

Questions:

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

No - Orphan works will already be difficult for rights holders to monitor without the additional burden of watching numerous licensing organisations

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

No Never
This would undermine the market for IP creators.
Normal sales by professional IP creators are non transferable and Orphan Works should be the same

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?

No Never
This will undermine the market for IP creators.
IP is only low value in the mind of the Buyer, currently IP is still often sold for large amounts which is how IP creators make a living

4. Should there be a limit 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?

No - and if there is , it should be the length of copyright, eg 70 years of life of creator plus 70 years.

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

6. What should any unclaimed funds be used for and why?

**To fund a special extra pension for retired full time IP creators.
The reason being the sale of Orphan Works is the theft of IP
creators future income , particularly pensions. Up to now a lifetimes
creation of Music, Art, Photography etc has funded artists
retirement. Orphan works will deprive creators of this income**

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

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

Never

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

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

Not at all

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

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?

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 What proportion of your applications would be for unpublished works and what sort of works would these be?

14. Would your main use of orphan works be as part of works that you produce already, such as a book or a 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?

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 rights holder following a diligent search?

Never - I work with photographs and all can be traced online with services such as google search by image and TinEye

<p>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 this the case for your organisation, if you are a publicly accessible archive?</p>
<p>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?</p>
<p>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?</p>
<p>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?</p>
<p>20. How would you do this (for example by charging for access to your website)?</p>

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?

22. Do you agree that we should not implement the optional provision?

23. Are there any other sources that should be added to this list of essential sources?

The vast majority of Orphan works are works on the internet so it is surprising no internet search for the owner is included.

Diligent searches should include internet searches in Google, Bing and a number of other search engines. In the case of visual works that should include a search both by description and a search by image (where software such as Google searches for the actual image)

A diligent search must also include a search of United States Copyright Registrations.

Provision must be made so individual creators can put forward resources that must be checked. For example if one had found an unknown sports photograph, there should be a list of sports photographers websites that should be checked. This would give some protection to full time IP creators and allow potential Orphan Works users to be guided to the real owners of the work

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?

As per answer 23, an internet search must be included as this is where one will find both Orphans and creators. Diligent searches should include internet searches in Google, Bing and a number of other search engines. In the case of visual works that should include a search both by description and a search by image (where software such as Google searches for the actual image)

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

There is currently no criminal sanction for the deliberate creation and registration of an Orphan work.

There should be a new offence of taking a creative work and removing the identity of the copyright holder.

There should then be a further offence of dishonestly registering a work as an Orphan while in reality knowing who the Copyright holder is.

This will provide some protection for creators who are currently seeing vast numbers of users of creative works going to often great lengths to remove identifying copyright information. As a photographer I have already seen my "© copyright holder" script removed 33 times from a single photograph in order to avoid paying for it. Creators are expecting large volumes of dishonest Orphan Works registrations.

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

No - there should be a greater burden of proof for a user to register a work as Orphan and additionally Orphans must only be allowed to be registered where no similar non orphan work is available commercially. This would allow museums to use historical and one off works of art while protecting creators.

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

Yes, and that appeals process must include valuations provided by trade organisations representing creators of similar content as they would have the best idea of its real value.

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply Yes No

At the IPO we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes No