

Orphan Works Timeline

(Working draft 4 – for comment – not for publication)

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1985	Parliament of Canada passes <i>Copyright Act</i> R.S., c. C-42 including Section 77: 'Owners who cannot be located' creating a licensing regime. ¹
1994	Copyright Convergence Group, <i>Highways to Change: Copyright in the New Communications Environment</i> ² recommends Orphan works be further considered.
1999	Copyright Law Review Committee notes the orphan works issue generated comment in submissions to their Simplification of the <i>Copyright Act</i> inquiry. ³
2000	<i>Copyright Amendment (Digital Agenda) Act</i> 2000 (Cth) ('Digital Agenda Act') is passed in Australia, without explicit consideration of orphan works. ⁴ April - Sweden's <i>Act on Copyright in Literary and Artistic Works</i> (1960). is amended See Article 26i. ⁵ Copyright Law Review Committee rejects proposal for orphan works style licence ⁶
2001	May - <i>Directive 2001/29/EC</i> of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. ⁷

¹ Available at: <http://laws.justice.gc.ca/eng/C-42/FullText.html> and <http://laws.justice.gc.ca/en/showtdm/cs/C-42/> See also the Copyright Board Brochure, in Resources List - Reports.

² AGPS, Canberra, 1994. See p.68. Noted in McDonald. Available at: [http://www.ag.gov.au/agd/WWW/rwpattach.nsf/viewasattachmentpersonal/\(CFD7369CAE9B8F32F341DBE097801FF\)~highwaysummary.html/\\$file/highwaysummary.html](http://www.ag.gov.au/agd/WWW/rwpattach.nsf/viewasattachmentpersonal/(CFD7369CAE9B8F32F341DBE097801FF)~highwaysummary.html/$file/highwaysummary.html)

³ Copyright Law Review Committee (CLRC). *Report on the simplification of the Copyright Act 1968: Part 2: Categorisation of Subject Matter and Exclusive Rights, and Other Issues* (1999). Available at: <http://www.austlii.edu.au/au/other/clrc/5> or https://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright_CopyrightLawReviewCommittee_CLRCReports_SimplificationoftheCopyrightAct1968. Noted in McDonald.

⁴ Available at: http://www.austlii.edu.au/au/legis/cth/num_act/caaa2000294/ or <http://www.comlaw.gov.au/Details/C2004A00702>

⁵ Available at: <http://www.wipo.int/wipolex/en/details.jsp?id=3656>

⁶ *Jurisdiction and Procedures of the Copyright Tribunal: Final Report* (2000) Ch 18. Available at: <http://www.austlii.edu.au/au/other/clrc/3/1.html>. See Firstpoint commentary [14.436].

⁷ Brussels: Commission of the European Communities, Official Journal of the European Union (OJ), L 167, 22 June 2001, p. 10. Summary at: http://europa.eu/legislation_summaries/information_society/l26053_en.htm, text available at <http://www.ivir.nl/legislation/eu/copyright-directive.doc> or <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:167:0010:0019:EN:PDF>

2002	<p>March - <i>WIPO Copyright Treaty</i> of 1996 comes into force 6 March 2002. See Article 10.⁸</p> <p>June - Council of the European Union passes Resolution of 25 June 2002: <i>on preserving tomorrow's memory — preserving digital content for future generations</i>, but with no mention of orphan works explicitly.⁹</p>
2003	Australian War Memorial commences project to digitise notebooks and diaries of CEW Bean to make the images publicly available via web.
2004	War Memorial's Bean project grinds to a halt after review of the complex mix of copyrights (later pursued using 200AB). ¹⁰
2005	<p>January - Australia-United States Free Trade Agreement (AUSFTA) comes into force.¹¹</p> <p>US Copyright Office holds inquiry into the issue of orphaned works in response to concerns that the uncertainty surrounding these works may needlessly discourage subsequent creators from using them.¹²</p> <p>May - Attorney-General's Department released issues paper; "Fair Use and Other Copyright Exceptions: An examination of fair use, fair dealing and other exceptions in the Digital Age", calling for submissions.¹³</p> <p>July - Australian Digital Alliance submission to Attorney-General, among many others.¹⁴</p>
2006	<p>January - US Copyright Office <i>Report on Orphan Works</i>.¹⁵</p> <p>February – announcement that the Commonwealth Attorney-General's Department would conduct an inquiry into orphan works.¹⁶</p> <p>May – Australian Libraries' Copyright Committee and the Copyright In Cultural Institutions Group hosts a joint forum which looks at the issue of orphan works in</p>

