

Title: Orphan Works IA No: BIS1063 Lead department or agency: IPO Other departments or agencies:	Impact Assessment (IA)		
	Date: 14/04/14		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
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Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
£0.03m	£0.02m	£0m	Yes Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?

A copyrighted work is orphan when it is not possible to locate one or more of the right-holders following a diligent search. If a work is orphaned it can only be copied lawfully to a very limited extent and its use in books, tv programmes, exhibitions and on websites is curtailed, rights holders gain nothing and its value to society is lost. The Government has passed legislation to allow for regulations to license the use of such works while protecting the rights of absent owners.

What are the policy objectives and the intended effects?

The aim is to create a system where people interested in using orphan works for commercial or non-commercial purposes can obtain a licence from the authorising body to use the works lawfully in the UK, following a diligent search, and by paying appropriate licence fees up-front.

This would create a system where archive holders are able to use and make available all works within their archives, and put remuneration aside for right-holders who re-appear later for doing so.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Government has already legislated in the Enterprise & Regulatory Reform Act to provide the power for regulations to allow for the licensed use of orphan works in the UK.

This is separate from and complementary to the EU Directive on certain permitted uses of orphan works

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 09/2018					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: n/a	Non-traded: n/a

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Younger of Leckie **Date:** 3rd July 2014

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -1.47	High: 1.39	Best Estimate:-0.03

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.24	0.13	1.35
High	0.29	0.29	2.78
Best Estimate	0.27	0.21	2.07

Description and scale of key monetised costs by 'main affected groups'

The main costs of this proposal are the public expenditure of setting up the authorising body (£0.267m transition cost),p9; running the body itself (£33k p.a.), p9; and the costs of undertaking diligent searches by potential users, as museums, galleries, libraries, archives and others such as broadcasters, publishers, and production companies will potentially be able to use all orphan works , but this would be voluntary and only done if the potential users believe it worth the effort of conducting the diligent search (£99k-£253k p.a.)

Other key non-monetised costs by 'main affected groups'

Existing unlawful uses in the UK are likely to be reduced by the availability of lawful licensed use, thus transferring some value from former infringers to rights owners, but this transfer has not been monetised..

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.15	1.31
High	0	0.32	2.74
Best Estimate	0	0.24	2.03

Description and scale of key monetised benefits by 'main affected groups'

The main benefits are the value to users of being able to use content that is currently orphaned. As the scheme is voluntary users will only apply for a licence if the benefits at least outweigh the costs (diligent search + admin fee + licence fee). The costs of diligent search are £99k-253kpa with best estimate of £176k plus the admin fee of £59.7k pa.

Other key non-monetised benefits by 'main affected groups'

There will be a potential benefit to users from legal certainty in the UK; a benefit from records of past diligent searchers; a benefit of expanded resource database. There may also be growth and innovation benefits see page 16.

Key assumptions/sensitivities/risks

Discount rate

3.5

The scope of this legislation covers all types of work and so includes many different markets (eg: books, audio-visual, photographs, music) and we have used earlier consultation responses to refine assumptions about the scale of the problem where we use the largest UK archives as proxies, and rely on orphan work estimates. We also assume that the Canadian Orphan Works scheme forms the basis of a good proxy for the UK and have reviewed this against evidence from the most recent consultation [1]. We have also used assumptions developed by the IPO for the setting up the authorising body with a 10% sensitivity.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.1	Benefits: 0.1	Net: 0	Yes	Zero net cost

Evidence Base (for summary sheets)

Problem under consideration;

A copyrighted work is an orphan when it is not possible to locate one or more of the relevant right-holders following a diligent search. If a work is orphan it can only be copied to a very limited extent without legal risk and therefore its use in books, TV programmes, exhibitions and on websites is curtailed: As it is not possible to obtain permission for use, there is at least the risk of civil infringement or criminal liability if there is commercial use. For example, even putting images of works on website involves making a copy of the work and hence cannot be done lawfully at present and even making a copy of a fragile work so it can be displayed to the public is also not lawful at present.

The orphan works problem has resulted in large quantities of copyright works being unavailable for use, whether for cultural or commercial purposes. This concerns millions of pieces of content ranging from video and sound recordings, as in the British Film Institute where 10% of the collection is orphaned to more than two million archive photos in the Imperial War Museum. There are also approximately 150 miles of shelved documents in The National Archives and National Records of Scotland, where up to 40% of the content is suspected orphan and much of it unpublished.

Both the Hargreaves Review of Intellectual Property and Growth [2], and the Gowers Review of Intellectual Property [3] identified Orphan Works as a problem that needed resolving to avoid leaving large parts of content unavailable for use and missing commercial opportunities.

The Government has legislated in the Enterprise and Regulatory Reform Act 2013 to allow the Secretary of State via regulations to allow for the licensed use of orphan works, subject to appropriate safeguards.

The Government has developed the draft regulations which will provide much of the detail on how the licensing of orphan works will operate and these were recently subject to consultation [1].

The domestic orphan works scheme complements the EU Directive on Orphan Works which will come into force by October 2014. This IA therefore needs to be read in conjunction with the IA on the EU Directive on Orphan Works in order to obtain the totality of the costs and benefits from the changes to facilitate the lawful use of orphan works.

The recent consultation on the regulations for both the domestic licensing scheme under the Enterprise and Regulatory Reform Act 2013 and the EU Directive on Orphan Works [1] also sought evidence on the potential likely levels of use of the scheme and we have used this to review the assumptions that have been developed in this IA.

Rationale for intervention;

Private sector solutions have been proposed in the past and are, for the most part, based on using insurance to indemnify users of orphan works against subsequent legal challenges (i.e. if the owner of the right later comes forward) or risk based approaches such as setting money aside in case the rights-holder comes forward. While Government does, as a rule, prefer industry led solutions, the current state of the law does not make the private sector initiatives legally possible. The orphan works problem therefore results in a missing market which the private sector cannot solve. The full demand for authorised orphan works can only be satisfied by government intervention in the form of legislative changes. This may also stem existing unauthorised use of works and encourage respect for copyright.

The Government agreed to accept Hargreaves's Recommendation to introduce legislation that will enable the use of orphan works. The only way to address this issue is to allow the fair and regulated use of the large amount of material containing orphaned rights within the UK by legislating to allow for approved authorisation on a regulated basis.

