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We need to establish that a problem exists, and that it has a considerable negative impact on libraries and librarians

Have you found yourself wanting to copy an item from your collection for use in a display or exhibition, only to find that you can't establish who owns the copyright? You are a victim of 'orphan works' syndrome, which afflicts many workers in libraries, museums and art galleries. This condition can lead to frustration and, in extreme cases, paralysis.

The problem has been exacerbated by the extension of the copyright term for published works to life of the creator plus 70 years. For unpublished works the situation is worse as these never go out of copyright.

A forum to discuss the problem was held in the National Library on 22 May. This forum was convened by the Australian Libraries Copyright Committee (ALCC), Australian Digital Alliance (ADA) and Copyright in Cultural Institutions (CICI) and attended by representatives from libraries, archives, museums and galleries. Those attending were amused by some of the examples, but there is a very serious issue underlying these stories.

Two typical cases

- A child's drawing, held by the National Gallery, bore the name 'John' and no other identifier. The Gallery wished to use it on a Christmas card but couldn't obtain permission since 'John' could not be located.
- A letter from the mother of a wounded World War I soldier to the Defence Department seeking details of her son's address. The Australian Archives wished to use a copy in a publication but found it difficult to trace the family of the author.

In both of the above examples the institutions concerned decided, after a thorough search for the copyright owners, to go ahead with the projects. They took the risk that the copyright owners would appear and sue them. As it happened, the copyright owners did surface but, rather than sue, were pleased that their material was being used in worthwhile publications.

In many cases, institutions cannot take this risk, so unique pieces of Australian history and culture remain hidden in libraries, museums and archives.

The problem is not confined to letters, paintings or archival materials. Consider the case of a book where the publisher has gone out of business or been taken over. Trying to trace the current owner of the copyright may involve lengthy searches of company records and more often than not be fruitless. Photographs, films, music recordings and scores also present their own unique difficulties.

A review is planned

The Australian government has announced that it will conduct a review of the orphan works problem in Australian copyright law, with a view to providing a mechanism whereby those wishing to make use of such works can do so without fear of prosecution. Any reform should also ensure that genuine copyright owners are compensated for the use of their material.

Among the procedures proposed are

- A tribunal to decide on a case by case basis.
- A statutory licence for orphan works administered by the collection societies.
- Shortened copyright term for 'abandoned' works.
- A blanket exception to or defence of copyright infringement for non-commercial use of 'orphan works'.

The US Copyright Office conducted a review last year, which attracted over 300 submissions. It released its report (<http://www.copyright.gov/orphan>) in January this year. A brief summary can be found in the ADA newsletter for Jan/Feb 2006. (<http://www.digital.org.au/issue/ipwJanFeb06.htm>)

This is one of the areas ALIA is working in to benefit the profession. We would like to hear from members who have had 'orphan works' problems, particularly in identifying or contacting copyright owners. ALIA will channel our information back to the ALCC who are to prepare a submission, ready to deliver to the government review. We need to establish that a problem exists, and that it has a considerable negative impact on the ability of libraries and librarians to fulfil one of their core values 'linking people with ideas...'. ■

Orphan works review

We would like to hear from ALIA members who have had problems identifying or contacting copyright owners.

Please contact me at copyright@alia.org.au if you can contribute an example. ■

CAL says business as usual, only better

In May, the Copyright Agency Limited (CAL) announced a number of organisational changes. CAL's chief executive officer, Michael Fraser, said that CAL, as part of Australia's dynamic knowledge economy, needs to change in order to keep pace with the external environment.

CAL intends to grow its business through the development of targeted new products and services. A key element of the refocus is the establishment of a dedicated Business Services

division, which will bring together resources and activities for CAL's rights management for customers.

Distribution payments to members are expected to be over \$60m this financial year. There are also a lot of unclaimed funds. Have you written an article for *ALJ*, *AARL* or *inCite*? If so, consider registering as an author with CAL to collect your fees (http://www.copyright.com.au/join_cal.htm). ■