

**COPYRIGHT ORPHAN WORKS: A MULTI-PRONGED
SOLUTION TO SOLVE A HARMFUL MARKET INEFFICIENCY**

by JOSHUA O. MAUSNER*

TABLE OF CONTENTS

I. INTRODUCTION	518
II. NATURE OF THE ORPHAN WORKS PROBLEM	520
A. The Orphan Works Problem Generally.....	520
B. The Problem of Missing Markets.....	521
C. Types of Copyrighted Works Affected.....	522
D. Requirements of a Viable Solution	523
III. ANALYSIS OF POSSIBLE SOLUTIONS	524
A. Determining Orphanhood	524
1. Reintroduction of Copyright Formalities	524
2. Reasonable Efforts Requirement.....	525
B. Treatment of Orphan Works	528
1. Loss of Copyright Protection Itself.....	528
2. Limited Remedies	530
a. Fair Use Affirmative Defense	530
b. Default Licenses	532
C. Copyright Registries	534
1. Intent to Use Registry	535
2. Mandatory Owner Registry	536
3. Voluntary Owner Registry	538
IV. PROPOSAL: A MULTI-PRONGED SOLUTION	539
A. Reasonable Efforts Requirement.....	539
B. Voluntary Owner Registry	539
1. Benefits of a Voluntary Owner Registry.....	540
a. Benefits to the Orphan Works Situation.....	540
b. Additional Benefits Beyond the Orphan Works Situation.....	541
(1) Preservation and Archiving of Creative Works	541

*J.D., UCLA School of Law, 2008; Senior Editor, *UCLA Law Review*; B.A., University of California, Berkeley, 2003. Sincere thanks to Professor David Nimmer and Jeffrey Mausner for their helpful comments, Professor Eugene Volokh for his advice, and Janet Mausner, Jillian Gordon, my family, friends, and classmates for their support. An earlier version of this article was published at 12 *Journal of Technology Law & Policy* 395 (2007).