⁸ Available at: http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#P83_10885

⁹ Brussels: Commission of the European Communities, *Official Journal* C 162 (06 July 2002), pp. 4–5. Available at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002G0706\(02\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002G0706(02):EN:NOT)

¹⁰ van Dyk, Robyn (Australian War Memorial). 'Digital preservation: the problems and issues involved in publishing private records online: the web publishing of the notebooks and diaries of C.E.W. Bean', (2010), paper for VALA2010, the 15th VALA Biennial Conference and Exhibition, Melbourne. Available at: http://www.vala.org.au/vala2010/papers2010/VALA2010_77_van_Dyk_Final.pdf

¹¹ Rimmer, Matthew. 'Robbery under Arms: Copyright Law and the Australia-United States Free Trade Agreement' (March 2006), *First Monday*, Volume 11, Number 3. Available at SSRN: <http://ssrn.com/abstract=855805> and http://works.bepress.com/matthew_rimmer/8

¹² Available at: <http://www.copyright.gov/fedreg/2005/70fr3739.html>

¹³ Available at: http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_Copyright-ReviewofFairUseExeption-May2005

¹⁴ Australian Digital Alliance, *Fair Use and Other Copyright Exceptions: An examination of fair use, fair dealing and other exceptions in the Digital Age*, Submission to the Attorney-General's Review of Fair Use and Other Copyright Exceptions, May 2005. Available at: <http://www.digital.org.au/submission/FairDealingReview05.rtf>

¹⁵ See Peters, Marybeth, Register of Copyrights, US Copyright Office, *Report on Orphan Works*, Library of Congress, Washington DC, 2006 Available at: <http://www.copyright.gov/orphan/orphan-report-full.pdf>

¹⁶ Australian Copyright Council, *Orphan Works*, Copyright Information, 18 December 2008. <<http://www.copyright.org.au/information/cit031/wp0130>> viewed 11 August 2010.

	<p>libraries and cultural institutions in Australia.¹⁷</p> <p>December – <i>Gowers Review of Intellectual Property</i> released by UK government.¹⁸</p>
2007	<p>February – “Copyright: From ‘The Da Vinci Code’ to YouTube” Conference (Brisbane), discussed amongst other things, the copyright law exceptions and the ongoing problem of orphan works¹⁹</p> <p>May – IFRRO <i>Statement on Orphan Works</i>²⁰</p> <p>June – IFLA/IPA <i>Joint Statement on Orphan Works</i>.²¹</p>
2008	<p>January – ‘Orphan works’ listed as an area of responsibility for the New Technologies Section of the Copyright Law Branch of the Attorney-General's Department in the Department's January 2008 e-newsletter.²²</p> <p>April – Two bills related to orphan works introduced to US Congress 110, the <i>Orphan Works Act of 2008</i> and the <i>Shawn Bentley Orphan Works Act of 2008</i>. (Note that in the US, titles of bills refer to 'Act' rather than 'Bill').²³ Neither of these bills are passed, nor introduced in next session.</p> <p>June – European Commission, High Level Expert Group (HLG) on European Digital Libraries, Copyright subgroup delivers <i>Final report on digitization, orphan works, and out-of-print works</i>²⁴</p> <p>August – New Zealand Government releases <i>The Digital Strategy 2.0</i>²⁵</p> <p>November – US court gives preliminary approval to the original Google Books Settlement.²⁶</p> <p>European Commission’s European Digital Libraries Initiative delivers its <i>Joint Report: Sector-Specific Guidelines on Due-Diligence Criteria for Orphan Works</i>²⁷</p>

¹⁷ Available at: <http://www.digital.org.au/alcc/HomeArchives.html#OrphanedWorks> – note recordings of presentations given available for download at website

¹⁸ Available at: Available at: http://www.hm-treasury.gov.uk/d/pbr06_gowers_report_755.pdf or http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/d/pbr06_gowers_report_755.pdf.

