Orphan Works in the UK and Overseas
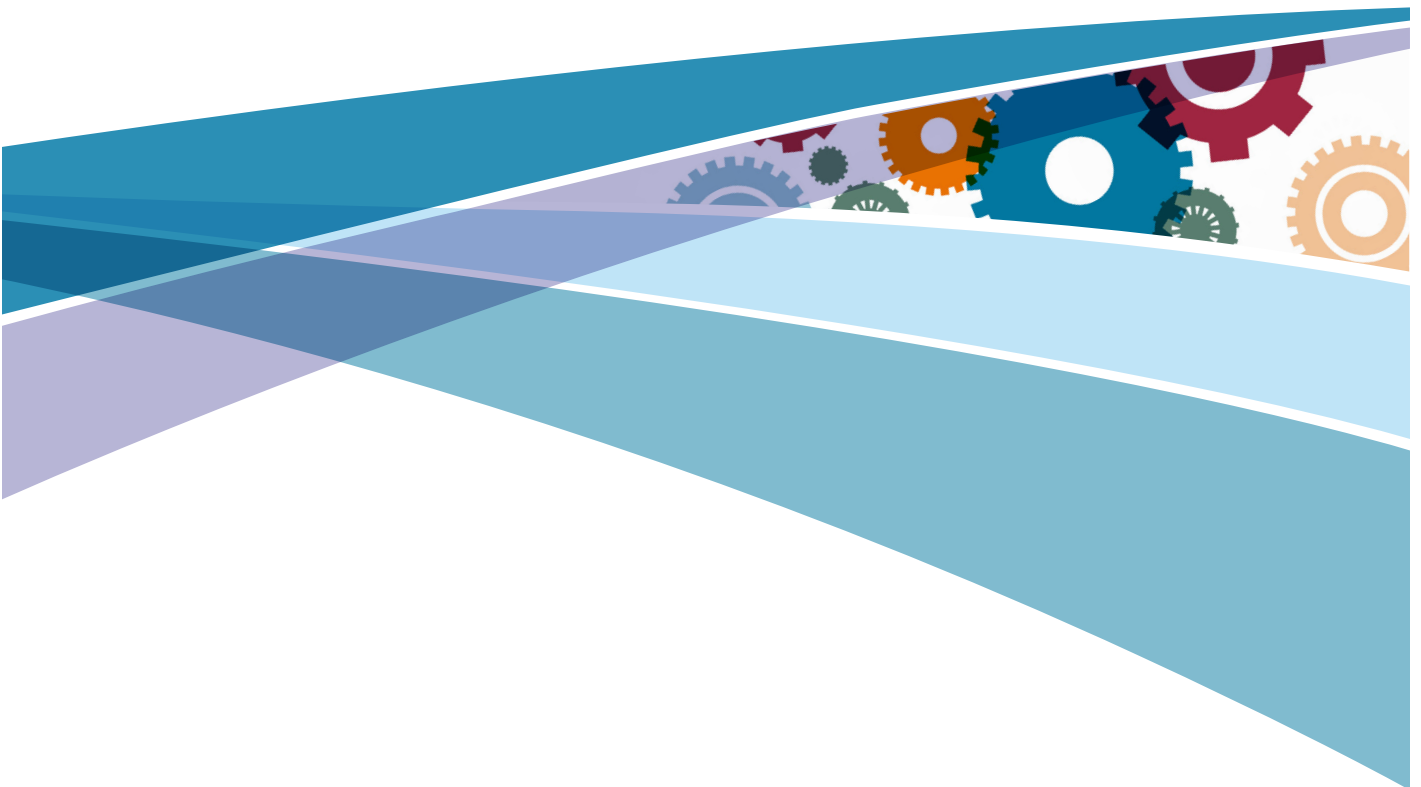
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Executive Summary

Introduction

In March 2012 the Intellectual Property Office (IPO) appointed PACEC to carry out research on the potential introduction of an orphan works system in the UK.

The research arose primarily from the recommendations of the Hargreaves Review which was quite explicit in pointing to orphan works as a major problem of untapped resources in the UK.

As a result of its research, the Review found that the orphan work problem results in large quantities of copyright works being effectively unavailable for use, whether for cultural or commercial purposes. Therefore it was recommended that the government should legislate to enable licensing of orphan works.

The government accepted this recommendation and as part of a potential solution, recognised the need for further research and views.

Within this context the aims of the study were to carry out some qualitative research in the UK with organisations that had an interest in orphan works and had previously been consulted by IPO. The main aim was to consult on the views of interested parties and in particular discuss the perceived benefits, disbenefits, and changes in use patterns from their perspective. Interviews were also held with a small sample of organisations in other selected countries where licensing schemes which included some uses of orphan works had been introduced i.e. Canada, Denmark, Hungary, Japan and India, to provide some insight into their experiences.

In parallel with this research, IPO has commissioned further research on the use of orphan works schemes and pricing issues which has been carried out by Bournemouth University.

The methodology comprised a series of steps:

a.   An inception meeting to gain further insights into the issues and agree the interview programme

b.   A review of the literature available

c.   Interviews with a reasonably representative sample of some twenty five organisations in the UK to gain the impressions of the organisations interviewed.

d.   Interviews with organisations overseas with experience of the licensing schemes introduced in Canada, Denmark, Hungary, Japan and India.

At the time of the research the details of potential proposals to be put forward by the Government for an orphan works scheme were not known in full, but there had been consultations as part of the Hargreaves Review and subsequently. Hence the results are qualified by this, and need to be viewed in this context.

The results below summarise the views and opinions of those that were consulted.

UK Organisations:
The Potential UK System

Twenty-six organisations were consulted. Most of these supported the introduction of an orphan works system – while recognising that at the time of the interview the specific nature of it was uncertain.

A small number of organisations that did not support a scheme (in full or in part) considered that it could be too costly to administer, and the costs outweighed the benefits, especially linked to the view that usage would be relatively low. They also thought that commercial users were difficult to define, copyright holders were known in many sectors and some professions would lose income (e.g. photography) as orphan works could crowd out their services.