The Government has legislated in the Enterprise and Regulatory Reform Act 2013 to amend the Copyright, Patents and Designs Act 1988, to allow the Secretary of State via regulations to allow for the licensed use of orphan works, subject to appropriate safeguards and remuneration for absent rights-holders.

Policy objective;

The aim is to create a system where people interested in using orphan works for commercial or non-commercial purposes can obtain a licence to use the works lawfully, following a diligent search, and by paying a licence fee.

This domestic orphan works scheme complements the EU Directive on Orphan Works which will come into force by October 2014.

The domestic orphan works scheme exists alongside the Directive as a licensing system within the framework of copyright law within the UK. It applies to all types of works, potentially allows all types of use, including commercial use, and can be used by anyone. The domestic scheme will:

- enable lawful use of orphan works, for example, in books, TV documentaries, exhibitions & on websites for commercial and non commercial use;
- enable access to potentially culturally valuable works;
- contribute to economic growth;
- minimise market distortion;
- maximise benefits to the economy;
- minimise perverse incentives to use orphan works illegally; and
- protect and remunerate rights holders

The Enterprise and Regulatory Reform Act gives the Secretary of State the power to make regulations to create an orphan works authorising body which will:

- Set licence fees for all different types of works and all different uses.
- Operate a searchable register of works which are subject to a current diligent search and works that have been granted an orphan works licence.
- Set and collect administration fee for applications.
- Process applications for licences including a verification process of diligent searches, determine what licence fee applies, determine what licence conditions apply (uses, duration etc) and collect fees.
- Set licence conditions & issue licences.
- Maintain escrow account with fees for rights holders.
- Check whether claims to be a returning rights holder are genuine – if satisfied of veracity, pass remuneration to rights holder/s.

Licence fees will be payable up-front, prior to the issue of the licence. The licence fee will take into account, as far as possible, the fees for similar uses of non-orphan works. For non-commercial uses this will be a minimal amount. This reflects the fact that museums and similar bodies do not normally have to pay for the non-commercial use of copyright works where the owner is known (as the owner gives their permission for the work to be used free of charge).

This should create a system where archive holders (including museums, galleries and libraries and not just archives in the strict sense) can use and make available orphan works in their archives, and pay fees for right-holders. This means that resources used on a diligent search will not have been wasted (as is the case at present) should a work turn out to be orphan. By allowing the use of orphan works, all content held in archives would potentially be available for use, including commercial uses such as publishing and broadcasting – against payment. The system would ensure that diligent searches are undertaken and that orphans are registered with the authorising body in a simple manner.

The EU Directive on Orphan Works creates an exception to copyright legislation to allow cultural and heritage organisations to digitise orphan works within their collections after a diligent search, and to make available to the public on their websites. The Directive does not allow any other uses.

The Directive also restricts the types of orphan works to books, journals, newspapers, magazines or other writings, cinematic or audiovisual works and phonograms. It does not include the use of artistic works such as standalone photographs, illustrations and paintings but embedded artistic works within works are permitted. The Directive also limits the organisations that are able to use the works to publicly accessible cultural and heritage organisations with a public mission.

Description of options considered (including do nothing);

Option 0: Do Nothing

This is not an option as the Government has already legislated in the Enterprise & Regulatory Reform Act to provide the power for regulations to allow for the licensed use of orphan works in the UK.

Not implementing these powers would leave the current system unchanged and leave orphan works as a largely untapped resource for creativity, innovation and growth, in creative output.

Risks and assumptions;

- Risks failing the Government's commitment to implement an orphan work solution
- Risks loss of important cultural material because archives cannot afford to preserve it without being able to recoup their costs through use of the material
- The Government has received comments that the ability to utilise orphaned works on a basis backed by statute is likely to increase overall confidence in copyright per se, so not fulfilling that promise may also have a negative impact.

Option 1: Establish an orphan works system

The Government has legislated to enable these culturally and economically valuable works to be used while protecting the interests of the owners of rights in orphan works. For example, orphan works will be able to be used in exhibitions, publications, in educational material, documentaries and other programmes and in any other way that a non-orphan work can be used. Section 77 of the Enterprise and Regulatory Reform Act therefore creates a power for the Secretary of State to appoint a body or bodies to license the use of orphan works through regulations.

The Act sets the parameters of the scheme to be covered by the regulations. These include:

- Requiring a diligent search for rights holders to be undertaken by the applicant before a work is classed as orphan;
- No self-licensing – a licence to use an orphan work cannot be granted to a body that can itself authorise the use of orphan works;
- Providing for a licence to use an orphan work to have the same effect as if granted by the missing rights-holder;
- Providing that an orphan works licence can only grant non-exclusive rights;
- Mandating that the regulations make provision about specified matters, including the treatment of royalties and other monies; and
- Providing for the withdrawal of an authorisation to grant licences, including for determining the rights and obligations when an authorisation is withdrawn.

Monetised costs and benefits

In order to allow us to calculate the costs and benefits we need to be able to estimate the potential levels of use of the scheme. To do this we have taken the Canadian system as a proxy and reviewed the assumptions based on the Canadian model against evidence received in the consultation conducted in January 2014 [1].

Canadian orphan works scheme as a proxy for UK scheme

Canada has provided for the use of orphan works under Section 77 of its Copyright Act which permits the Copyright Board of Canada to issue a licence on a non-exclusive basis to an applicant who has been unable to find a rights-holder after every reasonable effort to do so [4].

The Canadian orphan works system has been in operation since 1990 and between 1991 and 2009 dealt with some 421 applications covering 12,640 different works.

The Canadian system shares many characteristics with the proposed UK Orphan Works scheme. It works on the basis of licensing individual works following a search for rights-holders and allows both commercial and non-commercial use. Between 1991 – 2009 49% of applications were classed as “commercial”.

One of the key differences between the two schemes is that the Canadian scheme only applies to works that have been published, whereas the UK scheme applies to all works – both published and unpublished. (Other orphan works’ schemes such as India’s include unpublished works.)

This is a significant difference when assessing potential demand for the scheme. Consultation responses indicated that a substantial proportion of orphan works held in the archives of large museums and archives were unpublished. For example, the Imperial War Museum estimates that c.90%, of their archival material in their collection is unpublished. Similarly, the National Museum Directors’ Council (NMDC) estimates c.70% of museum collections (including their archives) probably falls into this category [5].

