

**UNIVERSITY OF MICHIGAN**  
**University Library**

By Electronic Submission

March 22, 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 20540

Re: Comment ~ Orphan Works and Research Libraries and Archives

Dear Jule Sigall:

On behalf of the University of Michigan, University Library attached please find our comment regarding Orphan Works and Research Libraries and Archives. We hope these comments are of assistance to the U.S. Copyright Office's examination of the orphan works issue.

If you have any questions or need further clarification please do not hesitate to contact me at:

William A. Gosling  
University Librarian  
University of Michigan

Sincerely,

William A. Gosling  
University Librarian

The University of Michigan University Library seeks to support and inspire new scholarship by making the output of past generations of researchers more accessible and more useful to current readers. As the stewards of a collection approaching eight million specialized volumes, we see daily evidence of scholars and citizens seeking information in support of their research interests. While copyright protections may reasonably be construed as an incentive for authors and publishers to invest in the research and writing process, at some point the continuation of these fetters new and further exploration of a topic. We understand and accept the balance between copyright as a spur for creative endeavor and the necessary restrictions that copyright entails. On the other hand, when a work has lost its commercial value and the creator has ceased to have a financial interest, we believe the larger public good should take precedence, as is the case for many of the so-called “orphan works” published post-1923.

The norms of scholarly communication that guide the academic community encourage open discourse and open sharing of research findings. Most academic authors want their ideas to be widely disseminated, and while a financial incentive might encourage creative endeavor at the outset, over the long-term the rewards of income recede relative to a desire for recognition and attribution. Moreover, the authors of many of the works that fall into the orphan category are no longer alive, and the difficulty of determining a rights-holder in such a case prevents the dissemination of the author’s intellectual legacy. We believe that making older, out-of-print works of scholarship more readily accessible to new generation of researchers is a service to readers and authors alike.

In the past few years these issues have become increasingly prominent for academic libraries as those libraries have begin to digitize portions of their collections. Libraries like the University of Michigan University Library are reformatting segments of their collection from deteriorating print to more durable digital formats. If these libraries can feel legally secure in doing so, these electronic files can be shared widely with the scholarly community, and could stimulate research in far-reaching places.

To ground this discussion, let us take a moment to illustrate the nature of the works which we believe should be available for wider dissemination and the difficulties that we encounter in trying to make those works publicly available under the constraints of the current rights system.

As part of its Preservation Reformatting program, the University of Michigan University Library scans about 5,000 volumes each year. This process results in high quality digital surrogates which the Library can make accessible online. Usually, because of the age of the materials most in need of preservation attention, these volumes are in the public domain. Volumes without rights constraints are streamed into one of the publicly available online collections at the university, such as the Making of America (<http://moa.umdl.umich.edu>) or the Digital General Collection (<http://www.hti.umich.edu/g/genpub>). But it is also the case that many of our more recent materials are highly brittle and need to be reformatted before they disintegrate beyond possibility of use. In the past year, the Library’s preservation process treated 274 such volumes. The Library embarked upon a low-level experiment to obtain permission

to make these volumes—almost all of a scholarly or academic nature—accessible to the world. The results of this experiment to date illuminate the difficulty of ascertaining rights holders and of obtaining permission, and consequently keeping valuable, if sometimes highly specialized, scholarship available for use:

Titles requiring permission to make publicly available	274
Titles published prior to 1978 <sup>1</sup>	234
Titles registered in Library of Congress online copyright registration database	11
Titles for which the author is known to be deceased or can safely be presumed deceased <sup>2</sup>	263
Titles for which we were unable to obtain any contact information for a publisher	88
Total permission requests sent	57
Permissions requests approved	13
Permission requests denied	12 <sup>3</sup>
Permission requests referred on to another party	15
Non-responses	17

For this sampling of “orphan works”, the likelihood of an author or publisher having a substantial financial interest in a particular work is slim. Nonetheless, we strongly believe that the intellectual and social value of the books remains high. We believe that we can support this assumption by analyzing the use patterns of the public domain volumes that the University of Michigan University Library has put online. For example, the Making of America, a publicly available collection of about nine thousand books printed in the U.S. prior to 1900, routinely records over 500,000 uses a month. While it is true that a few volumes within the collection have been looked at as many 25,000 times a year, it is notable that the vast majority of use is spread out over the entire collection rather than concentrated in a few commonly sought after texts. This indicates to us that while these volumes are indeed of interest to the public, only a small minority of *individual* texts are used enough to indicate that they have significant market value to protect. In another case, the University of Michigan Historical Math Collection, of about 1,000 public domain volumes concerning non-Euclidean geometry (an unlikely subject to be of general popular interest), frequently experiences 35,000 uses a month, again with use distributed across many volumes. While we have no empirical data suggesting that more recent materials would enjoy use at this level or greater, it seems a safe assumption that the relative currency of post-1923 works would ensure interest in those works.

As we have said, because our reformatting efforts are preservation driven, to a great extent we’ve limited these efforts to works published before 1923. If, however, more recent works could be similarly reformatted—without financial harm to authors and

<sup>1</sup> Copyright renewal is required for extension of copyright for materials published prior to 1978.

<sup>2</sup> We defined safely presumed deceased as over 100 years of age.

<sup>3</sup> Of the twelve denied requests, eleven were blanket denials from two university presses (five in one instance, six in the other).

publishers—it would be a considerable spur to new scholarship. As Michigan moves forward in its partnership with Google to create an electronic copy of its entire library collection, it would be a considerable service to scholarship if “orphan works” could be easily identified and widely shared.