The types of benefits identified were divided into specific categories. Interviewees were not able to quantify them. The main types of benefits identified through the interviews are:

*   An increase in the supply of material. All twenty-six interviewees.

    The main impacts would be an increase in access to material for all organisations, an improvement in the ability to search for content, especially electronically, along with an increase in the supply of material (three quarters of organisations selected each).

*   Reductions in risk. Twenty-three organisations

    A system would help instil confidence in the use of copy (hence a reduction of risk and the possibility of challenges and payment of remedies to owners) and that a system would clarify orphan works' status.

*   Reductions in costs. Eighteen organisations

    The main points were that the need for ownership searches would be reduced, as would the time and costs of more formal due diligence.

*   Improvements in outputs. Twenty organisations

    Almost six out of ten said that the scope and quantity of products and services (provided in the commercial and public sectors) would be improved, as would the quality of services.

*   Miscellaneous benefits. Seventeen organisations

    Primarily a reduction in piracy

Looking forward, interviewees considered that the continued exchange and production of information on the internet and social media would enhance the use and general flow of all material. It was thought that this context was important when considering orphan works in the UK.

For organisations that would generate revenue (mainly businesses), the main benefit identified was a reduction in costs for the identification and use of material (fourteen interviewees).

The main performance benefits for revenue earners were improvements in business competitiveness linked to a direct impact on sales and revenue (for twelve organisations for each benefit).

Almost all interviewees thought that almost all types of organisations would benefit from a scheme (albeit a very small number were not supportive of a system), especially the public sector bodies (with a public service remit).

Most of the interviewees also thought businesses would benefit, including businesses of all sizes (by employment and turnover) would see benefits. However, two cited smaller businesses with fewer than 25 employees, and four cited the more medium-sized businesses (with between 25 and 100 employees). The main sectors would be media, TV, film, and publishing.

Twelve respondents thought that the voluntary / community sector would also benefit because of cost reductions.

Twenty-two organisations thought there would be disbenefits from a system. The main concerns and potential disbenefits were that the system could be too complex and cumbersome and the process to identify orphan works and issue licences would take too long. A small number thought a system was not required.

The main disbenefits for revenue generating organisations (especially businesses) were that the costs could be high, especially for the smaller businesses with fewer than 25 employees would feel the cost impacts most.

The main benefits to society at large would be increased access to material (all interviewees) followed by improvements in education and training outputs (eighteen responses).

The wider economic benefits were considered to be that the media sectors in particular would become more competitive and sector incomes would grow, which would help stimulate overall economic growth.

For their own sector, sixteen of those interviewed thought the use of orphan works would increase (but they could not say by how much or give a percentage), and three of these thought there would be a significant increase. The use of material where the ownership of material was known would stay the same for most organisations that were interviewed. Seventeen thought that the overall use of orphan works (across all sectors) would increase and two of these believed there would be a significant increase in the use. Hence there would be an overall increase in demand for orphan works material – this reflected the perceived benefits of a system.

Organisations Overseas:
Experience of Their Systems

Twenty-one interviews were carried out with organisations from other countries. The orphan works systems in the five countries where research was carried out have similar purposes and aims. The systems ranged from a mixed-tier approach i.e. Hungary, where collecting societies play a role, to schemes where a fuller role is played by Government agencies for example Canada, Japan and India where centrally-granted non-exclusive licences are issued. Overall however, the rules in each of the countries are similar in application, scope and aims.

The main types of organisation which interviewees represented were Government agencies, Industry representative bodies, or collecting societies, with the remainder being a mix of education, community bodies, and museums/archives.

The main types of benefits identified through the interviews are as follows. The interviewees were not able to quantify them as research had not been carried out:

- An increase in the supply of materials (nineteen of the twenty-one organisations)

  As with the UK findings the main benefits were primarily in relation to increasing the supply of material that otherwise was unlikely to be accessed primarily because of the risk of copyright infringement. The works referred to mainly included audio / visual music and print media reflecting the types of organisations interviewed.

- The 'reductions in risk' and increase in certainty (eighteen organisations)

  The systems in their countries provided legal certainty / protection and a further four out of five said that they allow greater confidence to allow material to be used, and a reduction in the risk of challenges, with this being the main benefit.

- Reduction in costs (six organisations)

  These organisations cited a reduction in costs especially for due diligence searches, and the fact that materials could be used cost effectively.

- Improvements in outputs (nine organisations)

  These organisations interviewed mentioned benefits in terms of improvements in the scope/quantity of products and services.

- The main benefits for revenue generating organisations were that the systems allow commercial use, with nine citing this benefit. The other main benefit identified, although to a lesser extent, was that the systems improved product content.

- The types of organisations which were seen as benefiting most from the orphan works systems were primarily the library, museums and archives sector, with almost all of the interviewees citing this.

The organisations overseas did not identify many disbenefits arising from their systems, and only four main disadvantages were raised overall. The main disbenefit was that the orphan works process sometimes takes too long, with fifteen interviewees referring to this. This was followed by the view that the system is too complex. Four considered that digitisation increased the risk of piracy, and for three it was felt that it could potentially lead to an invasion of privacy.

The main societal benefit identified was that the systems increased access to material, with fourteen of the organisations noting this. Other key benefits were that the systems improved education and training (twelve interviewees), and that they increased the choice of services and products for the public (as "public goods"), with ten identifying this feature.

In terms of the wider economic benefits for the respective countries the main one was that the systems improve the image and/or reputation of the countries, associated with the transparency and fairness of the systems. The other benefits were increases in the income for some sectors, especially the media sector (three interviewees) and an improvement in competitiveness (five). Overall, it was considered by most that the economic benefits were important although a small group did not see them as significant.

The use of orphan works for their sector (i.e. the interviewee) had probably increased for five of the organisations while the use where the ownership was already known remained the same. Hence, the system had not crowded out the use of material where ownership was known. The overall use of orphan works material (by all users) had also increased, in the view of around five organisations, and use where ownership is known, had remained the same. Generally, it appears that the existence of orphan works systems had a positive impact on the usage of works, based on the views from the organisations consulted.