The assumption applied is that the low end of the range will be twice the level of usage of the Canadian scheme, with the high end of the range four times the level. This is likely to be a conservative estimate, given that many orphan works held in the UK are unpublished. Also the population of Canada is approximately 35m compared to approximately 63m in the UK. This factor might also be reasonably expected to impact on potential levels of usage of the respective orphan works schemes.

Assumption on potential levels of use

It should be noted that the assumptions used in calculating all the costs and benefits in this IA have been revised and differ from those used in IA BIS 1063. In particular, the assumption that archives would clear 5-10% of their works over a 10 year period (which would enable any orphan works found in this process to be used) in IA BIS 1063 has been up-dated. This reflects the fact that IA BIS 1063 was drafted when the EU Directive on Orphan Works was at an early stage and its potential impact on the domestic scheme was not taken into account. Taking the potential impact of the EU Directive on Orphan Works into account, the 5-10% clearance figure is more properly attributed to the EU Directive scheme (adjusted to reflect the narrower scope of the EU Directive scheme). Furthermore, it should be noted that the domestic scheme provides for the licensing of individual orphan works for specific purposes, rather than permitting any mass licensing of works. Accordingly, in order to gain an understanding of the total impact of all the legislative changes in respect of orphan works (both the domestic scheme under the Enterprise and Regulatory Reform Act and under the EU Directive), it is necessary to consider the total costs and benefits from both IAs.

The assumptions on the potential level of usage for the domestic scheme are based on the work that the IPO has undertaken in planning for the setting up and running of the Authorising Body, which, in turn, was based on evidence from the Canadian Orphan Works scheme.

As discussed above the assumption of the potential level of usage for the domestic scheme is based on evidence of the number of applications under the Canadian orphan works scheme, up-rated to reflect the fact that the Canadian scheme only applies to published works, whereas the UK scheme also covers unpublished works. The indicative evidence from museums and archives is that unpublished works make up a large part of the orphan works in the UK.

Up-rating the number of applications under the Canadian scheme (which licenses about 750 works annually) by 2 and 4 respectively as discussed above gives an estimate of 1,500 and 3,000 as the expected annual number of works licensed under the UK scheme.

The consultation responses were generally cautious about how often respondents would use the scheme. Commercial organisation indicated that they would generally use the scheme on an occasional basis for the commercial use of orphan works. There was concern, however, from the cultural heritage sector that the scheme should be affordable for low value/non-commercial uses and that this would be the key factor in determining how often they used the scheme. For example, the NMDC (which represents 39 major national and regional museums) supported the use of a blanket/umbrella licence for non-commercial uses as the only way it would be affordable. All of the responses from the cultural heritage sector made similar points, that, in order for them to use the scheme widely it would need to provide an affordable mechanism for large numbers of low value works.

The development of an annual/umbrella licence to allow the use of multiple works for non-commercial purposes was an issue that the consultation specifically sought views on. This reflects the assumption that by far the largest volume of use of orphan works will be by museums, archives and libraries for non-commercial purposes. In light of the consultation responses, the IPO will develop a blanket licence to ensure that the scheme is affordable for non-commercial use of orphan works. Given that the IPO is taking action to meet the concerns expressed by respondents on this issue, we believe that there is no need to revise the assumption of the expected annual number of works licensed under the UK scheme.

Using the information on the number of archive holdings and the estimated proportion range of these holdings that are orphans provided by the BBC, British Library and respondents to the earlier orphan works consultation [6] we can estimate the current number of orphans in the UK. We took the midpoint of the orphan ranges and multiplied this by the archive holdings size, to give us an estimate of 91m orphans held by archives. The table below summarises the calculation:

Media category	UK sample holdings	BBC & BL	Orphan range	Orphan Range	
				Mid-point	Estimated Orphan Works Holding
Artwork	548,000	-	20%-25%	22.50%	123,300
Sound	750,000	350,000	5%-10%	7.50%	82,500
Archive Films	513,000	600,000	5%-35%	20%	222,600
Archive photos	28,280,000	5,000,000	5%-90%	47.50%	15,808,000
Written material	10,400,000	14,000,000	4%-30%	17%	4,148,000
Newspapers*	-	112,500,000	4%-95%	50%	56,250,000
Mixed collections	38,000,000	20,500,000	8%-40%	24%	14,040,000
TOTAL					90,674,000
<p>*we keep the low newspaper percentage equal to books, and the high equal to the estimated number of orphans in the British Library newspaper collection pre-1912 [7, page 22, 36, 38]</p>					

We exclude commercial film archives and photo libraries (other than the BBC) as there were differing views on whether there were many orphans within these sectors. Some of the representative organisations in these sectors responded in the consultation that they had relatively few orphans in their archives. (One response relating to commercial film archives estimated 0%-7% as their orphan range. One response relating to photo archives and picture libraries reported approximately 0% as their orphan range but this excluded archive photographs which are more likely to be orphan than contemporary ones). However, other respondents stated that photo libraries may have 5-10% as their orphan range.

Accordingly, the estimate of 91m orphan works is likely to be a conservative one.

Therefore we are expecting 0.0017% - 0.0033% of orphan works to be cleared using the scheme per year. This has been calculated by dividing the anticipated 1,500 – 3,000 annual number of applications by 90.1m.

These calculations have utilised real-world information from work the IPO has been doing on planning for the running of the authorising body, and so make use of the best available information to recalculate the clearance rate of orphans, given it is an individual licensing scheme.

Costs – best estimate of £0.267m transition and £209k pa

Cost of creating an authorising body - best estimate of £0.267m

The IPO has commenced the detailed work for the set up and running of the Authorising Body. The IT costs are £250k.

As with all current digital spend, approval has been obtained on the approach to IT and the associated spend, through the BIS Digital Leaders group and the Cabinet Offices' Government Digital Service (GDS). This provides further scrutiny and assurance that public money for this project is being spent correctly and appropriately in line with wider government spending control.

The remaining £17k of the set up costs is the initial training costs for staff running the scheme, including desk training, reflecting the fact that the staff will need to be in post and trained prior to the authorising body going live.

This gives a total estimated set up cost of £0.267m. The estimated transition time is just 1 year, given that the authorising body will be the IPO, which already exists. The transition time would mainly relate to creating the infrastructure and functionality to enable the IPO to act as the authorising body.

