

Copyright

Accessing orphan works

Libraries hold many 'orphan' works where it is practically impossible to locate the copyright holders. The administrative burden of locating copyright holders is often prohibitively costly. In addition the term of copyright protection in unpublished works is effectively perpetual.

The Australian Libraries Copyright Committee and Australian Digital Alliance are producing a joint policy paper on practical restrictions in the use of orphan works to send to the Attorney-General's Department to help shape this legislation. ALIA is contributing to this paper.

The Attorney-General's Department will examine the current state of copyright law with regard to orphan works (including section 200AB of the Copyright Act 1968), with the aim of recommending amendments that would remove the practical restrictions that currently impede the use of such works.

What is 200AB?

The Australian Digital Alliance and the Australian Libraries Copyright Committee have released a handbook which contains an outline of how they believe each of the steps of the provision should be approached. They work through a number of possible scenarios to illustrate how s200AB might work in practice. <http://www.digital.org.au/alcc/resources/documents/FlexibleDealingHandbookfinal.pdf>

For a background to Orphan Works, look at <http://digital.org.au/alcc/HomeArchives.html> and our copyright pages at <http://www.alia.org.au/advocacy/copyright/>.

Library staff and those working in the area of copyright were asked to send examples of the practical restrictions in the use of orphan works. A selection of comments received from both large and small libraries show the burden of orphan works for libraries and archives. They also make useful suggestions for a change in the law.

Corporate Library Hobart Council Centre

Hobart Council Centre Corporate Library has a number of unpublished history manuscripts concerning the city. Most have deceased authors and some contain excerpts of other, often unacknowledged, works or interviews. They are useful in providing clues for historians undertaking cultural heritage surveys, but copyright compliance in reproducing sections of these orphan works, is quite problematic. Unpublished works could have a controlled extinguishing copyright, at a set period after the death of their authors.

Auburn Library Service

Those photos in our Local History collection taken after 1955 are still under copyright, but many of these photos have been donated to and received by the library without knowledge of who the photographer was, or without adequate records kept on copyright owner, as many were received before libraries started digitising their photographic collections and I don't think it was conceived of that the images would ever be reproduced.

In order to digitise these photographs and make them available on a publicly searchable database on the internet, we should have permission from the copyright owners/photographers. As it is next to impossible in many cases to trace the origins and provenance of a photo, this leads to a situation in which many very useful and interesting photographs of the local area cannot be provided to library customers.

University of Wollongong Library

UOW Library holds a large range of orphan works within its Archives collection. For the majority of this material, deposited in the 1970's and 1980's, we may have no details of the depositor or original owner. For some material where we do have a deposit form, the depositor was not necessarily the copyright owner. The wording on the early deposit forms was only along the lines of "I give my permission for this material to be deposited in the Archives for the purpose of ongoing research and study".



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Advisor

The intent of depositing material in the university archives was to provide a stable location for the preservation of, and access to, material that was believed to have inherent research value to members of the university and community. While we continue to provide access to those who can physically come to the building, copyright restrictions on the use of orphan works prohibit us from developing better digital access.

The library has begun to digitise parts of the archives collection and is concentrating on university documents for which we know we have copyright permission. Some of the archives collections are primary sources which could be better used for research, teaching, and learning if available in digital form. At the moment we are assessing all parts of the collection as to suitability for digitisation and one of the ranking scales specifically covers whether we have permission to do so or could locate the copyright owner.

One of the concerns with orphan works is the amount of time taken to try to identify copyright ownership. For example:

"Several years back I had a request from a Melbourne filmmaker for a copy of a 1970s oral history interview conducted by high school students. I made and supplied them with a copy of the tape for their initial/private research. They then asked if they could include part of the audio in the documentary they were making. We didn't have any deposit slip for the recording. The surname of the interviewee was unusual so I worked my way through the Whitepages online and found a daughter in Sydney, rang her, she didn't know we held the recording (her mother had since died) so she asked us to supply her with a copy. At the same time I sent her a release/reproduction form I'd worded, she then sent it back to me giving written permission for the filmmaker to reproduce the audio of her mother's reminiscences, which I then passed on to them. All up this request would have taken the best part of a day to complete."

At present the time required to attempt to identify the copyright owner of orphan works is a disincentive to making this material digitally available, especially when it is done in a not-for-profit environment where accessibility is for study and research rather than commercial purposes.

At this point we have not made use of the flexible dealing exception but would seek greater clarification in the copyright requirements for orphan works.

State Library of Queensland

State Library of Queensland uses a risk management approach to the use of orphan works. Practical restrictions to the use of orphan works in our library were addressed in a paper presented at Information Online in 2009.

Since that paper was presented we have also incorporated the use of s200AB into our approach for the use of orphan works. We have applied this section to the use of photographic material in an exhibition and are investigating how it might be used as part of several digitisation projects.

The State Library of Queensland is committed to a broader use of s200AB which we believe is aligned with the intent of this exception to be 'flexible'. We also strongly endorse an approach to orphan works that does not include any licensing arrangements with collecting societies. Cultural and collecting institutions would be severely disadvantaged if this approach were supported by government because the majority of orphans in our collections are works where no commercial interest formed part of the creation of the works, and the possibility of licensing fees being distributed to copyright owners in negligible.

If you have any relevant comments to make please send them to Helen.

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