Fifteen organisations across all the countries stated that there could be improvements to their systems. The main one was that there should be longer periods of access/usage and that the processes should be speeded up to enable quicker access. Some said the system should be widened for all categories of the media sector.

In terms of the types of organisations that would benefit from improvements, almost all were mentioned with main ones being libraries, museums and archives, businesses, and voluntary and community groups.

Supplementary Questions:
Types of Uses for Systems

The representatives of organisations overseas were asked some supplementary questions about some specific uses / applications of orphan works copy / material. The results are mainly qualitative, and can only be seen as illustrative of the countries / respondents.

- Developing mobile phone video games using photographs, maps, motion pictures and audio recordings. The main points were:

  - This use was made easier by the orphan works schemes, but for some it was not relevant.

  - The system encouraged the use and increased it by a negligible amount.

- Making graphic material more available by digitising collections of graphic works (e.g. posters, illustrations etc). The main points were:

  - The system made it easier (especially for non-commercial use).

  - The system had helped to increase the use of works (especially for the non-commercial sector). Some thought there was up to 20% increase; for others it was negligible (i.e. 5%).

- Allowed the use of traditional folk music and sound recordings for educational purposes. The main points were:

  - The use was made easier (especially in the non-commercial sector).

  - The system had allowed the use to increase (particularly in the non-commercial sector). However, the increase was negligible.

- The re-issue of older TV programmes as part of digital on demand services. The main points were:

  - There was significant uncertainty about whether the system had made this use easier or not, although for some commercial use was probably easier

  - The use had been influenced in both the commercial and non-commercial sectors. However, the increase was negligible.

- Creating an online gallery of archive material (following digitisation) containing photographs, maps, motion pictures and audio recordings. The main points were:

    – This use was made easier for both the commercial and non-commercial sectors.

    – The system had influenced an increase in the use – by a negligible amount of about 5%.

- Making books available through digitisation of material. The main points were:

    – No one was able to say whether their system made this use was easier or not

    – No one could say whether their system had influenced an increase in this use.

Overall, the view was that the systems had made it easier to develop the uses and applications above (apart from books being made available through digitisation). The increases in use were thought to be negligible, and it was considered that the systems were still being developed to make some uses easier, for example, through digitisation.

Overall Conclusions

The interviews with organisations in the UK showed that by and large they supported the introduction of an orphan works system. The small group that did not, considered that it would be too costly to administer, and that the costs would outweigh the benefits.

There were considered to be benefits in terms of the competitiveness of businesses, especially for the smaller ones (where the cost of accessing material would be reduced, coupled with an increase in the supply) and firms in the media, TV, film and publicity sectors. Hence, there could be wider economic benefits and some stimulation of growth. The main benefits to society were considered to be increased access to materials, training and educational benefits.

The disbenefits were potentially that the system could be too complex and cumbersome, and licenses could take too long to be issued.

It was considered that there would be an increase in demand for orphan work material.

The main economic benefits were considered to be increases in competitiveness, income and revenue, especially for the media sector. The main benefits to society were through the increase in access to material which improved education and training, and the choice of services for the public.

Overseas organisations did not identify many disbenefits. The main ones were that the process to obtain use could take too long, and the system could be complex. The issue of legal challenges was not raised as a disbenefit.

The orphan works systems had increased the supply of useable materials primarily because of a reduced risk of copyright infringement, and greater certainty and confidence.

There was very little difference in the perceived benefits and disbenefits of systems overseas, as compared to the potential UK system, based on the perceptions of the organisations in these countries.

1. Introduction and Aims

Introduction

In March 2012 the Intellectual Property Office (IPO) appointed PACEC to carry out research on the potential introduction of an orphan works system in the UK. Orphan works – copyrighted works where it is not possible to identify or contact the copyright holder(s) following a search in order to seek permission or a license for use – constitute a significant untapped resource in terms of intellectual property which could be made available for commercial or cultural re-use. Without permission it is not possible to use copyrighted works legally, and hence barriers exist to use and the exploitation of works.

Project Aims

The aims of the study were to carry out some qualitative research in the UK and in selected countries where licensing schemes, which included some uses of orphan works had been introduced i.e. Canada, Hungary, Japan and India, and Denmark (where the scheme is not a bespoke orphan works system). The main aspects are to consider the views of interested partners and the behavioural aspects in particular the perceived benefits, disbenefits, and changes in use patterns. In parallel with this research, IPO commissioned further research on the use of orphan works and pricing issues which was carried out by the University of Bournemouth.

The Methodology

In order to fulfil the requirements of the brief, there has been an integrated series of research tasks:

An inception meeting to gain further insights into the issues with respect to orphan works, the background to the study and consultations previously held as part of the Review and IPO work with organisations with an interest in an orphan works system. At the meeting there was an overview of similar work underway including the research being carried out by Bournemouth University. Initial discussions were also held on the types of organisations that could form part of the interview programme and the other countries to cover, i.e. Canada, India, Denmark, Hungary and Japan.

During the project there was regular liaison with the Steering Group on the research issues, the design and progress.

A review of the literature available, for example, the background research and consultations between IPO / Hargreaves Review with organisations that had expressed views. As part of the project Bournemouth University provided an overview of the systems underway in other countries.

Interviews with organisations in the UK. A reasonably representative group of some twenty five organisations were interviewed with an interest in orphan works, most of whom had been previously consulted by IPO. Some quotas were agreed with IPO to ensure they covered bodies representing industry sectors, collecting societies, libraries, museums, archives and galleries, and universities / the educational sector. Key artefacts and media were also represented, e.g. text publishing, film/TV, music, photography/still images, audio/visual etc. A structured set of topics and questionnaire was used which was agreed with IPO. The topics / issues covered:

The notion of an orphan works system

The potential benefits and disbenefits to organisations and businesses

The benefits to the wider society and the economy

The use of orphan works and content where copyright was known

At the stage the interviews were held the details of any potential scheme had not been determined. However, consultees had formed some idea of the principles of a scheme and what the characteristics may be from earlier consultations, wider discussions, and some knowledge of systems overseas.