A 10% sensitivity analysis is carried out to give a low and high estimate of £0.24m and £0.29m respectively.

Cost of running authorising body - best estimate of £33k p.a.

While detailed decisions about staffing are yet to be taken, we have assumed that the resource involved will be equivalent to one FTE at Executive Officer (B2) level once the Authorising Body is set up. The estimated staff levels are based on an assessment of the work needed to process the estimated number of applications a year (1,500) referred to above (Assumption on Potential Levels of Use), and is based on the processes the IPO is currently developing for the licensing of orphan works. The work of the one FTE would be spread across three different members of staff.

This approach should cost no more than £33,000 per annum, which represents the full out-turn costs of one FTE at B2 level.

A 10% sensitivity analysis is carried out to give a low and high estimate of £29.7k p.a and £36.3k p.a respectively.

Recouping the set up and running costs

The set up costs will be recouped over a period of 10 years. This, together with the running costs of administering the scheme, will be recouped by a combination of the admin fee that users will pay and the unclaimed licence fees.

The admin fee is yet to be determined and may need to take into account factors such as the amount of work involved, the value of the licence and type of use. The admin fee will also be set at a level to ensure that the scheme is affordable to users.

A licence fee will be payable to the authorising body by the user prior to the licence being issued. The fee will reflect the licence fees payable for comparable non-orphan works, which means for non-commercial use the licence fee will be nominal. It is expected that, because of the diligent search requirements, the number of rights-holder emerging once a licence has been granted will be very small. This is borne out by the evidence submitted in the recent consultation with the NMDC estimating that rights-holder subsequently emerge if not found through a diligent search in only about 1% of cases.

It has been decided that any unclaimed fees will be able to be used to off-set the start up and running costs of the scheme, thereby making it more affordable for users. The regulations will set out that if a rights-holder has not emerged after 8 years, at that point, the Secretary of State will be able to use the unclaimed funds for purposes which include the running of the orphan works scheme.

Cost of diligent search for users of orphan works - best estimate of £176k p.a

Legislation allowing the use of orphan works, both under the domestic scheme and the EU Directive require the carrying out of a diligent search for the (right-holders and/or creators). For the domestic scheme such searches will be carried out by the applicants, according to sector-specific guidelines, set by the authorising body with input from the sector. The authorising body would require details of sources searched and methods used with each orphan work application. The search will be compatible with the requirements of the EU Directive where applicable [8].

Therefore we need an estimate of how many items are likely to be searched under an orphan works licensing system. We then need to subtract those searches carried out under the auspices of the EU Orphan Works Directive to establish the number (and cost) of diligent searches that fall under the domestic orphan works scheme.

In the earlier impact assessments the IPO drew heavily on the available information about the BBC and British Library archives. These were some of the few data points available for estimating the size of archives and proportion of orphans. In their responses to the consultation, the BBC and British Library did not object to our estimates, and each added further detail as to its holdings on material, with the caveat that these are approximations based on length of shelf space and volume holdings [9]. We also received many submissions from other archives who want to use an orphan works system, beyond the interest expressed by the BBC and British Library.

Media	Archive	Total collection size
TV & Radio	BBC	950,000
Photos	BBC	5,000,000
Sundry items	BBC	2,000,000
Newspapers	British Library	112,500,000
Books	British Library	14,000,000

Sundry items	British Library	18,500,000
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We aim to estimate the cost of conducting diligent searches in these types of archives, which are amongst the largest in the UK, where the holders are keen to use orphan works. To get an hourly cost of labour we use the UK Annual Survey of Hours and Earnings (2012) (ASHE) median hourly pay for Librarians (£13.62 p/h) and Archivists and Curators (£14.01 p/h).

To establish the cost of searching books we use the 2006 Carnegie Mellon University Library's pilot project, and submission (#537) to the US Orphan Works Report [7, page 36], which estimates that it costs \$78 per item in 2006, plus \$132 in legal and supporting costs, making it \$200 per item. Converting into pounds for 2006 this is equivalent to £43 at the lowest cost and £115 for the highest cost per item, using an exchange rate of 0.55 [10]. Controlling for inflation the 2012 price would be £49 and £131, to make the figures comparable to the ASHE figures from 2012, using the Bank of England's GDP deflator.

We then need to establish how long it takes to undertake diligent searches for different types of content.

TV & Radio: The BBC's rights clearance trial found that checking 1,000 hours of factual programming (which is less complex than drama or comedy programmes) for rights implications, cost them 6,500 person hours [1]. Given this, we estimate that clearing television footage and radio material takes 6.5 hours per hour of material, so to clear the BBC archive of TV and Radio would take 6.1m hours ([600,000 hours of TV + 350,000 hours of radio] × 6.5 hours to clear). The Federation of Commercial Audio Visual Libraries, FOCAL, pointed out that much of this time was spent clearing rights rather than searching for right-holders, as older contracts did not have sufficient permissions for current needs [11]. The 6.5 hours could therefore be considered an upper bound, and we assume that half the time was spent clearing identified rights, so reduce the figure by 50%, to 3.25 hours, to get a lower bound estimate of 3.1m hours ([600,000 hours of TV + 350,000 hours of radio] × 3.25 hours).

Photos: We assume that each of the BBC's five million still photographs take 3.5 hours to clear as we do not have comparable data on the cost of clearing photographs. We do know that the Wellcome Library's digitisation project cleared the rights for posters, which should be simpler than photographs as they are usually signed, and this cost an average €50 (£43) per poster, which is similar to 3.5 hours of archivists working time cost in the UK (at £14.01 per hour, this is £49). Similarly, the Imperial War Museum takes on average half a day, or 3 ¾ hours (in a 7.5 hour work day) to search an artwork in their collection [12], and the suggestion in other archive submissions was that 3.5 hours was an appropriate estimate. That means it would take 17.5m hours to clear the photo archive. (5,000,000 photos × 3.5 hours)

Sundry content: We assume that the BBC's other content takes one hour at the low estimate for each of the approximately two million items, but 3.5 hours at the high, as sundry items would include various artworks, music scores, and other material. This gives a range from 2m to 7m hours to clear. Similarly for the British Library's 18.5m pieces of sundry content the range would be 18.5m to 64.8m hours.

