

 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Orphan works	
Lead Department/Agency	Department for Business, Innovation and Skills (Intellectual Property Office)	
Stage	Consultation	
IA number	BIS1063	
Origin	Domestic	
Expected date of implementation (and SNR number)	6 April 2013 2014 (SNR7)	
Date submitted to RPC	23/10/2013	
RPC opinion date and reference	23/12/2013	RPC11-BIS-1063(4)
Overall assessment	GREEN	
<p>RPC comments</p> <p>The IA is fit for purpose. The final stage IA should be clearer about how licence fees work and the impact of this on the costs and benefits when rights holders are not found.</p>		
<p>Background (extracted from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <p><i>A copyrighted work is orphan when it is not possible to locate one or more of the right-holders following a diligent search. If a work is orphaned it can be copied lawfully only to a very limited extent and its use in books, TV programmes, exhibitions and on websites is curtailed. Rights holders gain nothing and the works' value to society is lost. The Government have passed legislation to allow for regulations to license the use of such works while protecting the rights of absent owners.</i></p> <p>What are the policy objectives and the intended effects?</p> <p><i>The aim is to create a system where people, interested in using orphan works for commercial or non-commercial purposes, can obtain a licence from the authorising body to use the works lawfully in the UK, following a diligent search, and by paying appropriate licence fees up-front.</i></p> <p><i>This would create a system where archive holders are able to use and make available all works within their archives, and put remuneration aside for right-holders who re-appear later.</i></p>		
<p>Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options</p> <p>The Canadian orphan works system (in operation since 1990) shares many characteristics with the proposed UK scheme. The impact assessment therefore uses this as a basis for estimating the potential levels of use in a UK scheme. The assumptions used in calculating costs and benefits have been revised and differ from</p>		

those used in the previous IA (for the related primary legislation), which did not take account of the potential impact of the EU directive on orphan works. This reduces the value of the EANCB figure from that estimated in the previous IA.

The main costs of the proposals are the set up and running costs of the public sector authorising body; and the costs of undertaking diligent searches by potential users, such as museums, galleries, libraries and archives which will potentially be able to use all works within their collections. Such searches would be voluntary and undertaken only if the potential users believe it worth the effort of conducting the diligent search.

The main benefits are the value to users of being able to use content that is currently orphaned. As the scheme is voluntary, it is assumed that users would apply for a licence only if the benefits at least outweigh the costs of diligent search, and administration and licence fees.

Other options are not discussed in the IA. However, the previous IA (for the related primary legislation) said that a non-legislative solution was considered but it was concluded that this is unlikely to be compatible with international treaties, such as the Berne Convention.

The final stage IA should be clearer about how licence fees work and the impact of this on the costs and benefits when rights holders are not found. The consultation should be used to assist in this.

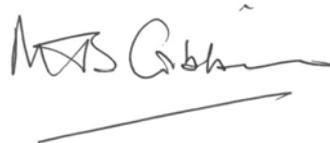
Comments on the robustness of the small & micro-business assessment (SaMBA)

The proposals are deregulatory for business and therefore a SaMBA is not applicable.

Comments on the robustness of the OITO assessment

The IA says that the proposals would re-cast regulation in order to reduce burdens on business and are deregulatory. The proposals are in scope of OITO and will have a direct net benefit to business (an OUT). Based on the evidence presented, this assessment of the likely direction of impacts is reasonable and is consistent with paragraph 1.9.11 of the Better Regulation Framework Manual (July 2013). The evidence supporting the estimated equivalent annual net cost to business figure will have to be strengthened so that it can be validated at final stage.

Signed



Michael Gibbons, Chairman