Interviews with organisations overseas. These included those operating licensing systems and similar interests to those in the UK (above). Some twenty or so interviews were held, again using a structured questionnaire and topic lists. Interviews were held by telephone and online.

These views would help to clarify the likely use of the system and demand for it based on the likely benefits and disbenefits. The interviews largely met the required quotas so that ex-post weighting of the results was not required to reflect a notional population.

The results below set out the views and options of those that were consulted.

The analysis was essentially qualitative, as interviewees were not able to quantify the impacts, with a database of the results set up to allow the status of responses to particular issues to be established.

The Structure of the Report

Following this introduction, chapter two provides a context for the system under consideration in the UK. Chapter three sets out the results of the discussions in the UK, and chapter four, the interviews overseas. The final chapter draws out some summary results and general conclusions.

The appendix shows the topics used and the structure of the questionnaire used in the interviews.

2. The Proposed System in the UK and Systems Overseas

Introduction

This chapter describes the orphan works system being considered in the UK to provide some context to the results of the interviews with organisations that have an interest. The information is drawn from the government's recent statement on Modernising Copyright[1]. It also briefly describes the systems operating in Hungary, Denmark, Canada, India, and Japan, as a context for the views expressed by organisations in these countries.

The Proposed System in the UK

The Government issued a statement in July 2012 on modernising copyright. It sets out Government policy on modernising copyright licensing and the issue of orphan works. It indicates the Government's intention to allow schemes to be introduced for the commercial and non-commercial use of orphan copyright works and voluntary extended collective licensing of copyright works. This will be subject to a number of important safeguards, and to create a backstop power to require collecting societies to adopt codes of conduct based on minimum standards. It also sets out the broad parameters that the Government intends to set for these schemes. The provisions are set out in the Enterprise and Regulatory Reform Bill and at present the legislation is at the Committee stage (second sitting) in the House of Lords.

The case for change

The Hargreaves Review, the Government response and consultation set out a case for change based on economic growth as a principal motivator but also citing a number of broader reasons for change around fairness, the reputation of the copyright system and the consequences of increasingly widespread digital technologies.

The Government's intentions here have not changed: to ensure copyright provides appropriate incentives for the creation of valuable works and activities that copyright currently over-regulates to the detriment of the UK, and to make changes to tackle problems in the current system.

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1   H.M. Government. Government Policy Statement. Modernising Copyright (July 2012).

Orphan Works

The Government's position, following the Hargreaves Review, is that it benefits no-one to have a wealth of copyright works be entirely unusable under any circumstances because the owner of one or more rights in the work cannot be contacted.

During the initial consultation, most consultation respondents agreed with the Government that a scheme should be introduced to allow the use of orphan works, that is works for which one or more of the right holders cannot be found. The scope of the scheme and how it should operate was subject to more debate.

The Government also understands that the use of orphan works may operate in different ways in different sectors, for example, where rights holders are not represented by collecting societies. Diligent searches for complex works such as audio-visual works, that may contain moving and still images, speech and music, will necessarily take more time than works with only one type of copyright. The Government also recognises that photographs often lack any information about rights holders or about the photograph's age, original purpose, subject matter or country of origin.

The key principles being followed are those given in the consultation document. In summary:

- Minimising market distortion between orphan and non-orphan works, by ensuring the owners of rights in orphan works are treated as similarly as possible to comparable 'non-orphan' rights holders.

- Maximising the benefits to economic growth of the scheme.

- Minimising or eliminating perverse incentives or opportunities to 'orphan' works.

- Through these and other appropriate measures, to ensure adequate protection for the interests of absent rights holders.

- Diligent search before something can be used as an orphan work is key to the scheme.

- Commercial and non-commercial uses of orphan works in the UK will both be permitted.

- This permission should come at an appropriate price – a market rate, to the extent that one can be established.

- This price should be payable in advance (or at agreed times if there is a royalty element).

- Licences will, necessarily, be non-exclusive.

- Moral rights should be respected and protected.

- The Government does not propose to alter the UK's moral rights regime.

- The deliberate stripping of metadata to 'orphan' works is already potentially subject to criminal sanctions and the Government will maintain that position to deter such behaviour.

- There will be a registry of orphan works.

- Works of unknown copyright status, such as where the work is over 70 years old and the date of death of the author is unknown, will be within scope of the scheme.

- A large part of the collections of museums, libraries, and archives are unpublished, unique works, the Government is minded to include some unpublished works in the scope of the scheme.

- Certain very old unpublished copyright works will cease to be in copyright rather than being orphan works.

- The scheme will not take the form of an exception to copyright, but will be based on authorisation by an independent body.

- The UK scheme will be compatible with the emerging European system.

- The Government will legislate in such a way that no sector or type of work is necessarily excluded from the orphan works regime, but there is flexibility to introduce different schemes for different sectors or types of work.

- Detailed scheme rules that deal with many of the potential abuses raised by respondents to the consultation will be prepared and further consultation will take place.

Extended collective licensing

To help simplify copyright licensing while protecting the interests of rights holders, the Government proposed to allow voluntary ECL in the UK for the first time. This would mean that collecting societies that meet the necessary standards for protecting rights holders' interests could seek permission to license specific uses of copyright works on behalf of rights holders who are not members, with the exception of those who opt out of the scheme.

Codes of Conduct for collecting societies

Collecting societies collectively manage copyrights on behalf of rights holders, providing licences to the value of £1bn per annum. The Government recognises the valuable role of collective licensing and the work that collecting societies do on behalf of their members. However, the Hargreaves Review noted that collecting societies tend to be monopoly suppliers in the sectors in which they operate, and that there was evidence that practice could be improved in some areas. Hargreaves argued that greater protection was required both for members of collecting societies, and for their licensees.

The Government values the benefits of collective licensing, and the work that collecting societies continue to undertake to improve their practices. However, evidence from the consultation demonstrates a lack of confidence in elements of the current system which reflect the monopoly status of collecting societies. Government will therefore legislate to allow the introduction, through Regulations, of a backstop power to enable the application of a statutory code of conduct. This power would be used in the event of failure by a collecting society to implement or adhere to a voluntary code which encompasses the minimum standards.

