



IFLA Statement on Orphan Works

Libraries are dealing with an increasing number of works where the copyright owners cannot be identified and located to consider the library's request for uses of the work which require the owner's permission. Such works have been termed "orphan works". To maintain the appropriate balance between owners and the library uses of the copyright works, it is important to ensure that copyright laws be adapted to special circumstances where necessary.

"Orphan works" present such a special circumstance. With regularity, libraries are finding it impossible to identify, locate and contact the legitimate holder of the relevant rights ("copyright owner") when the intended use of the work requires permission. Such "orphan works" risk exclusion from the cycle constituted by creation and use and there is a risk liability for copyright infringement if there is no means of securing the necessary permissions.

To promote the public interest while protecting owner's rights and counter the risk of infringement, IFLA strongly recommends a formal structure be adopted to enable the use of orphan works. The specific issues outlined below must be addressed in any regulative initiative dealing with orphan works:

Diligent search for the copyright owner

The library should conduct a diligent search in good faith, with a view to identifying, locating and contacting the copyright owner, prior to using the orphan work. The library should be informed about the full array of possible sources of copyright owner information.

Any regulative initiative should be flexible in its approach to any requisite search steps or information sources to be consulted. Only a flexible approach will ensure an adequate solution dealing with the individual circumstances of each orphan work as conditions vary among information resources available for different types of works and resources and search techniques can change rapidly.

Libraries and other stakeholders should develop and make publicly available guidance on what constitutes a diligent search.

Mass Digitisation Projects

Increasingly, digitization projects undertaken by libraries in the public interest involve such large numbers of works that the expense of a thorough search through human intervention on a title-by-title basis would be prohibitive. A fair balance must be found between the cost of the diligent search and the interests of the copyright owners. IFLA welcomes and supports efforts to automate diligent searches to the broadest possible extent; under certain

circumstances such automated processes in themselves may be considered sufficiently diligent.

Libraries may consider negotiating a license from an appropriate body in order to use orphan works. Where fees are part of the license and copyright owners may claim payment, after a defined period any unclaimed fees should be dispersed equally between libraries and rightsholders. Such an arrangement reflects the contributions made by both libraries and rightsholders towards the cost of digitisation projects.

Libraries, national legislatures and other stakeholders are encouraged to cooperatively develop innovative solutions that will enable public interest digitization projects.

Reasonable remuneration, appropriate restitution, or termination of use

Any regulative system should provide a process to deal with any subsequently located copyright owner of an orphan work. The copyright owner should be entitled to equitable remuneration for continued use of the work or require termination of the use of the work.

The library should not be penalized for the use of an orphan work after conducting a diligent search.

Clear and adequate attribution

Libraries should provide as clear and adequate an attribution of orphan works to the copyright owner(s) as is possible, taking adequate care to avoid misattribution.

Limitation on injunctive relief

Where injunctive relief is available against the continued and future use of a previously orphaned work, any regulative system should ensure that such injunctive relief is sufficiently flexible to take into account the creative efforts and investment made by the user in good faith.

Non-exclusivity of use

The use of orphan works is non-exclusive. A user of orphan works can intervene against further uses of the same orphan work only where the further use would infringe her/his new rights in derivative works (e.g. translations, adaptations).

Endorsed by the Governing Board of IFLA, at its meeting in Den Haag, The Netherlands, 07th December 2011.