

September 3rd 2013

Dear Lord Younger

The Libraries and Archives Copyright Alliance (LACA) welcomes the efforts of the Intellectual Property Office in trying to address the issue of Orphan Works. In particular we commend the Intellectual Property Office in its engagement with key stakeholders to find adequate solutions with regards to the implementation of the proposed Orphan Works licensing scheme as outlined in the Enterprise and Regulatory Reform Act 2013.

Whilst we understand the complexities in implementing legislative provisions which satisfy the conflicting priorities of the majority of stakeholders, we are concerned that the cost for users of implementing the requirements of this proposed scheme will be too high, rendering it inoperable. Specifically, users of Orphan Works in libraries, archives, museums and galleries are likely to find the requirements of this proposed Licensing Scheme too cumbersome and costly and therefore in practice will not be able to take advantage of them. We believe that this will mean that the ability of libraries, archives and other cultural heritage and educational organisations to provide digitised access to our rich content will continue to be crippled, thus undermining the rationale and anticipated benefits of the legislative provisions in the first place.

### **Diligent Search as a Potential Obstacle to Mass Digitisation**

We are concerned that the proposed licensing scheme fails to address the issue of mass digitisation, since we understand that a diligent search will be required for **each** individual copyright work, as well as each embedded copyright work. This will become even more problematic in the case of embedded artistic works, which will require both identification and subsequent diligent search, making mass digitisation impractical. We understand that initially the very point of separating orphan works and extended collective licensing was because diligent search for mass digitisation projects was recognised to be unfeasible.

### **Diligent Search as a Potential Obstacle to the opening up of our Archives**

In terms of archival materials, an individual copyright work could be as small as a single-page letter; archives are full of such things. Thus, in order to secure an Orphan Works licence for, say, a set of private papers containing correspondence, it would be necessary to carry out a diligent search for, and to register, every single letter. This would not be practical or feasible for most archival collections.

### **Data entry requirements are cumbersome and impractical**

Based upon conversations with Intellectual Property Office policy makers and also a review of the draft data entry forms for recording Orphan Works, we understand that in addition to

*Chair* Naomi Korn

*Tel* +44 (0)20 7255 0500 (CILIP)  
*Email* [policy@cilip.org.uk](mailto:policy@cilip.org.uk) (CILIP)  
*Web site* [www.cilip.org.uk/laca](http://www.cilip.org.uk/laca)

Representing ARA: The Archives & Records Association, ARLIS/UK & Ireland: The Art Libraries Society of the UK and Ireland, BIAL: British and Irish Association of Law Librarians, The British Library, CILIP: the Chartered Institute of Library and Information Professionals, IAML/UK & Ireland: The International Association of Music Libraries, Archives and Documentation Centres, JISC: Joint Information Services Committee, LIS-COPYSEEK online community, Museum Libraries, The National Library of Scotland, The National Library of Wales, Royal National Institute of Blind People (RNIB) National Library Service, Society of Chief Librarians in England and Wales, and SCONUL: Society of College, National and University Libraries.

carrying out a diligent search for the use of each Orphan Work, a separate record will have to be completed for each embedded Orphan Work.

**Costs of complying with the proposed scheme will render it unusable**

At this stage, we understand that the costs for the use of each Orphan Works are likely to comprise the following:

- 1 There will be a licence fee (whether on a case by case basis, or an upfront one off payment)
- 2 There is likely to be an admin fee
- 3 Due diligence per work and per embedded Orphan Work will need to be carried out
- 4 Information about each work and each embedded Orphan work will need to be added to an online database

Given that much of what is digitised has little commercial value and/ or is not available commercially, and often not represented by a Collecting Society, LACA believes that we will be in a situation where the proposed licensing scheme will not be used by the cultural and education sectors, and instead they will simply do as they have always done and take a risk-based approach.

Taking into account the governmental time spent on this, we are keen that the IPO ensure that the proposed solution is practicable. We are also keen to understand how the proposed licensing scheme might interface with the Copyright Hub and also how the achievements of the ARROW project might facilitate streamlining such processes. In short, we agree with Neelie Kroes, Vice-President of the European Commission, who stated:

*"If we let things go, there is a serious risk that there will be a "20th century black hole" on the internet. It is a duty of our time not to let this happen."*<sup>1</sup>

We look forward to liaising with the IPO to ensure that any Orphan Works solution addresses the issues we have raised, rather than creating unsatisfactory solutions.

Yours sincerely



Naomi Korn  
Chair, Libraries and Archives Copyright Alliance

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<sup>1</sup>Neelie Kroes, Vice-President of the European Commission responsible for the Digital Agenda  
<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/163>