



University System of Georgia  
Creating A More Educated Georgia

## Orphan Works

The situation is common: You want to use a copyrighted work beyond the limits of fair use or other copyright exception. You tracked down a likely copyright owner and have attempted to seek permission, but the effort simply has produced no conclusion. Worse, perhaps you did receive permission, but with burdensome conditions or a high price. Perhaps you wrote for permission, and the permission was flatly denied.

In some situations, you might have little choice but to absorb the bad news and change your plans. Much more complex and frustrating, however, is when you exert an honest effort, but you simply cannot find a copyright owner or your efforts go unanswered. When you cannot identify or locate the current owner, the copyright materials are sometimes called "orphan works." In the meantime, what do you do when you reach that mysterious "dead end" of the quest?

### **Return to fair use.**

When you originally evaluated fair use, you may have focused on an assumption about the "potential market" for the work in question, and the possible harm to that market caused by your use of the work. If you discover that there is truly no permissions market for this work, you should reevaluate the fourth factor in the fair use analysis. You may find that this factor now weighs in favor of fair use. For more information, visit the fair use pages of the USG Copyright Policy.

### **Replace the materials with alternative works.**

If you reach a "dead end," you should ask yourself whether those specific copyrighted works are the only materials that will satisfy your goals. In many cases, you can achieve your desired end results with works in the public domain and available for use without copyright restriction or from other copyright owners.

### **Alter your planned use of the copyrighted works.**

Your ambitious plans may have involved scanning, digitizing, uploading, dissemination, Internet access, and multiple copies for students and colleagues, causing the copyright owner to deny permission for such broad uses. Changing your ambitious plans to something more modest and controllable may either change the copyright holder's mind or increase the likelihood that you are within fair use. Reigning in the number of copies, scope of access, or potential for rapid digital duplication and dissemination, may tip the balance in favor of fair use.

*Revised for use by the University System of Georgia, based upon the fair use resources provided by the Copyright Advisory Office at Columbia University, <http://www.copyright.columbia.edu/orphan-works>*