

The promotion and advancement of art and science is an essential component of copyright law. As inspiring as this belief may be, copyright law left many areas obscured and undefined. Throughout time, copyright law has added new components to not only clarify and define, but to meet the current needs of copyright holders. Currently, fair use is an area that needs to be addressed, even more so when institutions are dealing with orphan works. Libraries, archives, and educational institutions are spaces that are faced with the challenges that are in placed by fair use. “For good faith users, orphan works are a frustration, a liability risk, and a major cause of gridlock in the digital marketplace.” (“Orphan Works and Mass Digitization”) These risks and gridlocks are thus making it difficult for institutions to provide access to material that contribute to art and science. It is important that copyright law provide institutions to digitize and make available to the public these set of works that have no known author, or have been abandoned.

Section 106 outlines the rights of authors, but it becomes a problem when one is working with orphan films that do not, or can’t locate the author. Duke Center for the Study of the Public Domain highlights the challenges that orphan works faces. “...there are often multiple copyrights over the same film-covering the film itself, the script-if-any-and the soundtrack.” (“Access to Orphan Films”). As Duke Center highlights, orphan films may have more than one copyright holder, thus it’s almost unrealistic of finding the proper author. In addition “Orphan Works in many cases are films commercially released but short lived in the commercial market.” (“Orphan Comments”). These are set of works that have been abandoned by the owner, therefore it should be allowed for institutions to digitize them, and or restore them so they can be accessed by the public. When these institutions strive to either preserve or make accessible to the public, it restricts orphan films from not only in preserving the material, but it keeps it from being utilized by the public, and essentially finding any

information about the specific film. This essentially places a barrier on the use of orphan works. It is important that Congress re-evaluate the current Copyright Law in order to address and provide a solution to orphan works.

Orphan films represent the current need for Congress to make adjustments to the current laws that restricts and places orphan films in a static space that potentially does not benefit anyone. Thus, "...the uncertainty surrounding the ownership status of orphan works does not serve the objectives of the copyright system" ("Orphan Works and Mass Digitization"). The law needs to be adjusted to meet the needs of the current time. Under the current copyright law, libraries and archives are the most harmed under the current law. Where can scholars, research, filmmakers, or even just the public, go to view orphan films. Even though YouTube has numerous orphan films uploaded, libraries and archives provide a comprehensive selection, and one that will be there to access whenever, where as YouTube videos are constantly being uploaded and taken down.

The reform that I would propose would be one that specifically addresses the constraints that are holding orphan films from being accessible. The reform would uplift barriers that take author's rights from Copyright Act of 1976, it would allow fair use for orphan works, and it would allow libraries and archives to digitize them, restore them, and make them accessible to the public. This reform aims to solve current restraints that orphan films have. Orphan films have surfaced in the last decades and have been an interest to scholars, researchers and filmmakers. Essentially, this reform will strike down the fears that institutions and people may have in potentially infringing on someone's work.

Libraries and archives would ultimately support the reform. These institutions champion for the ability for the public to access material, and "...brings together,

scholars, artists, archivists, collectors, curators, conservators and enthusiasts who recognize the Orphic value of these neglected aspects of our culture.” (“What is an Orphan Film?”) It would be a benefit to them to provide work that in a way reinforces the foundation in which copyright law was intended for. Furthermore, “Orphan Works probably comprise the majority of the record of the 20<sup>th</sup> century culture.”( Using Orphan Works”). Therefore, it would be a disservice to the public if we allowed our cultural records to not be conserved due to the laws that are allowing it to happen.

Those who would oppose this reform would be potentially big studio companies. These companies operate for the purpose of making money. If copyright law begins making changes to the current laws, then they may feel a threat that the door for fair use may get wider and wider, thus making their material vulnerable to being used and protected under fair use. This is a likely argument taken up by big studio companies that do not want to see fair use being tweaked to permit works being used. Essentially, they may feel as if the law is beginning to shift away from protecting their work from being used or made accessible to others. Additionally, potential authors may surface and want to take legal actions. In this case, potential authors may argue that no one ever asked their permission, or that one became negligent to research the orphan films copyright status. In looking at those who would oppose the reform, one can see the challenges in navigating these laws.

In examining the present concerns with orphan films, it highlights how the current law does not address this specific work. Section 106, 107, and 108 places barriers that keeps institutions, archives, filmmakers, and even the public, the ability to access these films. In keeping these films hidden it goes against the essence of copyright law in advancing arts and science.

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