¹⁹ <http://www.acipa.edu.au/PDFs/2007ConferenceProgram.pdf>

²⁰ International Federation of Reproduction Rights Organisations. Available at: <http://www.ifrro.org/upload/documents/IFRRO%20Statement%20on%20Orphan%20Works%20May%2007.pdf>

²¹ International Federation of Library Associations and Institutions (IFLA) and International Publishers Association (IPA). *IFLA/IPA Joint Statement on Orphan Works* (June 2007). Available at: <http://www.ifla.org/publications/iflaipa-joint-statement-on-orphan-works> or <http://archive.ifla.org/VI/4/admin/ifla-ipaOrphanWorksJune2007.pdf>

²² http://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright_e-NewsonCopyright_2008_Issue48-January2008

²³ Australian Copyright Council, *Orphan Works*, Copyright Information, 18 December 2008, <<http://www.copyright.org.au/information/cit031/wp0130>> viewed 11 August 2010, <http://www.opencongress.org/bill/110-h5889/text?version=ih&nid=t0:ih:111>

²⁴ Available at: http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/reports/copyright/copyright_subgroup_final_report_26508-clean171.pdf

²⁵ Available at: <http://www.digitalstrategy.govt.nz/upload/Documents/Digital%20Strategy%20.0%20FINAL.pdf>

2009	<p>January - Australian Library and Information Association conference, 'Information Online', paper 'Letting the orphans out of the orphanage - risk management for the use of orphan works at the State Library of Queensland' presented.²⁸</p> <p>June – Copyright Society Seminar (Sydney) – “Australia and the Future of Copyright proposals for new approaches”, proposed amendments concerning orphan works and other orphan material²⁹.</p> <p>October – Cultural Collections, Creators and Copyright Conference (Melbourne), conference addressed key issues currently facing Australia’s cultural institutions, creators, and copyright owners in the developing digital environment –including orphan works³⁰.</p> <p>November – US court gives preliminary approval to amended Google Books Settlement.³¹</p> <p>December – Government 2.0 Taskforce (chair Nicholas Gruen) releases <i>Engage: Getting on with Government 2.0 -- Report of the Government 2.0 Taskforce</i>³² recommending action to remove restrictions that impede the use of orphan works.</p>
2010	<p>October – EC Draft <i>Single Market Act</i> circulated, proposal 2 includes Orphan Works Directive.³³</p> <p>British Library estimates 40% of in-copyright works are orphan works³⁴</p> <p>April – Photographers take legal action against Google Book Search.³⁵</p> <p>UK <i>Digital Economy Act</i> passed with Orphan Works provisions excised at the last</p>

²⁶ Available at: <http://www.googlebooksettlement.com/>

²⁷ Available at:

http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/orphan/guidelines.pdf

²⁸ Margaret Warren. Available at: <http://conferences.alia.org.au/online2009/docs/PresentationC3.pdf>

²⁹ J.A.L. Sterling www.copyright.asn.au/events/f09n03paper.pdf Annex V

³⁰ <http://www.law.unimelb.edu.au/db/diary/cmctil/Detail.CFM?DiaryID=4381>

³¹ <http://www.googlebooksettlement.com/>

³² Secretariat hosted by the Online Services Branch, AGIMO, Department of Finance and Deregulation, Australian Government, Canberra. See Recommendation 7.3, p. xxi: “It is recommended that the proposed OIC examine the current state of copyright law with regard to orphan works (including section 200AB of the *Copyright Act 1968*), with the aim of recommending amendments that would remove the practical restrictions that currently impede the use of such works”. Available at:

<http://www.finance.gov.au/publications/gov20taskforcereport/> and

<http://www.finance.gov.au/publications/gov20taskforcereport/doc/Government20TaskforceReport.pdf>

