

STM Best Practices Recommendations on Historical Collections and Related Rights Management

STM is aware of difficulties faced by parties attempting to clear rights and obtain permissions, particularly in older works, and has for this reason supported pro-active solutions to Orphan Works and Out-of-Commerce works:

- Safe Harbor Provisions for the Use of Orphan Works for Scientific, Technical and Medical Literature (http://www.stm-assoc.org/2013_04_16_Safe_Harbor_Provisions_for_the_Use_of_Orphan_Works.pdf) and
- Safe Harbour Provisions for the Digitisation and Making Available of Out Of Commerce Works forming part of the Scientific, Technical and Medical Literature (http://www.stm-assoc.org/2013_04_16_Safe_Harbor_Provisions_for_the_Use_of_OOC_Works.pdf).

Recently, with the significant development of the e-book marketplace, there has been renewed interest on the part of publishers and customers in “back-files” of older book content, which has to some extent been under-utilised and under-promoted. There are challenges however in bringing such products back to market, and it is in this context that STM believes it appropriate to identify “best practices” in clearing rights and re-introducing such works.

Most fundamentally, all clearance issues should start with the author-publisher contract and relationship, and publishers should do all appropriate due diligence to identify the current location and contact information of the relevant author and/or their estate, and then communicate with the author or estate concerning the plans to re-introduce such works in the digital marketplace. Further, the rights of any other rightsholders, such as illustrators and photographers, should be considered. In that communication the publisher should propose appropriate commercial terms with respect to such re-introduction, whether based on fee-sharing or royalty arrangements. Publishers should conduct at least the same degree of diligence search mechanisms and procedures identified in the STM OW and OOC protocols identified above, including online searches, searches of relevant collective management organization archives, and the like.

STM recognizes however that in some percentage of cases the publisher will not be able to locate the author or their estate, and therefore we are of the view that, consistent with our positions taken on consumer uses of Orphan Works, publishers should in such instances (after exhausting the search mechanism described above):

- Establish a **public online registry** indicating which works they intend to re-introduce, the time-period in which an author or estate should respond (see second point below), and information about how a “missing” author or estate can contact the publisher (to obtain the proposed commercial terms among other matters)—this registry should be updated with information about how and when the work is ultimately re-introduced;

- Establish a **time-period** after the search has been exhausted and after information has been publicly noted in a registry – at which point the work will be made available online or in other digital format (a 3-month waiting period might be considered reasonable); and
- Even when no response has been received from an author or the author’s estate, the publisher should **set aside the fee or royalty stream** as outlined in the commercial terms transmitted to the author or estate, for the benefit and account of the author—these fees should be secure and reasonably liquid so they can be made available to the author or their estate on short notice.

Publishers should always take due care in the scanning and digitisation of such works to ensure that the reproduction is professionally done, and would not discredit the author. The integrity of the work must also be respected, and of course the attribution of the author must be continued. Finally, if an author or estate does communicate to the publisher, even if this is after many years of re-introduction, the wishes of the author or their estate with respect to future distribution or publication should be respected and adhered to as closely as possible. In this connection, publishers should consider the relevant GAAP accounting standards with respect to such funds.

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