

Copyright Sensing Model of Orphan Works in Library: A Legal Approach

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Abstract

This article has been designed to cater the awareness of copyright sensing of orphan collection. Author found that copyright sensing of orphan work is a real problem faced by the libraries and an important question emerges that orphan works may occur in any library To maintain the Copyright of the orphan work it is necessary to identify and trace all the legal heirs, requiring family relations to be traced with diligent examination. While most works include some information about the author, it is not always possible to identify who the real copyright owner so the efforts should be placed. This copyright sensing helps libraries to estimate their orphan collections.

Keywords: Orphan Work, Copyright Sensing Model, Library

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INTRODUCTION

Library professionals are the promote people and quickly use new techniques and tools to serve the user to make national heritage accurate face. Orphan works came to boost worldwide recognition in the spheres of library. National archives are feeling copyright sensing in developing orphan literature and more use of orphan works helpful in the estimation of copyright sensing in archives now the question arises when will a work qualifies as an orphan work? [1] A work will qualify as an orphan work after a diligent search has been carried out. This means that before any work can qualify as an orphan work a library must carry out a thorough search for the copyright owner to be verified by the Intellectual Property Office which has been appointed as the independent licensing body for orphan works at the international standards. The main objective of this study is to create a legal framework to ensure the lawful access to orphan works contained in libraries or archives operated by variety authorities.

DEFINITION OF ORPHAN WORKS

According to US Library of Congress

It defines “Orphan works as copyrighted works whose owners are difficult or even impossible to locate.”

According to the NOLO Plain Language Dictionary

“Orphan works refers to works protected under copyright whose owners are difficult to locate. For example: a photograph or a newspaper column from a 1850s newspaper.”

According to sec. 3 (4) of The Copyright and Rights in Performances (Licensing of Orphan Works) Regulations 2014

“A relevant work is an orphan work where, after a diligent search made in accordance with regulation 4, one or more of the right holders in the relevant work have either not been identified or if identified have not been located.”

“Orphan works” are works that are protected by copyright but the author cannot be identified or found. Copyrighted works can become “orphaned” when the owner is unknown. This could happen for various reasons. For example, the author could have never been publically known; the work was published anonymously, or never published at all. Otherwise, the identity of the author could have been once known but the information was lost over time.

METHODOLOGY

In order to collect the data various works were analyzed to indentify the copyright sensing

area. Various issues of orphan works were identified, use of orphan works were also identified as development of that literature in relation to identifying the copyright sensing issue. Historical data drawn from diverse sources was helpful in mapping the copyright sensing.

WHEN LIBRARY RAISES COPYRIGHT SENSING ISSUES

When will a work qualify as an orphan work the library count copyright sensing issue firstly when owner cannot be identified? Secondly the work remains register as orphan work. Thirdly when owner cannot be found then difficult to determine the real owner causes burden on library for copyright owner for orphan work and lastly when owner does not respond and when owner uncertain of ownership [2]. Sometimes owner does not grant or denies his permission for publication of his works.

PROBLEMS WITH REGARDS TO COPYRIGHT SENSING IN LIBRARY

1. Are orphan works needlessly removed from library?
2. Are an inappropriate burden imposed on library to preserving it?
3. Should something be done to preserve it timely?
4. Handling issue in maintaining the orphan works.
5. Too expensive to preserve digitally.
6. Compulsory licensing issue.
7. Exemptions for libraries, museum and archives.
8. Redress to user covered in copyright sensing.
9. When owner loses control on his works then licensing right by default goes in favour of library as depository owner [3].

STEPS INVOLVED IN PROCESSING OF ORPHAN WORKS

That is the more difficult task to digitize the orphan works for getting the necessary permissions for digitizing works that are still the matter of copyright issue. That challenge lies in identifying and contacting the rights holders. There are many aspects of the laborious from the physical to the digital distribution of that content.

1. Observation and collection of orphan works.
2. Processing of orphan works. (Analysis, classification)
3. Formation of orphan works. (Aggregation)
4. Storage of orphan works.
5. Display orphan works with its terms and conditions.
6. Dissemination of orphan works. (Access)[4]

ROLE OF LIBRARIES AND ARCHIVES TO MAPPING THE ORPHAN WORKS

Based on experiences like this, the world has concluded that the orphan works problem has a crippling effect on libraries and archives, especially as they seek to digitize whole collections of works in order to make them more accessible to their users. Many works that libraries and archives would like to digitize are orphan works that is works for which the copyright holder either is unknown or cannot be located after a diligent search [7]. At the same time recent changes in use of copyrighted works need to digitize large amount of material in order to preserve and provide digital access to it, raise the presence of possible copyright liability yet provide no way of obtaining permission from un-locatable owners. Such type of copyright trouble is faced by the libraries and the archives to make that works available digitally.