Newspapers: For the British Library holdings of 150m items we assumed in the previous impact assessment that 75 per cent of the collection⁸ were newspapers, and the British Library did not disagree with this rough estimate. It is worth noting that the newspaper figure is not the number of titles as suggested in one criticism of the figures, but the number of issues from all titles. This is important, as the Chartered Institute of Journalists pointed out, the situation arises from the 1911 and 1956 Copyright Acts, in each of which staff journalists were granted copyright in all their works produced pursuant to their employment, apart from publication in a newspaper or magazine, unless the rights were assigned. It was only with the 1988 Copyright Act that publishers obtained full copyright in material produced by all their employees, unlike the 1911 and 1956 Acts. Therefore "it follows that any unattributed journalistic material first published in the relevant period (1911-1989) must be considered an orphan work if published elsewhere (i.e. not in a newspaper or magazine), unless it can be shown that copyright had been assigned". According to the Institute: "based on limited sampling, the number of works involved appears to run into hundreds of thousands, perhaps millions, of immense value. This is because so many items

were published in newspapers or magazines without attribution, and only limited records were retained” [13].

Given this, we retain the total newspaper figure in calculating the potential cost of searching the archives:

Books: The British Library provided a figure of 14m monographs in the archive as part of their response to the consultation, which we have included, and then we have treated the remainder of the collection (18.5m items) as sundry items, with clearance time equivalent to the BBC content [16]. In a 2009 digitisation project at the British Library it took them 235 man hours to search the rights for 60 titles alone. This suggests an average time of between three and a half and four hours per issue ($235 / 60 = 3.91$).

The table below provides an overview of the total cost from fully searching both the BBC and British Library archives, which makes it a total expenditure of between £6.6bn and £8.4bn.

The cost of searching the full archive					
Archive	Content	Hours to clear	Quantity	Cost	Total cost
BBC	TV & Radio, low est.	3.25	950,000	£14.01 p/h	£43.3m
BBC	TV & Radio, high est.	6.5	950,000	£14.01 p/h	£86.5m
BBC	Still photos	3.5	5,000,000	£14.01 p/h	£245.2m
BBC	Sundry items, low est.	1.0	2,000,000	£14.01 p/h	£28.0m
BBC	Sundry items, high est.	3.5	2,000,000	£14.01 p/h	£98.1m
BL	Newspapers	3.5	112,500,000	£13.62 p/h	£5,362.9
BL	Books low est.	-	14,000,000	£49 p/item	£686.0m
BL	Books, high est.	-	14,000,000	£131 p/item	£1,834m
BL	Sundry items, low est.	1.0	18,500,000	£13.62 p/h	£251.9m
BL	Sundry items, high est.	3.5	18,500,000	£13.62 p/h	£881.9m

Given an orphan works licensing system the BBC and British Library would engage in clearing more of their archives, as they could make use of the orphans through the permission system. We do not expect that such a project would happen immediately, nor that it would cover the entire archive, as only parts of it will contain suspected orphans. So we maintain the assumption that between 0.0017% and 0.0033% of the available content in the BBC and British Library would be cleared per year. The total cost of this would be between £109k and £282k per annum ($[0.0017\% \times \text{£}6.6\text{bn}]$ and $[0.0033\% \times \text{£}8.4\text{bn}]$). The best estimate being the average of the two, £195k p.a.

However we know that a percentage of these searches occur already but are often wasted as the users would not be able to achieve any benefits as a result of discovering the work was an orphan. We have therefore reduced the costs of the scheme to take this into account. We have assumed that 10% of the searches would already occur, and this assumption is supported by responses received on this question in the most recent consultation [1]. Therefore the costs of diligent search are reduced by 10% giving an estimate of between £99k and £253k with a best estimate of £176k per annum

As has been pointed out in a number of responses, such costs seem high for two organisations that are far from typical even if they intend to make use of an orphan works system. This is a fair point, which is why we do not use these costs and scale up for the 2,500 museums, 3,300 public libraries, 3,000 community archives, 979 academic libraries and approximately 3,500 trust archives which might seek to use an orphan works scheme [14]. Instead we use our established archive holding figures for the BBC and British Library as a proxy for expected total UK activity. Fortunately, as part of the consultation, other institutions have provided information about their collections and an initial estimate of their suspected orphan work holdings. We can use this to test if our cost figures are in the appropriate range. The table below summarises the majority of estimates provided by archive holders, and the percentage of each collection they consider potentially orphan.

This is probably the most complete list of orphan work estimates that have been collected, even compared to the EU Commission's research [7]. These are sorted by rough categories which correspond to artwork, sound recordings, films, photographs, written material and mixed holdings but this is not exhaustive.

Media	Archive (source, if different)	Total collection size	Orphans
Art	Imperial War Museum	48,000 works	20%
Paintings	Guildhall Art Gallery (LMA)	-	20%
Prints / drawings	London Metropolitan Archive	-	25%
Artwork	National History Museum, London	500,000 items	25%
Sound recording	Imperial War Museum	33,000 records	5%-10%
Sound recording	British Library	700,000 hours	-
Film	UK film archives (FOCAL)	17,000,000 hrs	0.5% for most
Film	Imperial War Museum (FOCAL)	-	0.25%
Film (Europe)	European Film Archives [9, page 25]	3,200,000 titles	4%-7%
Archive Film	Imperial War Museum	230,000 items	5%
Archive Film	British Film Institute	-	10%
Archive Film	National Library of Scotland	32,500 items	20%
Archive Film	Huntley Film Archives (FOCAL)	80,000 titles	20%