³³ European Commission. Draft *Single Market Act*, (27 October 2010). Open for consultation until Feb 2011. See Proposal 2 for an Orphan Works Directive. See also Single Market High Level Conference organised by the European Commission in Brussels, 8 February 2011. Available at:

http://ec.europa.eu/internal_market/smact/index_en.htm, and see related Communication at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:REV1:EN:PDF>. [“Proposal No 2: In 2011 the Commission will submit a proposal for a framework Directive on the management of copyrights, with the aim of opening up access to online content by improving the governance, transparency and electronic management of copyright. The Commission will also be proposing a Directive on orphan works.”]

³⁴ ‘Press and Policy: Intellectual Property’ web site section (undated, accessed January 2011). <http://pressandpolicy.bl.uk/content/default.aspx?NewsAreaId=316>.

³⁵ *The American Society of Media Photographers Inc v Google Inc*, 10-02977, US District Court, Southern District of New York filed 7 April 2010. [Pitt:] The press release of a plaintiff is available at:

<http://www.graphicartistsguild.org/news/news-system/article?id=122>

	<p>minute in the rush to pass Bills before the election.</p> <p>May – European Commission launches <i>A Digital Agenda for Europe</i>³⁶</p> <p>May – Australian government ‘agrees with modification’ with Gruen report’s recommendation on orphan works³⁷</p>
2011	<p>January – European Digital Libraries Initiative’s Comité des Sages releases <i>The New Renaissance Report</i> recommends instrument on Orphan Works with an ‘8 step test’.³⁸</p> <p>UK’s Open Educational Resources IPR Support releases <i>Risk Management Calculator</i>, an interactive online risk assessment tool for works including orphan works which helps assess risk of breach and compliance enforcement.³⁹</p> <p>February - SBS Statement on Orphan Works⁴⁰</p> <p>February - EU consults on <i>Single Market Act, EC challenges Google Book Search settlement</i>.⁴¹</p>

³⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2010/0245. See p. 30. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0245:FIN:EN:HTML> or http://ec.europa.eu/information_society/digital-agenda/documents/digital-agenda-communication-en.pdf

³⁷ Australian Government (Lindsay Tanner, Minister for Finance and Deregulation). *Government Response to the Report of the Government 2.0 Taskforce* (5 May 2010). See in particular Recommendation 7.3. Available at: <http://www.finance.gov.au/publications/govresponse20report/index.html>.

³⁸ Available at: http://ec.europa.eu/information_society/activities/digital_libraries/doc/refgroup/final_report_cds.pdf. See also CDS web page at http://ec.europa.eu/information_society/activities/digital_libraries/comite_des_sages/index_en.htm, NYT story at: <http://www.nytimes.com/2011/01/11/business/global/11google.html>

³⁹ Available at: <http://www.web2rights.com/OERIPSupport/risk-management-calculator/>; see also media release, at: <http://www.jisc.ac.uk/news/stories/2011/01/calculator.aspx>

⁴⁰ *SBS Statement On Orphan Works [Version 1.0 February 2011]* (2011). Available at: <http://www.sbs.com.au/aboutus/corporate/view/id/541/h/SBS-Statement-on-Orphan-Works-1.0-February-2011>

⁴¹ de la Durantaye, Katharina. ‘H Is for Harmonization: The Google Book Search Settlement and Orphan Works Legislation in the European Union’, *New York Law School Law Review*, Volume 55, Number 1, (2010/11). Available at: http://www.nyls.edu/user_files/1/3/4/17/49/1080/55-1%20Final%20de%20la%20Durantaye%2011.30.10.pdf. See also Baker, Jennifer (IDG News Service). ‘European Commission challenges Google Books: The EU’s flagship digitization project takes on Google Books’ (11 January 2011). News coverage of Comité des Sages/Europeana Report. Available at: http://www.arnnet.com.au/article/372912/european_commission_challenges_google_books/ See also NYT <http://www.nytimes.com/2011/01/11/business/global/11google.html>