The problem of orphan works may have existed in theory since the copyright laws came into effect. But some amendments have managed the problem; first provide extension to copyright terms second to elimination of copyright formalities third the technological skill that allows authors to create and preserve more copyrightable works fourth the technological changes in the way users access and consume copyrighted works [5]. Although some technologies prevent the works from being accessed or used except upon conditions specify by the copyright holder. These technologies have come under criticism for interfering with the rights users enjoy under copyright law but here some rules are engineered to include exceptions for

fair use and academic interest. These concerns have a clear negative effect on public access to knowledge and historical and cultural materials. Preliminary research from collections across the world indicates that libraries and archives hold a large number of orphan works. Further while collections of published content may already include many orphan works special collections containing copyrighted works create even greater challenges because these collections often contain historical and ephemeral materials for which contextual information about ownership is un-locatable. At the same time the majority of identified orphan works have no owner making the risk to those works. Libraries and archives state great concern about using orphan works this concern is no doubt exacerbated by the complaint related to copyright.

HOW THE MODEL OF COPYRIGHT SENSING WORKED OUT IN LIBRARIES

The model provides the solution to specific requirement of libraries and will assist them in satisfying user requirements to access the orphan work whether print or non-print. The model concord allows the library to digitize and provide access to out of print and non-print works to authorized users through license. It is not limited in respect of territory but access may not be offered through open networks [6]. Where the library may index the orphan work on its websites it declared that the licensee is authorized through the copyright sensing model to offer the content on its web-site only. Under the license the library may digitize, access the digitized data, arrange it in a systematic way to facilitate the search and retrieval and last provide access to its users through proper network. Access should be offered in a way that does not interfere with the archive's lawful interest in controlling the commercialization of their works. By this way the authorized user is allowed to search, view, retrieve and use the digitized orphan work.

It is further assumed that the archive that offers online access to orphan work will also grant access to the same categories of works

to authorized users in closed networks. Therefore, the model of copyright sensing has been worked out.

RULES THAT GOVERNS THE LIBRARIES AND ARCHIVES UNDER THIS COPYRIGHT SENSING MODEL

1. Legal certainty presupposes a solution for so called orphan works unknown or non-locatable right holders and their works.
2. Access means either within the premises of libraries and archives or online availability [8].
3. For born-digital works or works digitized by right holders this means getting permissions for access to works.
4. For analogue works this means getting permissions for large scale digitization and access.

LICENSE FOR ORPHAN WORKS IN INDIAN COPYRIGHT ACT (AS AMENDED) 1957

The Indian Copyright Act (as amended) 1957 orphan works are stated under sec. 31A. According to this section any person can apply for a compulsory license to utilize an orphan work where the author is dead or is unknown or cannot be traced or cannot be found and where the work is unpublished and has originated in India. In these circumstances a user can apply to the Copyright Board to have the orphan work published provided the work in question is an Indian work [11].

This necessity of unpublished Indian works is amended under the Copyright (Amendment) Bill 2010 which was passed by the Rajya Sabha on 17 May 2012 and came into force on 21 June 2012. This amendment extends the scope of the sec. 17 to any work whether they are unpublished works or published works for the public and continues to identify work which is withheld from the public in India where the author is dead or unknown or cannot be traced by diligent search [10]. Section 31 deals with a copyright owner who is known and identified but has refused to allow the republication of the work or has refused to allow the performance in public or has refused to allow broadcast or in the case of artistic work recorded in such works and by reason of

such refusal the work has been ban in the public. In that case the Copyright Board will allow the copyright owner to make their case for refusal. If the copyright Board is satisfied after holding an inquiry that the grounds for such refusal are not reasonable the Board can direct the Registrar of Copyrights to grant to the complainant a license with lenient terms and conditions to republish the work perform or broadcast the work as the case may be on payment of royalty to the copyright owner. The grant of license will be notified in the Official Gazette and a copy of the license will be sent to the both parties concerned the Registrar of Copyrights will direct the applicant to deposit the amount of the royalty determined by the Copyright Board in the account specified by the Copyright Board. That deposited amount will be available for a copyright owner or their legal heirs or the legal representatives stated in the Indian Copyright Act 1957 [9].

However, a license can be cancelled by the Copyright Board after giving an opportunity to the applicant to be heard on the following grounds:

1. That the licensee has failed to produce and publish the work as the time mentioned in the license [12].
2. That the license was obtained by fraud or misrepresentation as to any essential fact.
3. That the licensee has contravened any of the terms and conditions of the license.

CONCLUSION

The explanation and discussion mentioned above demonstrates that the sensing approaches of orphan works in libraries and archives become a copyright sensing model at all. The study shows that the orphan works problem is a real one in existing copyright law. Thus it can be surely and empathetically concluded that copyright sensing of orphan works has its own region of research area of study for copyright issue. After handling the issue to maintaining the orphan literature the burden imposed on library to preserving it with digital opportunity to its users. It was shown that copyright sensing body should issue the compulsory license to use it by settling the exemption issue for libraries and

national archives. And in matter of redress case some laws should be ruled out for it. And in case when owner loses rights on his works then licensing right by default goes in favour of archives as primary depository owner

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