

Safe Harbor Provisions for the Use of Orphan Works for Scientific, Technical and Medical Literature

An STM, ALPSP, AAP/PSP Position Paper

(and authorized by publisher signatories below)

In December 2006, STM announced a policy on Orphan Works, copyright works for which a prospective user is unable to identify, locate and contact the legitimate holder of the relevant rights (“copyright owner”) for the purpose of obtaining permission to use such works¹. Other trade associations have also made similar proposals including the IPA (including a recent joint statement with the library association IFLA) and the AAP². As copyright holders, users, publishers and citizens, the publishing members (and associations of members) have an important stake in the question of allowing uses of orphan works which they may own. Publishers also recognize the importance of establishing clear and reasonable rules of practice. We also appreciate the support in such initiatives of organizations such as IFRRO³.

Other publishing trade associations have since joined in our original statement, including the Börsenverein des Deutschen Buchhandels e.V.

Each publisher who is a signatory to these Safe Harbor Provisions is hereby notifying prospective users that, to the extent such publisher owns “orphan works,” users who comply with the guidelines below will be entitled to the “safe harbour” protections noted herein.

Core requirements (see STM 2006 statement for more detail)

- user of an “orphan work” must be able to demonstrate that they have made a reasonably diligent, good faith search for the copyright owner (see below for further guidance);
- The use must include clear and adequate attribution to the original work, author, original publisher and copyright holder, if possible and as appropriate under the circumstances;
- In the event that a copyright owner is subsequently identified for the work deemed to be an “orphan work”, the user must pay a reasonable royalty (see below for further guidance); and
- After a copyright owner has been identified, the user must ensure that there is no further re-use or re-utilization of the copyright work (beyond the initial derivative use and subsequent distribution thereof) except as may be agreed with the copyright holder.

In the event that any of the publishers who are signatories to these Provisions identify works used as “orphan works” and inform the user as to the ownership status of the work, the publishers hereby agree to waive, if the above requirements have been met by the user, any claim or entitlement to all fees or damages including statutory, punitive, exemplary or other special or general damages (other than a reasonable royalty as described below).

¹ see <http://www.stm-assoc.org/documents-statements-public-co/2006-documents-statements-public-correspondence/STM%20Position%20Orphan%20Works%20Dec06.pdf>

² See comments from AAP at http://www.publishers.org/main/Copyright/CopyKey/copyKey_01_04.htm and the 2006 IPA statement at

http://www.internationalpublishers.org/images/pdf/PP_Copyright/ipaonorphanworks_position20060423.pdf

and the joint IFLA-IPA June 2007 statement at

<http://www.internationalpublishers.org/images/pdf/IndustryPolicy/IFLAIPA/JointStatements/ifla-ipa%20orphan%20works%2020070607.pdf>

³ IFRRO Statement on Orphan Works, May 2007,

<http://www.ifrro.org/upload/documents/IFRRO%20Statement%20on%20Orphan%20Works%20May%202007.pdf>

Reasonably diligent good faith search for copyright owners in scholarly material

The publishers who are signatories to these Safe Harbor Provisions accept that it is not possible to provide an exhaustive list of resources for each scientific, technical or medical discipline that would be useful for a reasonably diligent good faith search. Clearly care must be demonstrated on the part of the user in identifying literary and bibliographic resources that would be most relevant for the work in question.

The publishers do believe that in virtually all cases searches and reviews must be conducted of these kinds of resources identified generically as:

- Published indexes of published material relevant for the publication type and subject matter;
- Indexes and catalogs from library holdings and collections;
- Sources that identify changes in ownership of publishing houses and publications (see below comment on imprints) including from local reprographic rights organizations;
- Biographical resources for authors;
- Searches of recent relevant literature to determine if the citation to the underlying work has been updated by other users or authors;
- Relevant business or personal directories or search engine searches of businesses or persons; and
- Sources on the history of relevant publishing houses or scientific, technical or medical disciplines.

Additionally, where the user can identify a prior publisher that appears to be out of business, the list of imprints available from this link⁴ should be consulted immediately prior to each use.

Reasonable royalty or similar fee

The publishers who are signatories to these provisions have agreed that the royalty rate or similar fee to be charged will be identical to the publishers' normal permissions request rates. If the use goes beyond the relevant publisher's normal policy for granting permissions, such publisher-signatory commits to making a good faith effort to determine a reasonable royalty rate, taking all circumstances into consideration.

Publisher signatories/ imprints:

The publishers who have signed below have agreed with these provisions to extend a "safe harbour" for uses of "orphan works" whose "parentage" or ownership is later identified.

⁴ For STM list, see: <http://www.stm-assoc.org/documents-statements-public-co/2007.10%20Science-Medical%20Publisher%20Imprints%20List.pdf>

Publishers:

American Chemical Society
American Institute of Physics
BMJ Publishing Group Ltd
CABI
Elsevier
Emerald Group Publishing
Federation Press
Hogrefe Verlag GmbH & Co KG
Institute of Physics
International Union of Crystallography
IWA Publishing
John Wiley & Sons (including Blackwell)
Lucius & Lucius Verlagsgesellschaft mbH
Oxford University Press journals
Portland Press Limited
Royal Society of Chemistry
SAGE Publications
Springer Science+Business Media
Taylor & Francis
Thieme Publishers
University of Chicago Press
Woodhead Publishing

Version 1.1
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Version 1.2 (additional signatories)
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