Overseas systems

The licensing schemes which included some uses of orphan works are shown below for Hungary, Canada, India and Japan, and Denmark (where the scheme is not a bespoke orphan works system), are taken from a report prepared by Bournemouth University Centre for Intellectual Property Policy and Management (CIPPM) for the Intellectual Property Office.[2]

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2   Bournemouth University Centre for Intellectual Property Policy and Management, (CIPPM) A Comparative Review of the Treatment of Orphan Works, IPO, 2012.

Hungary

Hungary has a double-tier approach initiated in 1999 and revised in 2009. Some works are managed through centrally-granted non-exclusive compulsory licensing, while others are part of extended collective licences managed by collecting societies and are termed "orphan rights".

The compulsory licensing system forms part of the role of the Hungarian Patent Office (HIPO), which is the intellectual property office managing patents, design, and copyright alike. The HPO keeps a voluntary register of copyright works, it delivers opinions to collecting societies on prices of copyright licences, and it administers the Copyright Expert Council, an advisory body providing procedures and dispute resolution tools.

A work is "orphan", according to Hungarian legislation, if the author is unknown or, if known, cannot be found. The system covers most media. Legislation on orphan works applies also to performances, but not to other related rights (e.g. phonograph productions rights). Uses that can be licensed are not limited to digitisation but are extended to every possible use of the work.

Lawful use of an orphan work, by Hungarian Copyright Law, has to be preceded by a diligent search for the rights holder. Diligent search requirements depend on the type of user and the type of use to be made of the work. Sector specific criteria are set by regulation.

Hungarian legislation provides for a Register of licensed orphan works, managed by the HPO, which includes only orphans for which the Office granted a licence. The register is accessible by the public. It covers types of uses, remuneration cost and date of license withdrawal. It needs to be stressed that only licensed orphan works are included in the register. It cannot be used to locate rights holders and to avoid future orphans.

The Hungarian legislation provides for an exception for non-profit uses of orphan works. Non-profit users do not have to deposit the licence fee with the HPO. They pay directly to the author, where they re-appear and there is a preferential administrative fee.

Lastly, in some cases, orphan works are included within the extended licensing system managed by collecting societies, applied in Hungary to some mass uses of copyright works.

The aforementioned study[3] conducted by CIPPM concluded that the system of centrally administered compulsory licensing and extended collective licensing, whilst on the one hand appears to guarantee legal certainty and reward for rightsholders, but on the other appears not to be suitable for mass digitisation, and ultimately appears to be too expensive.

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[3]   *Ibid*

Denmark

In Danish copyright legislation, which is not a bespoke orphan works system, the regulation of orphan works is partially addressed within the Extended Collective Licensing (ECL) system, although ECL does not deal specifically with orphan works. This system involves the negotiation of copyright licences between collecting societies and a user or – more often – a category of users. The terms of the agreement will extend also to rights holders that are not represented by the collecting society and this includes foreign rights holders.

ECL was first introduced in northern European countries in the 1960's. However, it was typically applied to selected categories of users. In 2008 an amendment to the Danish Copyright Act introduced a new extended collective licensing provision that further broadens the scope of applications to use ECL. It was designed to help mass digitisation, especially in relation to orphan works[4].

Uses of works currently covered by the extended collective licensing system include re-transmission of radio, television and archives, educational use, transfer between libraries, works of art, internal use of archives by businesses, and the public performance of phonographs (written symbols for sounds or words).

Any collecting society that represents a substantial number of rights holders in the relevant field can negotiate agreements for particular uses with licensees, negotiated on a case-by-case basis (with an appeal procedure available if necessary). If the agreement is approved by the Danish Government, the licence is extended to cover works of non-member rights holders, which can include orphan works.

Any work used within the scope of an extended collective licence can be used without the risk of legal pursuits. No standards of diligent search are set by copyright regulations as a prerequisite for the use of orphan works in these circumstances. However, it is current practice for collecting societies to perform a search in order to identify the rights holder of a work and / or their whereabouts[5].

No registry or database including used or existing orphan works is provided by Danish copyright law. However, the government is lobbying at EU level for the establishment of a database.

The ECL System is generally considered by the Danish government and by Danish copyright literature to be sufficiently effective to cater for the rights of reappearing authors of orphan works, although it may not deal with all issues in practice[6].

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4   *Ibid*
5   *Ibid*
6   *Ibid, page 21. Footnote 106, Olsson 2010, and 107 re the Danish Copyright Act 2010*

Canada

Canada recognises Orphan Works in legislation going back to 1985. Works are considered "orphaned" where the "author cannot be located" or identified.

The granting of a non-exclusive licence for the use and exploitation of orphan works is subject to terms and conditions and lies with the Copyright Board of Canada which is "an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyright works and has the power to issue licences for the use of works when the copyright owner cannot be located". The licence granted by the Board for the use and exploitation of Orphan Works is valid only in Canada.

Legislation on Orphan Works applies to all categories of works including performances, sound recordings and broadcasts.

In view of the number of licences which has been granted for published and fixed Orphan Works, the majority have included literary and artistic works, followed by musical works and architectural plans.

It is possible to exploit an Orphan Work without a licence from the Board where the use is for a non-commercial purpose and comes under 'fair dealing for the purposes of research or private study'. Educational institutions, libraries, archives and museums will also benefit from the exception if it is for a non-commercial use.

Before making an application to the Board, an applicant should have carried out the necessary search for the author of the work, and should demonstrate 'reasonable efforts'. In the absence of formal regulations, the Board has formed informal standards over time to judge an applicant's search efforts.

Where the Board is satisfied that an applicant has carried out a search and reasonable efforts have been employed to locate an author who continues to be unlocatable, the Board 'may' issue a licence.

The Board holds a list of licences granted or refused for used Orphan Works, although there does not appear to be a register or database for recording 'suspected orphan works'.

