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**Executive Summary: Blockchain and Orphan Works:**

**Creating a distributed voluntary registry of orphan works searches**

**and clearances using a blockchain maintained by libraries**

I. Application

There has been a tremendous amount of fervor over the use of blockchain, especially in the area of cryptocurrency. Other uses are coming to the fore: using blockchain (AKA distributed ledger technology) for self-executing contracts, as a registry for land titles, tracking digital artworks and their sales/license fees. Much of the emphasis on use of blockchain for intellectual property use is predicated on creator/rights-owner control and licensing of their works.This is a perfectly valid use for the technology, but there has not been the same level of scrutiny of how blockchain may be used to promote fair use and the public domain.[[1]](#footnote-2)

In 2017, Jake Goldenfein, Lecturer in Law, and Prof. Dan Hunter, both of Swinburne Law School, Australia, proposed using blockchain and automated tools to augment and expand current orphan work registries in Europe.[[2]](#footnote-3) I believe that such an approach can and should be adopted for American works, and led by American libraries. A voluntary registry of searches for potential orphan works will not solve the problem. But the benefits of having such a registry include easy access by interested parties, as well as contributions and review by a range of for-profit and non-profit stakeholders able to track chains of searches and even resolve clearance questions for a work or set of works. There are significant drawbacks, such as how to incentivize using the blockchain and how to prevent manipulation of the chain.[[3]](#footnote-4) But given the regulatory and legislative inertia that has blocked attempts to deal with orphan works, encouraging crowdsourcing of orphan works research may be the best, most risk-adverse method of reviving use of these works in our current copyright regime.

II. Recommendations:

* Start a pilot program to:
  + Investigate the best protocols and framework for an orphan works blockchain
  + Collaborate with a small but relevant number of stakeholders representing various types of users and intermediaries to develop search and record prototypes
  + Release and track a minimally viable product (MVP) to demonstrate potential use of a blockchain
  + Document, analyze and disseminate results

1. For instance, see Riede, Lutz, Digital Transformation: Managing IP Rights Through the Blockchain (March 13, 2018). Available at Lexology: <https://www.lexology.com/library/detail.aspx?g=1723d7df-0bb7-46f3-9db0-a9299c36dadc> [↑](#footnote-ref-2)
2. Goldenfein, Jake and Hunter, Dan, Blockchains, Orphan Works, and the Public Domain (December 5, 2017). Columbia Journal of Law & the Arts, Vol. 41, No. 1, 2017. Available at SSRN: <https://ssrn.com/abstract=3083153> [↑](#footnote-ref-3)
3. Eden, Terence, “How I Became Leonardo da Vinci on the Blockchain,” (June 12, 2018). Terence Eden’s Blog. Available at: https://shkspr.mobi/blog/2018/06/how-i-became-leonardo-da-vinci-on-the-blockchain/ [↑](#footnote-ref-4)