it is practically impossible to obtain permission to reproduce journal articles for classroom use.

One solution to this problem would be a safe harbor provision--allowing fair use of scholarly articles and books after a reasonable effort has been made to obtain permission for use of the work.

--

Lawrence Solum