If the Board arrives at the decision to grant a licence, the next step will be to consider the terms and conditions of the licence, the duration of the licence, the price (tariff) and payment.

In deciding on the payment and for the purpose of distributing royalties, should the rights holder be located as outlined below, the relevant collecting society will play a significant role under the Canadian system.

Immediately after the licence is issued by the Copyright Board, it requires the licensee to pay the tariff to the relevant collecting society.

India

India's orphan works system was established in 1957 and amended in 2010 and recently passed a law in June 2012. It extends the scope to any work and not necessarily of Indian origin.   According to the law, a compulsory license can be granted to an applicant who wishes to exploit an orphan work where the author is dead, unknown, cannot be traced or cannot be found. It applies to published works as well as unpublished works which originated in India. This will be extended to any work that did not originate in India.

An application can be under made for a compulsory license for it to be recognised as an orphan work and will be subject to the terms set out, when accepted. Before making an application, an applicant must publish their proposal.

All categories of works including literary, dramatic, musical, artistic works, and sound recordings etc. are covered.

Where due diligence is appropriately carried out, an applicant will then make an application to the Copyright Board. The application should also be accompanied by the relevant fee.

The Copyright Board takes into consideration a number of factors in determining the manner of royalties/tariffs to be paid, e.g. the retail price and prevailing standards.

The licence will be subject to the payment of a royalty and to terms and conditions as the Copyright Board may determine, e.g., the duration, royalty rate (having considered a retail price) and prevailing royalty standards, and recipient with the language for translation standards. The amount of royalty deposited by an applicant will be available for a copyright owner or their heirs, executors or the legal representatives.

A licence can be cancelled if the licensee has failed to produce and publish the work, has used fraud or misrepresentation, or has contravened any of the terms and conditions.

The copyright collecting societies do not play a role in orphan works in India and there does not appear to be a register or database detailing suspected orphan works. Furthermore there is no case law involving an infringement of use of orphan works or a reappearing author.

Japan

A provision for orphan works in Japan was first recognised in 1970 (and updated in 2010), and relates to 'exploitation of works in the case where the copyright owner thereof is unknown. In such cases, and following due diligence if the copyright owner cannot be found, an applicant can make an application to the Agency for Cultural Affairs (ACA) for a compulsory licence. It is possible to issue a compulsory licence for works of a foreign author as long as the work will continue to be exploited within Japan.

Where a compulsory licence is successfully granted, the applicant pays compensation or 'security money' on behalf of the copyright owner which is fixed by the Commissioner of the ACA and which 'corresponds to an ordinary rate of royalty, in the case, designated by Cabinet Order'.

An applicant has to first carry out a diligent search in order to locate the author of an orphaned work. The applicant will pay compensation as payment for use on behalf of the copyright owner which is fixed by the Agency at a set rate.

A person who has applied for a licence can begin exploiting the work concerned with that application whilst the application is pending and where they have deposited 'security money' in relation to the work they wish to exploit.

The changes brought about by more recent amendments provided for the production of the electronic archive in Japan's main and only national library. This includes providing for digitising Orphan Works subject to the relevant laws.

The system does not specifically set out the categories of work which an Orphan Works licence should cover and therefore, it can be implied that all categories of works are covered. The majority of licences granted have been for literary works, followed by artistic works, music, maps, photos, choreographic works, and films.

Under Japanese copyright law, the collecting societies do not play a role. A register/database is held by 'some institutions' for suspected orphan works.

Summary

In summary the approaches amongst the countries which were examined present a wide range of solutions of the issue of Orphan Works.

Denmark uses an ECL system in a scheme which includes orphan works, which involves collective negotiation with users. The EU leaves member States free to choose their own regulatory systems. All the other countries implement a central licensing system, with a central public authority granting copyright licences on Orphan Works. The three main regulatory approaches which are evident are

   a) limited liability

   b) extended collective licensing

   c) central licensing authority

All creative works appear to be covered by most legislations. Both commercial and non–commercial uses are dealt with in all of the countries. Applications for individual or multiple licences are dealt with by central authorities in the countries implementing the central licensing system, while licences are collectively negotiated in Denmark. No particular role is envisaged for collecting societies in most countries, with the exception of Denmark, in which they handle those uses licensed through an ECL scheme, and Hungary, where collecting societies collect the unclaimed revenues after five years from the expiry of the licence.

Prices are fixed by central authorities in the countries that have a central licensing system, and by collecting societies in Denmark where the scheme includes orphan works. Set prices can be challenged in a court of law in the countries, or alternatively before the licensing authority with an extra-judiciary procedure (e.g. Canada). Infringement claims are also dealt with by ordinary courts in all countries or by licensing authorities with extra-judiciary procedures i.e. in Hungary for example. In Denmark, both prices and infringement claims are under the jurisdiction of a special tribunal.

Finally, no case law can be identified in any of the countries regarding orphan works and reappearing authors although Denmark does not have a bespoke orphan works scheme.

3. UK Organisations: The Potential UK System

Introduction

This chapter sets out the results of the discussions with organisations in the UK who have an interest in the potential introduction of an orphan works scheme. The research sought to consult a small but reasonably representative group of organisations. The discussions, which were qualitative, covered the characteristics of the organisations and their interest in copyright and orphan works, views on the benefits and disbenefits of a scheme, impacts on the wider society and future use of copyright material.

The results which are set out below show the opinions and the views of the consultees.

The Characteristics of Organisations

In total some twenty-six organisations were interviewed across a range of sectors including government agencies, organisations that represented businesses / other organisations in their sectors and covering specific artefacts (e.g. authors and publishers, film and television, music, audio/visual content and photography), the universities and education sector, libraries, museums, archives and galleries and collecting societies.

Some organisations were both users of orphan works and provided rights. Twenty-two of the twenty-six sought to protect the copyright holders and look after their interests and eighteen said they carried out / assisted with due diligence / ownership searches, while fifteen authorised the use of orphan works.

Most organisations supported the introduction of an orphan works system – while recognising that at the time of the interview the specific nature of it, its coverage and how it would operate had not been decided and that further consultation was likely.

