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Abstract:

American or European models of use of orphan works can be divided into a number of groups, such as: the US Government's Restricted Claims Model, models with the central office granting a license (Canada, Hungary, UK), and models using the collective management system (Scandinavian countries, Switzerland). The model adopted in the United States gives quite a lot of freedom to the user, but is fraught with uncertainty about the possible infringement of copyright. It is open question whether the fair use doctrine for the use of orphan works for non-commercial purposes by the cultural institutions would be more effective. Formalized Canadian, Hungarian and British models give users greater legal certainty with regard to the use of the work, but also prolong the access to orphan works. Entrusting orphan works to collective management organizations could be an effective solution for those forms of creativity over which these organizations actually care.