Archive Film	London Metropolitan Archive	-	35%
Digital Photos	Getty	33,000,000 items	-
Physical photos	Getty	70,000,000 items	-
Photo libraries	British Association of Picture Libraries and Agencies	-	~0%-5% "non-issue"
"New deal" photo	London Metropolitan Archive	260,000	5%-40%
Archive Photos	London Metropolitan Archive	-	15%
Archive Photos	Imperial War Museum	11,000,000	20%
Archive Photos	UK Museum collections [9, page 29]	19,000,000	90%
Archive Photos	National Archive sample [9, page 30]	85,000	95%
Books	Authors Licensing & Collecting Society (PwC)	-	<4.7%
Documents	Bedfordshire and Luton Archives Services	-	15%
Books	National History Museum, London	1,000,000	20%
Books	National Library of Scotland	1,500,000 items	~25%
Documents	Imperial War Museum	7,900,000 items	20%-25%
Manuscripts	National Library of Scotland	-	20%-30%
Books	British Library sample [10]	-	31%
Books in copyright	British Library sample [10]	-	43%
Manuscripts	Natural History Museum, London	1,304 metres / 195m ³	50%
Texts	Oxford University	600,000 items	100%
Photos, reports, plans, drawings	English Heritage	12,000,000 items	8%
Overall collection	London Metropolitan Archive	-	15%-20%
Text & drawings	Museum of Childhood (NMDC)	-	15%-20%
Text, photos, maps, plans	National Records of Scotland	80km shelf space	~15%-50%
Text, photos, illustrations etc	National Archive	11,000,000 cat. Items ~180km shelf space	40%
Records / Photos	Southampton City Council	-	30%-50%
Collection on industrial heritage	Leicester University	-	60%
Testimonials	Imperial War Museum (IWM)	8,000 reels	100%

These figures suggest that there are many organisations that hold potential orphans. These could benefit from a diligent search and the certainty of a permission to use orphans, or agreeing licensing terms with right-holders where such are found. The data, while indicative, compares well to the orphan work estimates in a 2009 JISC report [15] and suggest that different sectors and content have different needs.

Media category	UK sample holdings	Orphan range
Artwork	548,000	20%-25%
Sound Recording (hrs)*	750,000	5%-10%
Commercial film (hrs)**	21,800,000	0%-7%
Archive Films (hrs)	513,000	5%-35%
Photo libraries	>100,000,000	~0%
Archive photos	28,280,000	5%-90%
Written material†	10,400,000	4%-30%
Mixed collections§	38,000,000	8%-40%
*Scaling the average IWM record to 90 minutes, or one standard cassette tape **Treating an average film as 1.5hrs long, and including both UK and European film archives †not counting the 600,000 orphan texts at Oxford and the 195m ³ material at the Natural History Museum. §Treating the average work at the National Archive & National Records Scotland as a 1cm wide holding.		

These exclude the commercial film archives and photo libraries as there were differing views provided in consultation responses on whether there were many orphans within this sector. Some of the representative organisations in these sectors responded that they had relatively few orphans in their archives. (The commercial film archives responded 0%-7% as their orphan range, while photo libraries responded approximately 0% as their orphan range – excluding archive photographs). However, other respondents in these sectors stated that photo libraries may have 5-10% as their orphan range.

Impact of fees on the user and market,

The issue of finding both orphans and right-holders raises the issue of how the authorising body should structure its fee schedule. The fee schedule has not yet been decided so it is not possible for us to calculate the costs of fees. It will be a fundamental principle of the scheme that the Authorising Body in setting licence fees for the use of orphan works, as far as possible, should seek to mirror what happens with equivalent non-orphan works. This is aimed at ensuring that the licensing of orphan works does not under-cut the market for non-orphans.

Benefits – best estimate of £235.7k pa

Benefit to Users and the public from content that is orphan - best estimate of £235.7k pa

Currently, the majority of archives would not undertake large diligent search projects because too much of their time will be wasted when works turn out to be orphans and therefore unusable. This is why the orphan works solution may mean a change to business practice, as users would be able to use all works covered by such searches. The majority of these searches are likely, however, to be undertaken under the auspices of the EU Directive and are now attributed to the EU Directive IA.

While the public will benefit from accessing these works and the users may extract additional value from cleared orphans, our estimate of the benefits is based only on the cost of clearance, not any additional gain. We do this partly because the costs can be estimated with some degree of certainty, while potential benefits to the public and users would be speculative. As participation is voluntary, a user would not attempt to clear content where it did not believe the value of that activity to at least cover the costs. As we cannot, with any certainty, predict the value of the orphan works beyond this business decision, we use the costs as our benchmark benefit to users.

We calculated the benefit to orphan works users as being at least as much as the cost of the search plus the administration fee charged by the Authorising Body. The administrative fee, which is yet to be finalised, is calculated here by taking the annual running costs and assuming the set up costs are recouped over 10 years from the build up of unclaimed licences fees ($£33k + (£0.267m/10) = £59,700$ p.a). This is a conservative minimum estimate as it would also be reasonable to assume that the benefit would be at least as much as all the associated costs with using an orphan work which would also include the licence fee payable and in most cases may be considerably more. It is not possible, however, to estimate the value of the licence fee element as it will vary according to the rate payable for comparable use of non-orphan works of the same type.

This yields an expected benefit of **£235.7k per annum** with a low and high best estimate of £152.7k and £318.7k p.a respectively. (Diligent search costs + admin costs = £176k pa + £59.7k pa)

These are just the cost-based figures however, and it should be borne in mind that additional commercial opportunities can arise from permissions to use orphan works. For example, the British Film Institute estimates that, if it were enabled to use orphan works, it might generate an additional annual gross income for itself of more than £500,000 [2, page 39]. So there are additional un-quantified benefits to users of the orphan works system.

To illustrate what these potential benefits could like The Collections Trust estimates that UK museums and trusts contribute around £1.2 billion to the UK economy each year through their exhibitions and cultural activities. The average proportion of Orphan Works in collections across the UK's public sector was measured at 5% to 10%, whilst in certain sectors (archives) this proportion was higher. So if 5-10 per cent of UK museum collections are orphan as estimated in the JISC report *In from the Cold in 2009* [15, page 6], and therefore not used, adding them to the economic contribution of the exhibitions could potentially add more value to the museum, trusts and the visitor experience. We could assume the value of orphans is equal to that of non-orphans in the museums and trusts sector, meaning they could add between £50m and £130m p.a. (low: $[\pounds 1.2\text{bn}/95] \times 5 = \pounds 50\text{m}$, i.e. the current £1.2bn value reflects 95% of the collection and we want to know how much 5% would be worth; high: $[\pounds 1.2\text{bn}/90] \times 10 = \pounds 130\text{m}$).

If we were to use our assumption that 0.0017%-0.0033% of holdings would be cleared per year under the UK orphan work scheme. We can estimate a rough indicator that between £800 (0.0017% x £50m) and £4,300 (0.0033% x £130m) of additional value could be released per year with an average of £2,550p.a.

