

Testimony of

Mr. Rick Prelinger

April 6, 2006

STATEMENT OF RICK PRELINGER,
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Thank you for the privilege of addressing the Committee today. I would like to begin by thanking the Chairman and Ranking Member for their leadership in addressing the orphan works situation. The process you have started has awakened broad public interest, and we are excited to see this problem being actively and thoughtfully addressed.

I come to you today wearing two hats.

First, as Board President of the Internet Archive, I would like to say a few words about our activities, especially our project to digitize the contents of America's great libraries and build an open digital library available to all.

My second (and considerably smaller-sized) hat is as Founder and President of Prelinger Archives, a small commercial film archive specializing in historical footage of American life, culture and industry. I'd like to talk about why clarifying the situation of orphan works is especially critical for films.

First, the Internet Archive. We are a nonprofit library that has collected billions of works and served millions of users since 1996. We collect books, music, moving images, web pages, and software programs. We work with the Library of Congress, the National Archives and Records Administration, the National Archives of the UK and many other institutions to find workable solutions to libraries' and archives' missions in the digital world.

Last October, we announced the formation of the Open Content Alliance in partnership with five major technology companies [Adobe, Hewlett-Packard, Microsoft, Xerox and Yahoo!], and over 50 research and public libraries holding over 150 million books. The Alliance seeks to digitize the holdings of key libraries and build a great joint collection online. Members have all agreed to make their holdings openly available to all users, subject of course to the limitations of copyright law.

[We are encouraging others to develop new ways to use the materials and help the books to reach greater audiences. Our users range from university mathematics professors seeking rare classic texts to middle-school children whose school libraries could use more books. The Internet offers us an unprecedented opportunity to build a great online library, not a library to replace physical libraries, but an organized collection of millions of books in all disciplines.]

We believe there are many hundreds of thousands, perhaps millions of orphan works which, if digitized and made available to all, would vastly add to our public storehouse of knowledge. We hope that we and our partners will be able to digitize these books for noncommercial public purposes without fear of liability. Toward this end, we support the Copyright Office's suggestion regarding limitation on remedies for noncommercial use.

Let me switch hats and say a quick word about Prelinger Archives. Most of our collection came here to the Library of Congress in 2002, but we are still collecting historical film, especially industrial films, advertising films and home movies. These are vivid documents of everyday life showing our country and its people as they actually were, quite unlike Hollywood films or TV shows. Our footage is in very high demand by producers of films, television and educational media, and we have made a business out of licensing stock footage. Most of our films are orphan works, because most small film producers are no longer in business.

Contemporary audiences are fascinated by historical films. I recall the thrill of an audience in Britton, South Dakota when I showed them Depression-era home movies from their own town. And this coming August, archivists and members of the public will gather in at least 24 states to celebrate Home Movie Day, watch family films, and select historically valuable items for preservation.

Now, film is a peculiar creature in that it is quite fragile. It often decomposes more quickly than copyrights do. We therefore face a critical dilemma when it comes to preserving films. Nonprofit archives like Northeast Historic Film and organizations like the National Film Preservation Foundation need assurance that they can intervene to rescue deteriorating films without fear of liability. Small businesses like ours, whose budgets are at nonprofit levels, also need to know that they can recover preservation costs through commercial licensing.

(Thanks to Senators Hatch, Leahy, Cornyn and Feinstein for their work to reauthorize the NFPB, the parent organization of the NFPF.)

I'm a member of the baby-boom generation. Much of my generation's history has passed into the public domain. But because of the peculiarities of copyright law, many of my younger friends lack the freedom to freely quote or reproduce key works from their own era. Easing access to orphan works would go a long way towards addressing this generational inequity.

I thank the Committee for its attention, and look forward to answering any questions.