

Orphan Works Summary

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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>UK Orphan Works Licensing Scheme</p>	<p>The Orphan Works Licensing Scheme provides 7 year, UK only licence for the use of all types of orphan works for any commercial or noncommercial purpose.</p> <p>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>More about orphan works and the Orphan Works Licence can be found here: https://www.gov.uk/guidance/copyright-orphan-works - overview</p>
<p>Exceptions</p>	<p>Within copyright law there are a number of fair dealing exceptions to copyright that specifically benefit heritage organisations. These exceptions to copyright are crucial to the heritage sector by enabling the use of third party copyright works in certain situations without the need to seek permission. Changes to the copyright legislation in 2014, have resulted in a more progressive regime for users, cultural heritage and educational organisations. This means that heritage organisations are more likely to consider and use the exceptions to copyright to support their activities.</p> <p>More about the exceptions to copyright can be found here: www.copyrightuser.org/undestand/exceptions</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>

Do Not Use	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.
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Top tips to remember:

1. It is always wise to have a notice and takedown policy and point of contact who can remove in-copyright works quickly from the website if someone objects as this minimizes your legal and financial exposure to copyright infringement. It is worth remembering that your approach to risk is only as good as how you make things better if they do go wrong!
2. Provide good and accurate acknowledgement of the rights holders.
3. Record your reasonable efforts ideally on your collections management system. Whether you use an Orphan Works solution or a risk management approach, you will need to make sure you record the efforts you make to try and trace the rights holders.
4. Review your existing insurance policies – you may already have a clause somewhere that protects your museum against copyright infringements. If you don't this might be worth investigating.
5. Make sure that your staff are aware of their roles and responsibilities in terms of copyright clearance, as well as any agreed Notice and Take Down Policies.

Final Thought:

Risk is an important issue to think through when using an in-copyright Orphan Work. Your usage may be so low risk that it may be worth not expending the costs of an Orphan Works Licence fee. Risk, cost and benefit should therefore all feature in your decision-making processes.

Helpful resources

- **Naomi Korn Associates resources** – A collection of free and openly licensed copyright, licensing and data protection help resources.
www.naomikorn.com/resources
- **Intellectual Property Office (IPO)** – Intellectual property rights resources, information and updates on UK legislation. www.gov.uk/government/organisations/intellectual-property-office
- **Heritage Digital guide: Working with volunteers: Copyright considerations** – A guide providing information on best copyright practices when it comes to managing or supervising volunteers. This resource includes an editable template Deed of Copyright Assignment that you can use with your own volunteers. www.charitydigital.org.uk/resources/digital-guide-working-with-volunteers-copyright-consideration
- **Heritage Digital guide: Heritage Organisations and Exceptions to Copyright** – A guide providing an essential overview of the various UK copyright exceptions that can be used by heritage organisations to support their digital strategies. www.charitydigital.org.uk/resources/resources/digital-guide-heritage-organisations-and-exceptions-to-copyright
- **Heritage Digital guide: A Guide to Copyright and Working with Suppliers to Create Digital Content** - Best practice steps and guidance to help heritage organisations manage copyright effectively when working with suppliers (for example freelancers, web developers, photographers or commissioned artists). www.charitydigital.org.uk/resources/resources/digital-guide-working-with-suppliers-to-create-digital-content
- **Heritage Digital guide: Brexit, Intellectual Property Rights and Heritage: What you Need to Know** - Information and guidance for heritage organisations about IP changes following the UK's departure from the EU. www.charitydigital.org.uk/resources/resources/digital-guide-brexit-intellectual-property-rights-and-heritage
- **Copyright User** - A website providing guidance and resources about using copyright resources www.copyrightuser.org
- **Creative Commons** – Details about the different types of CC licences and sources of CC licenced content. www.creativecommons.org
- **Publication: Information Law: Compliance for librarians, information professionals and knowledge managers, by Charles Oppenheim, Adrienne Muir and Naomi Korn** – A book presenting the tried and tested 'Compliance Methodology' for organisations seeking to navigate the complex legal landscape of the information professions.
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