Following consultation, and in particular discussion with the author of the report on the scope of orphan works [15], who has undertaken a survey to estimate the incidence of orphan works in museums, it has been suggested that the value of orphans was uneven, although within this there is some highly valuable content. But it was argued that highly valuable content was unused. Not wanting to over-estimate the potential contribution of orphan works in this impact assessment, we do not presume that orphans are more valuable, but this is an indication that our figure may be an under-estimate of the benefits.

Benefit to growth and business creation.

In addition to the direct reduction in costs of clearance through orphan works reform, we expect benefits to growth and innovation from the availability of very large amounts of historic orphan content in UK archives. While there are firms in this market, and organisations such as the BBC, British Library, The National Archives, British Film Institute who already want to digitise collections for use, we treat this as an indirect benefit for the purposes of One-In Two-Out (OITO) calculations; as the commercial firms in this space do not yet exist, or have not yet decided to work with UK archives, due to the orphan works problem.

The Government has not been able to obtain evidence on which one might be able to base any monetisation/quantification of the indirect benefits to growth and business creation. Nonetheless, we would expect benefits to growth and innovation from the potential availability of large amounts of historic orphan content. The previous impact assessment used the genealogy sector in the UK and the US as a proxy for the orphan works scheme. This was based on a mass clearance type approach rather than the clearance of individual works and so is no longer applicable.

Evidence from responses to the consultation (carried out as part of the Government's response to the Hargreaves Review) indicated that there would potentially be benefits to growth but did not estimate the scale of these or monetise them. For example, the CBI in its response stated that it "welcomes the Government's proposal to legislate so that orphan works can be accessed more easily, allowing businesses to exploit valuable IP - which would otherwise go untapped - without the risk of infringement".

Evidence from the operation of the Canadian Orphan works scheme, which, like the UK scheme, allows for commercial and non-commercial licence use of individual orphan works, shows that a substantial proportion of use under the scheme has been commercial. 37% of applicants were from businesses, with 49% of applications for commercial use.

This indicates that the UK scheme has the potential to generate a high level of orphan work use from businesses for commercial uses, with the concomitant benefits to growth and business creation. This is particularly so when one takes into account the larger scope of the UK scheme, which includes unpublished works as well as published works, combined with the fact the UK population is nearly double that of Canada. Responses to the most recent consultation [1] indicated that commercial organisations would occasionally wish to use orphan works. While many respondents stated that the fact that licences were limited to the UK and non-exclusive licences would make the scheme less attractive, it is worth noting that these restrictions also apply to licences under the Canadian scheme (i.e. use is restricted to Canada and licences are non-exclusive) but over a third of applications in Canada are nonetheless from businesses.

At present the time required to undertake diligent searches of complex content can prevent new technology opportunities being exploited, as content cannot be used if it is orphan. (Note that under the domestic orphan works scheme, organisations would still be required to perform a diligent search.) The BBC, one of the largest holders of historic content in the world, made this clear in its submission to the Hargreaves review:

"The existing copyright framework poses challenges for BBCW as it can be difficult to clear all the rights in sufficient time to facilitate a deal. In the digital age "speed to market" is critical to maximise returns and often with new types of technology there is only a limited window of time to leverage the best deals. However the complexity of the clearing rights for commercial purposes has sometimes previously prevented BBCW from pursuing commercial opportunities. For example, BBCW lost out on a lucrative deal several years ago involving making classic comedy clips available on mobile phones at a time when delivery of content to mobile phones was in its infancy."

Orphan works would only have been one of the issues in this case. However in discussions with BBC Archives, and in the BBC submission, it has been suggested that orphan material can be a much greater problem in older material. The BBC has one of the largest audio visual and written history archives in the world, some of which is too costly to clear and make available to the public. In its submission BBC says "It is not always possible to trace underlying rights holders for orphan works for a number of reasons.

- The existence of underlying rights may not always be clear, e.g. "we cannot always determine whether presenters of a show wrote their own scripts or simply voiced a script written by someone else. While performance contributions are currently protected by copyright for a period of 50 years there may be other elements (e.g. pre-written script/literary content) protected by copyright for a longer term of lifetime + 70 years. In many cases these elements were not identified in early programmes or programme listings. It is therefore impossible to know if there are contributions within the period of copyright protection or not.
- It is not always possible to identify or to contact the rights holder. This happens, for example, in the case of anonymous contributions, or where it is not possible to determine who has inherited rights upon the death of a rights holder."

BBC policy is to make available as much as possible of its archive to the public. It is also interested in creating commercial value through its assets, which would include the use of archive material for personal history services, for which there is growing demand - spurred by and reflected in the audiences for family history TV programmes (e.g. "Who do you think you are", which attracts 6 million viewers and has been adapted as a format in ten other countries)

Benefit to current orphan work users, from more legal certainty in the UK

A number of museums and archive holders which responded to the consultations [1,6] are currently using works that have been diligently searched, and have been found to be orphan. A number of them do so by making provisions for potential right-holders through a risk insurance, which a few museums referred to in their consultation responses; some set aside funds in an “awaiting claims” account, as the BBC does. Some simply take the calculated risk that no-one will come forward and do not keep funds aside at all. Without a system of permissions, all this activity is effectively infringing copyright even though cases can be, and often are, settled through a licensing agreement.

The orphan works system will offer licences that cover the UK, which remove legal uncertainty as to the use of orphan works. For example, in 2009/10 the BBC had programme income of £8.9m subject to awaiting claims due to untraceable owners or failures to respond to clearance requests [16]. The orphan works system would remove the need for a legal risk premium where content was aimed at the UK market, and would remove the need to keep money aside as it would charge fees up-front.

Institutions which do not put aside funds for their use of orphans will, with an orphan works system in place, be more exposed to discovery which should make the enforcement of rights simpler. It is not possible to quantify the total benefit of this, as it will depend on how much is currently put aside, how much content is aimed at the UK market and the legal risk assessments of each firm, all of which is commercially sensitive or confidential information which we cannot access. However the overall effect should be positive. It may even reduce the legal risk for entities looking to use orphan works globally as permission in the UK could be seen as a strong argument for the orphan status of a work where other countries offer legal means of using orphan works.