The small number that did not support a scheme (in full or in part) considered that, from what they knew of it, it could be too costly to administer, and the costs outweighed the benefits, especially linked to the view that usage would be relatively low. The Canadian system was cited as an example here. Other key points were that it was thought difficult to distinguish between commercial and non-commercial use. Many of those that were interviewed considered that where published material was involved most of the holders of copyright were already known - hence an orphan works system would not make much difference. In other sectors (e.g. still images and photography) there was a concern that there could be a loss of revenue for professionals in the sector where orphan works were used instead of their outputs.

The Benefits of an Orphan Works System

The types of benefits identified by the organisations formed general categories. Interviewees were not able to quantify the benefits. The main types of benefits identified through the interviews are shown in Figure 3.1.

Figure 3.1. Number of consultees identifying benefits of an Orphan Works System
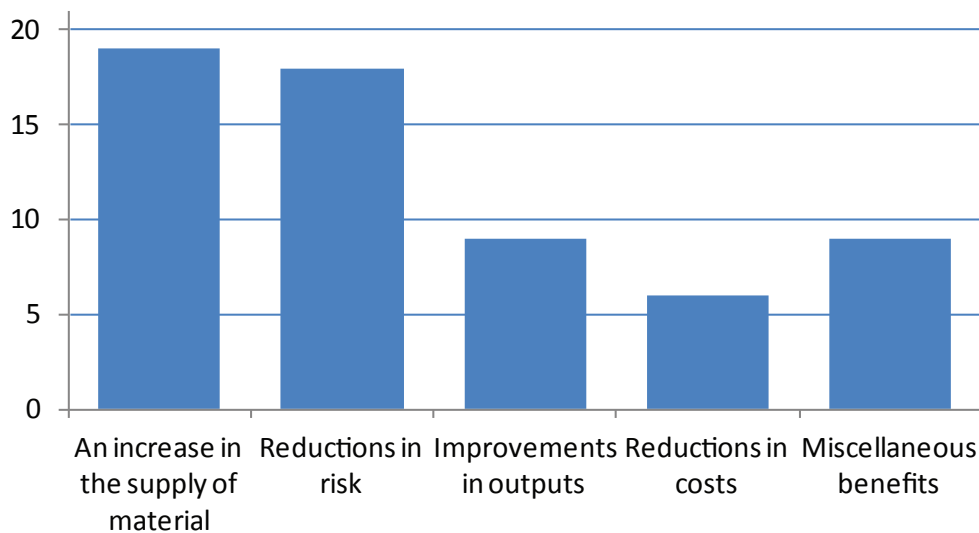
Note: All 26 survey respondents answered this question.

Source: PACEC – Interviews with UK organisations, absolute numbers

An increase in the supply of material / copy that could be used was identified by all 26 organisations interviewed. This was in spite of a small minority of organisations not supporting the introduction of a system. The main impacts would be an increase in access to material for all organisations, an improvement in the ability to search for content, especially electronically and an increase in the supply of material for some eighteen organisations. Increased flows of knowledge / information would result according to fifteen organisations (see Table 3.1).

Looking forward, interviewees considered that the continued exchange and production of information on the internet and social media would enhance the use and general flow of all material. It was thought that this context was important when considering orphan works in the UK.

Table 3.1. The benefits for all groups from an orphan works system

	Number of respondents
	Total
The Supply of material	**26**
Increases access to material	26
Helps identify new sources / material	13
Improves the free movement of knowledge / information	15
Improves the ability to search for content electronically	19
Increases the supply of material	18
Increases knowledge of sources / materials	13
Allows collective use	17
Reductions in risk	**23**
Helps to prevent piracy	8
Allows confidence / reduces risk of challenges / remedies	20
Provides legal certainty / protection	18
Clarifies suspected orphan works status	21
Provides an effective mechanism for obtaining permission	18
Improvements in outputs	**20**
Improves the scope of /quantity of products / services	13
Improves the range of products / services	12
Improve the quality of products / services	13
Improves innovation / creativity	12
Improves experimentation / testing	8
Reductions in costs	**18**
Reduces diligent search	10
Reduces the need for ownership searches and associated costs	11
Reduces the tariff / cost / price of using material	9
Allows material to be used cost-effectively	9
Provides a mechanism for challenging tariffs / price	5
Number of respondents	26

PACEC – Interviews with UK organisations, absolute numbers

Some twenty-three organisations thought that the main risk of using material would be reduced. The main points here were that a system would help instil confidence in the use of copy (hence a reduction of risk and the possibility of challenges and payment of remedies to owners) and that a system would clarify orphan works' status. These points were made by twenty and twenty-one organisations respectively. Some thought that a system would provide greater legal certainty and protection and was an effective mechanism for obtaining permission to use material, i.e. mentioned by eighteen organisations.

The view amongst twenty of the twenty-six consultees was that outputs from using orphan works material would be improved. Thirteen consultees said that the scope of products and services (provided in the commercial and public sectors) would be improved, thirteen said that the quality of services would be improved, and twelve thought their quantity would be improved. Twelve thought innovation/creativity would be enhanced, as was the case for the range of services/products available.

An orphan works system was associated with a reduction in costs for eighteen interviewees. The main points were that the need for ownership searches would be reduced, as would the time and costs of more formal due diligence.

Other benefits were that it was considered that a scheme would make it easier for collective use rather than the exclusive use of material.

The benefits for organisations that could generate revenue from a scheme (for example through sales), especially for commercial use (i.e. businesses but also those that could make charges for the operation of a scheme and use of material) were also discussed with twenty-one of the interviewees. Twenty of these organisations assumed that commercial use of material would be part of the scheme. The main benefit identified was a reduction in costs for the identification and use of material (fourteen interviewees). This reflects the cost / benefit relationships outlined above.

The main performance benefits for revenue earners were thought to be improvements in business competitiveness linked to a direct impact on sales and revenue (for twelve of the twenty-one organisations for each benefit). Associated benefits were thought to be the ability to improve product ideas and content and an increase in jobs and employment for some nine organisations.

