

Checklists

1. Tracing Rights Holder Checklist

- Image Recognition Software – use free sites like www.tineye.com and Advanced Google Search.
- Check the acknowledgements and notes of published works/exhibition catalogues about the author.
- Check the Internet for information about the creator of the material and keep a record of all searches where appropriate.
- Check the WATCH file on the Internet for information about artists and writers (entered through <https://norman.hrc.utexas.edu/watch/>)
- Check other organisations which might hold works by that artist/creator and contact them to see whether they can provide any information about the rights holder.
- Check with the British Library www.bl.uk. If finding the copyright holder of a book (still in copyright) published by a now defunct publishing house, send a query to the British Library through their website <http://www.bl.uk/index.html>.
- There are a number of collecting societies and include the following:
 - ◊ Published text based works: CLA (Copyright Licensing Association) www.cla.co.uk
 - ◊ Art work, including photographers: DACS (Design and Artists Copyright Society) www.dacs.org.uk
 - ◊ All types of published and unpublished text based works: Publishers Association www.publishers.org.uk and ALCS (Rights Management Society for Authors) <http://www.alcs.co.uk/>
 - ◊ Recorded music: PRS for Music <https://www.prsformusic.com/>
 - ◊ Newspaper: NLA Media Access <http://www.nlamediaaccess.com/default.aspx?tabId=40>
- Establish whether the work been lent/bequeathed/given by the rights holder. If so, can the person who gave the material provide any contact information for the rights holder?
- If the artist or author is still living, then you maybe able to find out their contact address through the online directory enquiries or alternatively if they live abroad a similar search engine for their home country.
- Is the material held in a Picture Library or stock photography agency?
- Is the work by an academic, student, member of support staff or anyone else directly (or indirectly) connected with your organisation?
- Place an advert in a relevant trade journal or magazine in order to trace the rights holder.

2. Negotiating Rights Checklist

- Always try and use your own agreements rather than a third party's particularly if your rights are being used.
- Clearly articulate who you are, your aims and the context of your use, particularly if you are not-for-profit, carrying out activities for non-commercial purposes etc
- Familiarise yourself with the other party and what their aims and objectives are and try and pitch your request accordingly?
- If you feel that you are being asked to compromise or give too much, walk away and reconsider your position.

- Leave yourself plenty of time to negotiate rights – build it into project management and budget management.
- Make sure that you stipulate what happens when the licence has expired.
- Never promise to do something to which you cannot comply.
- Read the contract carefully, if you don't understand something, try and get further advice.
- The inclusion of terms such as “in perpetuity” or “world-wide” rights can cost more money and these maybe more rights than you need.
- Try and group all the rights that you need for your organisation into one request instead of constantly going back to re-negotiate. The effort taken in co-ordinating efforts will strengthen your hand with the rights holder.
- Try and reassure the other party that you will try to protect and manage their rights (particularly in the digital environment) but be realistic in terms of what you actually do.
- Where appropriate, make sure that students, staff and any funding parties, or third parties with whom you have a relationship, are also covered for their use of the material within the licensing agreement.

3. Risk Assessment Checklist

- Consider how you might mitigate risks when considering the use of Orphan Works. These might include:
 - ◊ *Disclaimers*
 - ◊ *Credit Lines*
 - ◊ *Notice and Take Down Policies and Procedures*
 - ◊ *Reproducing images in low resolution*
 - ◊ *Limiting use to low risk orphan works only (see below)*
 - ◊ *Restricting any use to “Non-Commercial research or private study”*
 - ◊ *Putting money aside in case rights holders come forward and/or taking out insurance*
- Decide how many attempts you will make to try and trace rights holders (see Checklist 2 – above). This should reflect your organisation's appetite for risk and the resources available to clear rights, as well as any legislative requirements after the implementation of any orphan works solutions.
- Keep records of all attempts made to contact the rights holders.
- Remember that whilst proportionality and making informed judgements is crucial – it is not a finite science.
- If you are a cultural heritage organisation and have text and/or audio works, consider the use of the [Orphan Works Exception](#)

Further reading:

www.naomikorn.com/resources
www.copyrightuser.org

www.cilip.org.uk/copying
www.ipo.gov.uk

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