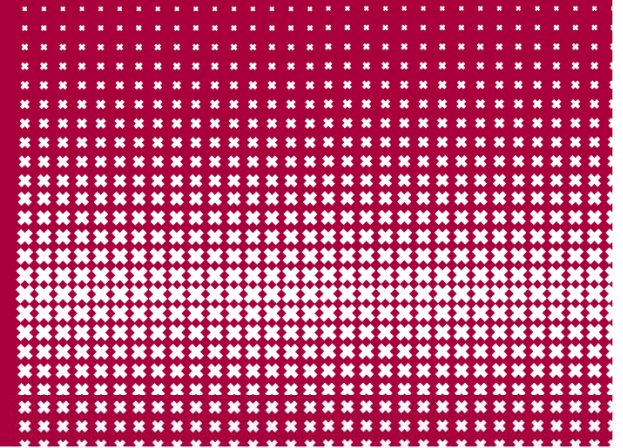




UNIVERSITY OF AMSTERDAM

Stef van Gompel

Institute for Information Law



The Orphan Works Chimera and How to Defeat It

A View From Across the Atlantic

Introducing the Chimera



- Lion's head: mass-digitization projects.
- Snake's head: transformative and derivative uses.
- Goat's head: small-scale impermanent/ephemeral uses.

Mass-digitization & reutilization [lion]

- Orphan works: considerable legal uncertainty.
 - Monetary relief: damages may add up.
 - EU: actual damages: moderate.
 - US: statutory damages: high (wilful infringement).
 - Injunctive relief: not a significant problem.
- Part of bigger problem of rights clearance.
- Solution: collective licensing (e.g. ECL).



Transformative/derivative use [snake]

- Orphan works: high legal uncertainty.
 - Monetary relief: EU moderate / US high.
 - Injunctive relief: enormous problem!
 - Removing an orphan work from a transformative or derivative work can render the entire work valueless.
- Solution: statutory license (or specific exception or limitation) subject to a reasonable search.



Impermanent/ephemeral use [goat]

- Orphan works: (moderate) legal uncertainty.
 - Risk is limited to monetary damages.
 - Injunctive relief is not a real problem.
- EU (moderate damages): practical solution.
- US: statutory model aimed at limiting monetary damages for copyright infringement.



Conclusion

- No 'one size fits all'-solution!
- Different models for different manifestations of the orphan works problem:
 - Large-scale uses (mass-digitization projects).
 - Small-scale uses.
 - Injunctive relief.
 - Monetary relief.