

Orphan Works

Orphan Works are works in copyright where the rights holders are either unknown or cannot be traced. There are 4 options available depending on the risk, cost, work and re-use which can be used:

<p>EU Orphan Works Exception</p>	<p>In the case of a ‘No deal’ Brexit, this exception will no longer form a part of UK legislation. This non-commercial exception enables cultural heritage, educational and public broadcasters to reproduce their orphan works by digitising them and making them available online, by carrying out self-certified reasonable searches and then completing the necessary fields on the EU IPO Orphan Works Database¹. The exception is however limited because it does not include standalone artistic works such as a photographs or paintings, although it does include text-based works, audio visual works and embedded orphan artistic works. ¹https://euiipo.europa.eu/ohimportal/en/web/observatory/orphan-works-database</p>
<p>UK Orphan Works Licensing Scheme</p>	<p>The intention of this scheme was to provide a means for the use of all types of orphan works for any purpose by a wide variety of users, by issuing a UK-based licence for up to 7 years. Usage of the licence by museums has been to date extremely low due to the high admin costs of the scheme, its limited coverage (it only covers the UK so anything published online would not be covered), and the relative lack of benefit in relation to costs and proportionate risks. The cost/risk/benefit of this solution does not necessarily balance out and so this solution is probably viable in only a minority of situations.</p>
<p>Risk Managed Approach</p>	<p>Risk management should always be an option, what should carefully be considered includes reasonable searches, procedures for staff to follow and linked to risk mitigation – such as a “Notice and Take Down” Policy and Procedure.</p>
<p>Do Not Use</p>	<p>Do not use is always an option. The basis of this decision would be the level of risk deemed acceptable and factors such as the age of the item, the use and the possible costs associated with the other solutions.</p>

Disclaimer: None of the information contained within this document should be construed as legal advice. Should specific legal advice be required, please consult the appropriate legal advisor.



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