



Finding Parents for Orphan Works: Using Genealogical Methods to Locate Heirs for Obtaining Copyright Permissions



Drew Smith

USF Tampa Library, University of South Florida, Tampa, FL 33620, USA

ARTICLE INFO

Article history:

Received 30 December 2014

Accepted 19 March 2015

Available online 3 April 2015

Keywords:

Copyright

Orphan works

Genealogy

ABSTRACT

Faculty and students frequently want to use copyrighted material in their books, articles, presentations, and instructional materials, but because such usage often falls outside Creative Commons and Fair Use guidelines, they will need to obtain permissions for the use of the material in those cases. Because current copyright law has resulted in long durations for copyright, the copyright owner may be very difficult to identify and locate, resulting in a large number of “orphan works.” When the original copyright owner is deceased, it will be necessary to locate an appropriate heir to contact in order to obtain the needed permissions. Genealogical methods can be used to identify and locate these heirs, but because these methods are usually unfamiliar to academic librarians, the librarian may feel unable to assist the faculty member or student with this type of search. This article demonstrates how these methods are easy to learn and apply, using case studies in which an academic librarian, within a brief period of time, was able to access readily available online genealogical sources and to apply basic genealogical techniques in order to identify and locate heirs to a deceased copyright owner.

© 2015 Elsevier Inc. All rights reserved.

INTRODUCTION

Academic librarians have long provided copyright-related services to faculty and students. Much of this assistance has centered around providing advice on the use of copyrighted materials in academic instruction and publication. While much of this advice has been offered via face-to-face workshops, online tutorials, and online guides, the nature of copyright often results in the need for a librarian to meet one-on-one with the faculty member or student in order to assess their particular question and to provide advice tailored to their situation.

Common scenarios involve identifying a work as in the public domain, meaning that the information-using patron is legally free to use the work in whatever manner they choose. In those cases where a work is still likely to be under copyright, the librarian may be able to assist the patron in determining that the use of the work appears to fall squarely within the confines of Fair Use guidelines, or within the limitations of a Creative Commons license for those works using that scheme. In most remaining cases, the librarian may be able to assist the patron in locating the publisher or author in order for the patron to request permission to use the work.

However, there remain a small number of cases where a work is likely to be under copyright but the rights owner is difficult if not impossible to locate. The term “orphan work” has arisen to describe these works. Previous literature has focused on the problem of orphan works. Policies regarding orphan works expect users to do a reasonable search, but the nature of what is reasonable will depend upon the skills of the searcher and the resources available. Academic librarians engaged in such a search might be unaware of available resources and feel that

they lack the skills to do the search. This paper will discuss the growing number of resources that can be used and the minimal genealogical research skills needed to use them.

LITERATURE REVIEW

In 1988, the United States signed on to the Berne Convention for the Protection of Literary and Artistic Works, an international agreement originally created in 1886 and revised numerous times since, including as recently as 1979. In 1998, U.S. Public Law 105-298 was enacted and resulted in an additional 20 years of copyright protection. Also enacted in 1998 was U.S. Public Law 105-304, the Digital Millennium Copyright Act (DMCA). The impact of these events on the potential use of copyrighted material by others began to appear in the literature.

The term “orphan” in relation to materials whose owners could not be found was used as early as 1994, specifically in reference to film preservation issues (Melville & Simmon). During the discussions leading up to the passage of Public Law 105-298 in 1998, the Chairman of the American Film Heritage Association, Larry Urbanski, wrote to U.S. Senator Strom Thurmond, specifically using the term “orphan works” to refer to “works no longer owned by anyone, with no traceable lineage.” Soon after the passage of the DMCA, the U.S. Copyright Office warned that the extension of copyright terms would exacerbate the problem of orphan works, and recommended that Congress address the issue. In that 1999 report, the Copyright Office noted:

In some circumstances, it can be time-consuming, difficult or even impossible to locate the copyright owner. Locating owners of older,

out-of-print or unpublished works, or works not marked with copyright management information, can be particularly problematic. ... Educational institutions note that an online course may incorporate many different works, making it burdensome for faculty or librarians to spend days trying to track down the owner of a single work.

In 2005, the U.S. Senate asked the Copyright Office to research and report on the issue of orphan works. The resulting 2006, U.S. Copyright Office “Report on Orphan Works” devoted a section to the problem of “Changes of Ownership or in the Circumstances of the Owner,” noting:

Even if an author or copyright owner can be identified from a copy of the work, events since the creation of that copy can affect the ability of a subsequent user to identify or locate the current copyright owner. Copyright is, after all, a form of property. As with other forms of property, ownership may pass through many hands, and by various legal mechanisms. Therefore it is not uncommon for the chain of title to copyright in a work to be somewhat complicated to trace. Even where ownership does not change hands, the owner's circumstances may change. The owner may change addresses during a move to a new home or place of business. The owner may die, dissolve, or otherwise cease business altogether.

