



Keeping Up With Copyright: Understanding Recent Changes to Copyright Law and Licensing

3. Orphan Works

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Access to Copyright/Out-of Commerce Orphan Works



- **Why?**
 - Access for individual researchers
 - Uniting associated dispersed items/collections
 - Facilitates cross border research
 - Fulfils public/heritage missions of cultural institutions
 - Preservation
- **How?**
 - International exception to copyright
 - National licensing schemes
 - Combination of above

Access to Copyright/Out-of Commerce Orphan Works



- **Issues**

- Exception vs licensing polarisation
- Playing field is not level
- Mutual recognition of national/domestic schemes
- Costs/terms of licensing schemes
- 2 schemes now introduced in the UK:
 - one based on provisions made in the Enterprise and Regulatory Reform Act 2012
 - one based on the requirements of EU Directive 2012/28 on certain permitted uses of orphan works

Access to Orphan Works in the UK: Comparing 2012/28/EU and the ERRA 2013

EU Directive 2012/28/EU on certain permitted uses of orphan works	UK Enterprise and Regulatory Reform Act 2013
Embodies an exception to copyright law for orphan works	Embodies a licensing approach for use of orphan works
Publically accessible libraries, educational establishments, museums; archives; film or audio heritage institutions; public service broadcasters	Envisages and supports use “by any applicant” for a licence - well beyond cultural and heritage organisations, such as use by commercial companies and businesses
Print works (books, journals, magazines and newspapers); cinematographic and audio-visual works; phonograms; embedded works - which must be treated separately	All types of works including a large corpus of works – single photographs or illustrations; paintings etc – excluded from scope of the Directive
Unpublished works – under certain conditions	Unpublished works under any conditions
Non-commercial use	Non-commercial and commercial uses
Authorised institutions may use orphan works to achieve aims related to their public interest mission	No restrictions on reasonable uses in terms of the licence granted
Diligent search in Member State of first publication or broadcast	Diligent search; payment of a licence fee for use of the work. A diligent search conducted under the Directive is acceptable for the purposes of the UK domestic scheme
Revenues may be generated to cover the digitisation costs	
Permits making available of digitised items from the cultural and heritage organisation’s website	Provides for a far wider range of uses – e.g. publication in a book; inclusion in a film or TV programme; merchandising; in an exhibition etc
Provides for mutual recognition and use across the Member States	Provides for use only within the UK but envisages the possibility of reciprocal recognition of schemes
	Licences granted for up to 7 years but are renewable
	Presumption that relevant Moral Rights apply



Copyright, Designs and Patents Act 1988

16.— The acts restricted by copyright in a work.

(1) The **owner of the copyright in a work has**, in accordance with the following provisions of this Chapter, the **exclusive right** to do the following acts in the United Kingdom—

- (a) to copy the work;
- (b) to issue copies of the work to the public;
- (ba) to rent or lend the work to the public;
- (c) to perform, show or play the work in public;
- (d) to communicate the work to the public;
- (e) to make an adaptation of the work or do any of the above in relation to an adaptation;

and those acts are referred to in this Part as the “acts restricted by the copyright”.

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by the copyright.

• The UK Scheme on Orphan Works

- Is it compatible with EU law?
- Does actually it comply with UK law?
 - could/should it also have been implemented differently?
- What will be the role of Directive 2012/28 in the UK?