



**Association
of illustrators**

IPO

Copyright Works: seeking the lost

Response to Consultation February 2014

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AOI is a Business representative trade body

About the AOI

The Association of Illustrators (AOI) was established in 1973 to advance and protect illustrators' rights and is a non-profit making trade association dedicated to its members' professional interests and the promotion of contemporary illustration. As the only body to represent illustrators and campaign for their rights in the UK, the AOI has successfully increased the standing of illustration as a profession and improved the commercial and ethical conditions of employment for illustrators. AOI offers members professional and business advice.

Our members contribute considerably to the value of the UK's culture, economically and culturally, creating imagery for a large area of the creative industries across the world; book publishing, newspapers and magazines, merchandising, digital content for online and mobile platforms, fashion, design, cards and giftware, animation, storyboarding, character design and much more. They also sell artwork in print or original form through galleries or other outlets.

Today, the AOI has some 1550 members who consist of self-employed freelance illustrators, illustration agents, art colleges and individual students and commissioning bodies. Member illustration agents act for about a further 800 leading illustrators.

Illustrations are very susceptible to becoming orphan works due to the ease with which digital and digitised artworks may be copied and distributed. AOI have concerns that contemporary works as well as historical ones will be treated as orphans and therefore believe they should have the protection and value placed on them that is afforded to non-orphan works.

AOI support the responses from the British Copyright Council and Creators Rights Alliance

Response

1

Could collecting societies improve the licensing of orphan works in their areas of expertise? If so, how?

IPO will be the authorising and licensing body for orphan works, but can include collecting societies in diligent search criteria.

2

Should an orphan works licence be transferable? If so, in what circumstances would this be appropriate?

No, as a diligent search will have been carried out and the work licensed in relation to a specific use.

3

What are your views on allowing high volume users to take out an annual licence or similar arrangement to cover low value, non-commercial use?

All uses of an orphan work should be subject to remuneration, and any licence issued should take into account what a rights holder would believe the value of the work is that is being licensed. All licences should reflect that. The term 'Low value' is relative and can be misappropriated.

4

Should there be a limited on the period of time in which a rights holder can claim his/her remuneration? If yes, taking into account the examples of time limits set out at paragraph 5.9, what should that period be and why?

As the rights holder owns the copyright, the period should be sufficient for them to claim the licence fee in their lifetime. This could be 70 years from the date of licence.

5

At what point should the Government be able to distribute unclaimed funds? What is the rationale for your answer?

As long as the unclaimed funds have been held for a period of 7 years, they should be distributed after that point.

6

What should any unclaimed funds be used for and why?

Unclaimed monies should be used for the benefit of creators and performers as the funds have been generated by their works.

7

Should there be a right of appeal for users of orphan works in the event of unreasonable actions by the authorising body (IPO)? If so, should this cover a) licence fee tariffs (e.g. via the Copyright Tribunal) b) refusals to grant licences or c) both?

Yes, if there is a right of appeal for emerging rights holders, there should be a right of appeal for users. It should cover licensing fee tariffs and refusal to grant a licence.

8

Approximately, how often would you anticipate using the orphan works scheme/how many applications a year would you envisage making?

Very few.

9

What types of use do you envisage using orphan works for?

There has been little indication, beyond the cultural heritage organisations digitization and making available of orphan works, to inform us of what the demand for orphan illustrations will be.

Uses of visual orphan works could potentially, but rarely, be used by AOI across platforms including print, digital and non-traditional spaces.

10

How much does the fact that licences are non-exclusive impact upon your potential use of the scheme?

As licences are only to be non-exclusive this may limit their appeal for potential users, however if the scheme is unworkable for them they will usually be in a position where they can seek an alternative.

11

How much does the fact that licences are limited to the UK impact upon your potential use of the scheme?

Online licence use – can orphan works be licensed for website use if the license is only for UK?

12

If you are a potential licensee would you use the scheme only when you are fairly sure you want to use a particular work or would you use it to clear whole collections of works in your archives? What do you consider would be an acceptable amount of time for processing an application to use an orphan work?

Regarding an acceptable amount of time for processing an application to use an orphan work, surely it is the result of the search which is relevant here, not the time it takes to complete it.

13

What proportion of your applications would be for unpublished works and what sort of works would these be?

N/A

14

Would your main use of orphan works be as part of works that you produce already, such as a book or television programme or would you develop a new product or service based on a whole collection of orphan works or a collection that is likely to contain many orphans or partial orphans?

N/A

15

The impact assessment assumes that in 10% of orphan works applications, a diligent search would have already established that the work is orphan. Without a lawful means to use an orphan work, this would be wasted time and resource. Approximately, how often, at present, are you unable to locate or identify a right holder following a diligent search?

We have not undertaken diligent searches for rights holders.

16

We have assumed that the majority of diligent searches carried out by publicly accessible archives are likely to be undertaken under the auspices of the EU Directive. Is the case for your organisation, if you are a publicly accessible archive?

N/A

17

If you are an organisation covered by the Directive, how often do you anticipate using a search conducted under the Directive to then support an application under the domestic scheme?

N/A

18

If you are an organisation covered by the Directive, able to display much of your material on your website under the provisions of the Directive on certain permitted uses of orphan works, how much will you use the domestic orphan works licensing scheme?

N/A

19

If you are a cultural organisation, how likely is it that you would be able to recover the full costs related to the digitisation and making available of an orphan work?

N/A

20

How do you do this (for example by charging for access to your website)?

N/A

21

Would you attempt to engage in a public-private partnership to digitise and make available such works? Any charges can only reflect the cost of search, digitisation and making available, with no profit margin. What evidence do you have of the level of interest of private enterprises in such partnerships?

N/A

22

Do you agree that we should not implement the optional provision?
(unpublished works in the EU Directive)

No answer

Diligent Search

23

Are there any other sources that should be added to this list of essential sources? (Diligent search)

Sources should include online illustration portfolio sites, or archives of illustration, including AOI portfolios, Children's Illustrators etc

<http://www.childrensillustrators.com/>

<http://www.theaoi.com/portfolios/>

<http://contact-creative.com/contact.php>

<http://www.theaoi.com/awards/archive.php>

<http://www.hireanillustrator.com/>

24

Do you agree with the addition for non published works under Part 2 of the Schedule? Are there any other sources that could be added for unpublished works?

No answer

25

Is there a realistic prospect that civil sanctions will not provide appropriate remedies? In what circumstances?

No answer

Fair Compensation

26

Do you agree with this approach? Where should the burden of proof lie, and why?

The burden of proof should lie with the licensing body.

27

Is it necessary to provide for an appeals process on the level of fair compensation? Who should administer such an appeals process?

Yes, as the fees set for licensing an orphan work by the licensing body may not accurately reflect the level of primary licensing expected by the rights holder. This appeal should be extended to cover the granting of a licence which the rights holder believes was inappropriate by the licensing body.

Any appeals process should be free to the emerged rights holder.

AOI are willing to be contacted for consultations or research