Of particular interest in the report is the discussion of deceased copyright owners, and the nature of the transfer of their rights to their heirs to their estates. The report also briefly mentioned methods and resources for locating copyright owners, such as “basic Internet searches, using old phone books, and searches for death certificates and records concerning estates.” In preparation for their report, the Copyright Office solicited feedback as to whether it should develop official criteria for doing a reasonable search for copyright owners, but the response was primarily negative. As a result, the Copyright Office made no recommendations for defining the nature of a reasonable search as part of any proposed legislation.

Soon after the publication of the U.S. Copyright Office report, the UK government took it upon itself to address the issue of orphan works. The “Gowers Review of Intellectual Property,” published in December 2006, was commissioned by the UK Chancellor of the Exchequer, with the intention of examining intellectual property rights. The Review recommended the proposal of an “orphan works” provision to the European Commission as an amendment to Directive 2001/29/EC. Another recommendation (14a) was made as follows: “The Patent Office should issue clear guidance on the parameters of a ‘reasonable search’ for orphan works, in consultation with rights holders, collecting societies, rights owners and archives, when an orphan works exception comes into being.” The Review shared a British Library statistic that estimated that 40% of all print works were orphan works. In discussing the nature of a “reasonable search,” the Review referred to the British Library’s recommendation of “best endeavours,” but the Review found these words insufficient for users to know whether their search efforts were enough for legal protection.

Mark Bide (2010), the Executive Director of EDItEUR, a non-profit global industry standards organization for books and serials, wrote about the orphan works situation from a European perspective in 2012. He asked how it was possible to identify who held the rights and how to get in touch with that individual. In response to the problem, Bide discussed the creation of a European Commission project, ARROW (Accessible Registries of Rights Information and Orphan Works towards Europeana). The ARROW partnership, under the leadership of the Italian Publishers Association (AIE), is intended to categorize works as orphan works and to create a European Registry of Orphan Works (ROW) so that the rights owner can come forward to identify an orphan work as theirs.

Malcolm Kendall (2010), Legislation Manager for Library Services at the University of Birmingham, addressed the orphan works issue from the standpoint of an academic library dealing with UK copyright law.

Kendall discussed the question of first identifying whether or not the copyright owner was deceased (and if so, on what date). He cited the Gowers Review’s recommendations regarding the nature of a “reasonable search.” Kendall also mentioned a proposed U.S. Book Rights Registry, as well as the previously mentioned ARROW project. As Kendall points out, “ARROW is not intended to replace the ‘diligent search’, but will be a valuable part of it.”

In recent years, a number of writers in the legal and library worlds have written on the subject of orphan works and the guidelines for doing a reasonable search. The National and State Libraries Australasia (NSLA) released a position statement in 2011 specifically on the subject of “reasonable search.” According to the NSLA statement:

In practice, a reasonable search will involve a continuum of effort ranging from minimal through to an extensive or extraordinary search. On this continuum, a greater level of resources and professional expertise will be required to locate the copyright holder of recent and/or works created by professionals as these searches have a higher likelihood of success.

Buttler (2012), in discussing orphan works within the contexts of a library’s special collections, argues that there will be cases where the information as to ownership cannot be discovered and as a result, permissions will never result. Carol Ebbinghouse, Law Library Director for the California Second District Court of Appeal, attempted to answer the question of what would be needed to meet the highest standards for “due diligence” in a search for the copyright owner (2012). She included such steps as “[h]iring private investigators for skip tracing” and “[t]hrowing names at the internet in hopes of finding ‘the one’ you’re looking for.” She went on to suggest that existing processes for locating heirs to unclaimed real property or money could be used in an analogous way for locating heirs to intellectual property.

In summary, the review of the available literature provided a look into the history of orphan works, identified recent efforts by U.S., UK, and European governments to address the issue, and supports the idea that no official set of guidelines has yet been put forward as to what constitutes a “reasonable search.” In particular, nothing appears to have been written related to what an academic librarian with basic genealogical research skills and access to common genealogical resources would be able to do in assisting an academic patron in locating a deceased copyright owner’s heirs for the purposes of obtaining permission to use copyrighted material in instruction or publication.

CASE STUDIES

In late September 2013, a University of South Florida faculty member was writing a book and wanted to use copyrighted illustrations taken from several older books, but didn’t know how to locate the heirs to the now-deceased copyright holders. A USF librarian with genealogical research skills was brought in on several communications with the faculty member in an effort to help locate likely heirs.

CASE STUDY #1 — WILLIAM HENRY BROWN

The faculty member wanted to use material from a 1935 book, *The Plant Kingdom*, written by William Henry Brown. According to the faculty member (who had done some basic genealogical research using Ancestry.com), Brown was deceased, as was his wife, Mary Angus (Blythe) Brown, but on December 14, 1962, she had renewed the original copyright on his book (registered April 1, 1935), as indicated in the Stanford University’s Copyright Renewal Database. The faculty member also had information that William and Mary had been married in Manila, Philippines in 1927, and that, according to ship’s passenger lists, the Browns had two sons, Charles and William, who, if they were still alive, would now be in their early 80s. Given that Mary’s last residence was Hampton, Virginia, this provided clues as to the likely locations of the two sons.

Download English Version:

<https://daneshyari.com/en/article/358253>

Download Persian Version:

<https://daneshyari.com/article/358253>

[Daneshyari.com](https://daneshyari.com)