Benefit of increased lawful use of the copyright system

The Government has received comments that the ability to utilise orphan works on an authorised basis is likely to increase overall confidence in copyright per se. The situation where culturally valuable material cannot be used with permission, to the detriment of the public and the right-holder, tends to decrease respect for the copyright system as a whole, and may reduce compliance in other areas.

Furthermore, increased lawful use through the scheme would mean additional revenue being paid by currently unlawful users to reventant rights holders.

There would also be a further benefit in terms of making the unauthorised use of orphan works easier to detect.

Risks and assumptions;

In addition to the key assumption of demand being as predicted in the section on "assumption on potential levels of use" above, the following risks and assumptions have been considered:

Risk of actively “orphaning” work by ripping metadata

There is a justified concern particularly from photographers about the current copyright system, where their work, once digitised, is appropriated by unscrupulous content sellers, and the identifying information (metadata) is removed in order that the work can be presented as owned by the unauthorised seller.

Allowing the licensed use of orphan works would not prevent such abuse across the copyright system, but nor will it exacerbate the problem, and there are a range of safeguards which will mitigate any risks arising from the removal of metadata in the context of orphan works. Before any licence to use a work as an orphan can be issued the applicant must have conducted a diligent search for the rights-holders, in accordance with sector specific guidance. Experience of licensing orphan works in Canada has demonstrated that 22% of applications do not need to be pursued as the diligent search process identifies the rights-holder. Nor will the absence or removal of metadata in itself make a work "orphan" or allow its use under the orphan works scheme. It is also worth bearing in mind that the over-whelming majority of orphan photographs held by museums and archives are old analogue historical photographs rather than digitally created images. The requirement for an up-front payment at the going rate would also act as a disincentive to the deliberate removal of metadata and to inadequate diligent searches.

Unlawful use

On the basis of evidence from stakeholders received through the consultation and subsequent discussions with the cultural heritage sector, we have assumed that, if there were a workable scheme to allow users to use orphan works lawfully, then the majority would choose to use such a scheme rather than choose to continue with a risk based approach. The impact of introducing schemes to allow for the lawful use of orphan works is therefore expected to significantly reduce the unlawful use of orphan works through a "risk based" approach.

Wider impacts

The relationship between the orphan works system and the Copyright Hub

The Hub is an industry-led initiative that aims to make copyright licensing easier and more streamlined with low transaction costs for both licensors and licensees. When completed, the Hub will be a portal with intelligent connections to a wide range of websites, digital copyright exchanges and databases in the UK and around the world, with the focus on making copyright licensing easier in the digital age

The Hub is currently in its test phase. A fully functioning Hub could reduce the costs of those wishing to use some types of orphan works. It could be easier to search for content and rights holders could monitor all their content in one place, rather than the present situation where there is no central registry/database. There would be no benefit from the Hub for unpublished archive material.

Orphan Works Directive

The EU Directive creates an exception to copyright legislation to allow cultural heritage organisations to digitise and make available to the public orphan works within their collections after a diligent search, for non commercial use. Organisations will search as a minimum the appropriate sources set out in the Directive and any others they think will contain information on rights holders. The responsibility for the diligence of the search will lie with the organisation making use of the works. If rights holders emerge after the diligent search they are entitled to fair compensation which will be agreed between the parties. If the diligent search has been completed competently this process removes the risk of copyright infringement.

The Directive restricts the types of orphan works to books, journals, newspapers, magazines or other writings, cinematic or audiovisual works and phonograms. It does not include the use of artistic works such as standalone photographs, illustrations and paintings but embedded artistic works within works are permitted. The uses under the Directive are limited to digitising material and making it available to the public. The Directive also limits the organisations that are able to use the works to cultural and heritage organisations with a public mission. These are:

- Publicly accessible libraries
- Educational establishments

- Museums
- Archives
- Film or audio heritage organisations and
- Public-service broadcasting organisations

Following a diligent search organisations are required to submit the following information to the Office for Harmonisation in the Internal Market (OHIM) via the national competent authority: the results of the search, the use the organisation will make of the work, any change to the status of the work and relevant contact details. OHIM will maintain a database of all orphan works being used so rights holders will be able to identify works and organisations can see diligent searches that have been completed. The Directive allows for mutual recognition across the EU, so a diligent search completed in one Member State will be valid across the whole EU. This would avoid duplicate searches where an organisation has a physical copy of an orphan work within their collection that has had a diligent search already completed by another organisation.

Post Implementation Review plan

A full evaluation strategy and Post Implementation Review is being developed for the introduction of the Hargreaves recommendations. The Post Implementation Review will detail the benefits associated with the introduction of the copyright reforms and will include input from external stakeholders. The plan will also set out how and when the benefits will be measured, which will depend on the type of benefit, as some benefits will be measured by applications and take-up that can be measured from the first year of operation, whereas others will depend on information that will take several years. The evaluation strategy will set out the activities that will be undertaken in order to evaluate the policy, drawing on management information collected through the copyright system, as well as research that is commissioned in order to measure the benefits.

In addition, during the legislative passage of the Enterprise and regulatory Reform Act 2013, a Ministerial commitment was given to review the domestic orphan works scheme after its first year of operation.

Direct Costs and Benefits to Business Calculations (following OITO methodology) and Micro Exemption

The orphan work solution would mean that holders and users of works with an unknown or un-locatable creator would be effectively exempt from the regulatory framework surrounding copyrighted works providing they have met the requirements of the scheme: so it recasts regulation in order to reduce the burden on organisations holding or wishing to use orphan works. There will be a series of safeguards around the use of orphan works but these impact businesses indirectly as they only apply when businesses choose to use the orphan work. Freelance creators should benefit from an increased probability of being reunited with any orphan works in the diligent search and, in the limited cases where they are not found at that stage but appear after the work has been licensed, they will receive licensing fees for the use and regain control of the work. Micro businesses are not excluded from the scope of this proposal because, there would be an overall benefit for them from being able to use orphan works.

Given the main users are likely to be archives and some of these would classify as public bodies we have attributed 50% of the costs and benefits to business. Given we are unable to fully quantify the benefits of the measure and that we assume the benefits are the same as the costs otherwise users would not apply to use the scheme we have therefore classified this as ZERO NET COST.

We are not able to calculate all the benefits to business given a lack of available evidence of potential value, however given that this is an entirely voluntary scheme and therefore applications will only be made if the benefits outweigh the costs we believe this in reality to be a larger out.

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