

unpublished works as well? In Canada, for example, the system for unlocatable copyright owners only applies to published works. What are the reasons for applying it to unpublished works? If "orphan work" status would apply to unpublished works, how would such a system preserve the important right of first publication recognized by the Supreme Court in *Harper & Row*?¹⁴ What are the negative consequences of applying such a system to unpublished works?

5. Effect of a Work Being Designated "Orphaned"

However a work is identified and designated as "orphaned," what would be the effects of such designation? Under systems for a mandatory, formal registry of maintained works, like the 1909 Act, the right to assert one's exclusive rights vis à vis others could similarly be lost, in whole or in part, if the work was not contained on the registry. Should this loss of rights apply only to the particular work at the time of use, or only to the particular use or user, or would it affect a permanent loss of rights as against all uses and users?

Other possibilities include imposing a limitation on remedies for owners whose works are "orphaned"—without affecting the copyright itself. For instance, under the Canadian approach, the Copyright Board sets the license fees and other terms for the use and collects the payments on behalf of the copyright owner should one ever be identified. Under that approach, users could be confident that their use of the work would not subject them to the full range of remedies under the Copyright Act, but only an amount akin to a fee for use. At the same time, copyright owners would not be concerned about the inadvertent loss of rights from failure to pay the fee or take other requisite action. Domestically, the Copyright Clearance Initiative of the Glushko-Samuelson Intellectual Property Law Clinic of American University's Washington College of Law is currently developing a proposal that would limit the liability for users of orphan works and not result in any loss of copyright per se on the part of the copyright owner.¹⁵ Under that proposal, only a

recovery of a reasonable royalty would be allowed in infringement actions with respect to orphan works where good faith efforts have been made to locate the copyright owner. Are there other approaches that might be used? If a reasonable royalty approach is used, how should it be determined in any given case? To settle disputes as to the appropriate fee, is traditional Federal court litigation the right dispute resolution mechanism, or should an administrative agency be charged with resolving such disputes or should another alternative dispute resolution mechanism be adopted?

Are there other measures that could be applied in cases of orphan works? How would these, or any of the others described above, affect the incentives for authors of such works, particularly small copyright owners or individuals who might bear a greater burden than copyright owners with more resources?

6. International Implications

How would the proposed solutions comport with existing international obligations regarding copyright? For example, Article 5(2) of the Berne Convention generally prohibits formalities as a condition to the "enjoyment and exercise" of copyright. For any proposed solution, it must be asked whether it runs afoul of this provision. Would a system involving limitations on remedies be consistent with the enforcement provisions of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) or the prohibition against conditioning the enjoyment or exercise of copyright on compliance with formalities of TRIPS and other international agreements to which the U.S. is party? Would such proposals satisfy the three-step test set forth in TRIPS, Art. 13, requiring that all limitations and exceptions to the exclusive rights be confined to "certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder"? Are there any other international issues raised by a proposed solution?

Dated: January 21, 2005.

Marybeth Peters,

Register of Copyrights.

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include how to determine what constitutes "good faith efforts" to locate the copyright owner and how to determine and/or settle what a reasonable royalty would be.

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

Under the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 69 FR 64114 and one comment was received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW, Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to splimpto@nsf.gov. Copies of the submission may be obtained by calling (703) 292-7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292-7556 or send e-mail to splimpto@nsf.gov.

An agency may not conduct or sponsor a collection of information

¹⁴ See generally *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 550-555 (1985).

¹⁵ Pursuant to that proposal, copyright law would be amended to limit liability for the use of works where the user has been unable to locate the copyright holder after making good faith efforts. Liability could be limited to a "reasonable royalty" or the like, or could be akin to the limitation of U.S. Federal Government liability to "reasonable and entire compensation as damages * * *, including minimum statutory damages." 28 U.S.C. § 1498(b) (2003). Complex issues raised by that proposal

unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION: On November 3, 2004, we published in the **Federal Register** (69 FR 64113) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending January 3, 2005. We received one comment regarding this notice.

Comment: One commenter wrote about the value of the program.

Response: NSF believes that in order to continue funding, program evaluations are necessary.

Title of Collection: Evaluation of NSF Support for Undergraduate Research Opportunities (URO).

OMB Number: 3145-0121.

Type of Request: Intent to seek approval to continue an existing information collection for three years.

Abstract: Follow-up Research on Undergraduate Research Opportunities (URO-2).

Proposed Project: The National Science Foundation (NSF) manages a number of programs that provide meaningful research experiences for undergraduate students. This suite of programs includes: Research Experiences for Undergraduates (REU), both the Site and Supplement components; Research in Undergraduate Institutions (RUI); the undergraduate research components in several of NSF's large research centers programs, *e.g.*, Engineering Research Centers (ERC) Programs, Science and Technology Centers (STCs); and several institution-wide resources development programs in which undergraduate research experiences are often one component.

These Programs provide a wide range of US undergraduate students with opportunities to conduct hands-on research under the mentorship of graduate students, postdoctoral fellows, and faculty in various types of higher education institutions, including small liberal arts colleges, minority-serving institutions, research universities, as well as non-profit institutions in which science or engineering research is conducted.

The purpose of the proposed evaluation is to follow-up on undergraduate participants in research experiences supported by NSF who were surveyed in 2003. The 2003 survey

collected information about why participants chose to participate in research, the nature of the research activities, effects of research on participants' knowledge, skills, confidence, awareness, and academic career interests and aspirations. The proposed survey will provide information about participants' current academic and employment status (in 2003, most of the respondents were in their senior year of college) and participants' current perceptions of the effects of their undergraduate research experiences on their career and academic decisions. The survey database will be linked to that of the 2003 survey to access differences on a number of dimensions, including NSF program, academic major, type of academic institution, and sex and race/ethnicity of the participant.

Use of the Information: NSF and others who design undergraduate research programs will be able to use the information to help design programs that meet the needs of different kinds of students in different kinds of settings.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals.

Estimated Number of Respondents: 2900.

Estimated Total Annual Burden on Respondents: 1450 hours—2900 respondents at 30 minutes each.

Frequency of response: One time.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond.

Dated: January 19, 2005

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-266 and 50-301]

Nuclear Management Company, LLC Point Beach Nuclear Plant, Units 1 and 2; Notice of Availability of the Draft Supplement 23 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of Point Beach Nuclear Plant, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG-1437, regarding the renewal of Facility Operating Licenses DPR-24 and DPR-27 for the Point Beach Nuclear Plant, Units 1 and 2 (PBNP), for an additional 20 years of operation. PBNP is located on the western shore of Lake Michigan in Two Rivers, Wisconsin, approximately 30 miles southeast of Green Bay, Wisconsin. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft Supplement to the GEIS is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1-800-397-4209, (301) 415-4737, or by e-mail to pdr@nrc.gov. In addition, the Lester Public Library, located at 1001 Adams Street, Two Rivers, Wisconsin 54241, has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by April 13, 2005. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of