Most interviewees thought that almost all types of organisations would benefit from a scheme, albeit a small group were not supportive. Overall the benefits were thought most likely to accrue to the public sector bodies (especially with a public service remit). In particular, libraries, museums, those providing archives and galleries and universities / research organisations would benefit most, along with the educational sector generally (colleges and schools) through greater access to and the use of research (as reported by twenty and eighteen organisations respectively).

Sixteen interviewees also thought businesses would benefit. According to four of these sixteen, the main sectors to benefit would be media, TV, film and publishing. Twelve thought businesses of all sizes (by employment and turnover) would see benefits. However, two cited smaller businesses with fewer than 25 employees and four cited the more medium sized businesses (with between twenty-five and one hundred employees), primarily because of the reductions in costs. Twelve respondents thought that the voluntary / community sector would also benefit.

Disbenefits of a System

While there was some uncertainty about how a potential scheme would work, organisations did have views on the overall principles of a likely scheme. Twenty-two of the twenty-six consultees thought there would be some disbenefits, although most were in favour. The number of interviewees that identified disbenefits were lower than those who cited benefits. The main concerns and potential disbenefits were that the system could be too complex and cumbersome (for twelve respondents) and the process to identify orphan works and issue licences would take too long (ten respondents). Nine of the respondents thought that a system could be costly with increased costs for the use of material (and to operate a system) compared to no orphan works system. See Figure 3.2. . Some thought that digitisation to help create the system could actually increase the risk of piracy (eight respondents).

Figure 3.2. Number of consultees identifying disbenefits for all groups from the system
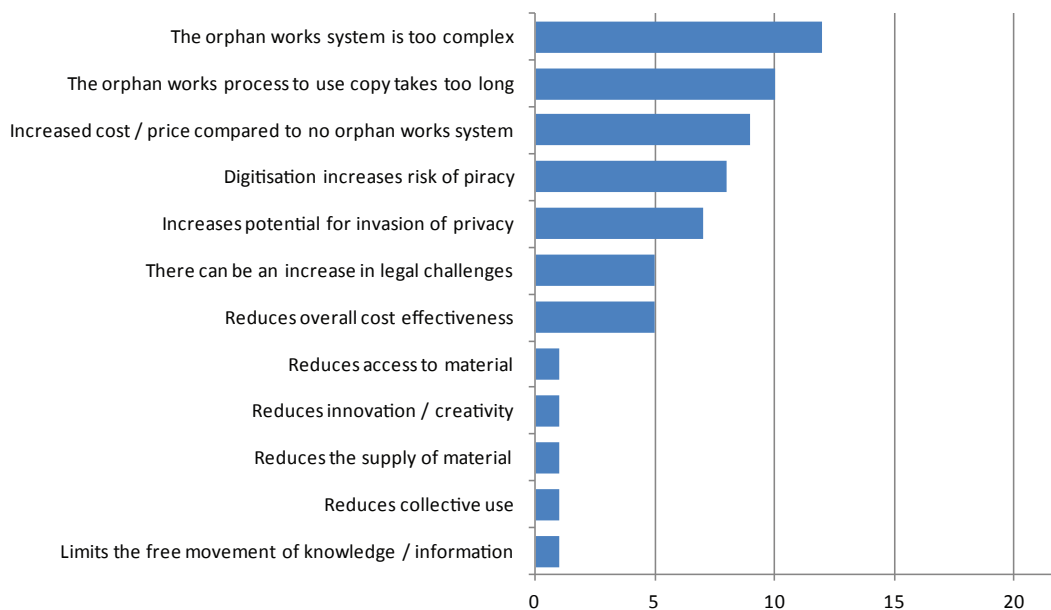
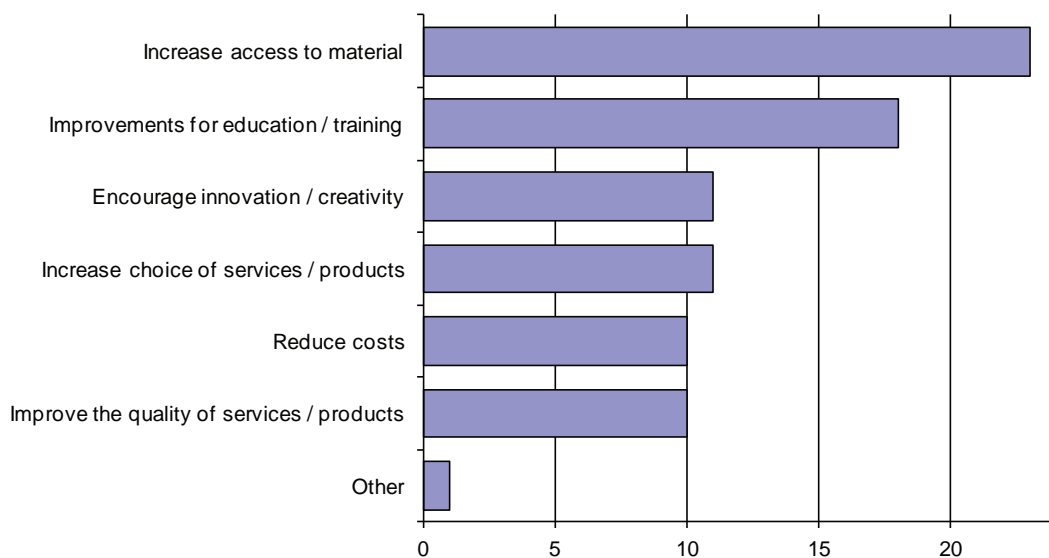**Note: 22 organisations answered this question.**

Source: PACEC – Interviews with UK organisations, absolute numbers

In terms of the organisations that would experience the disbenefits, eleven out of the nineteen interviewees which expressed a view cited businesses, ten cited libraries, museums, and those running archives, followed by universities / research organisations (eight respondents) and the voluntary / community sector (also eight). Among those consultees who thought that businesses would be negatively affected, six organisations thought that all businesses would be affected, and four thought that the smaller businesses with fewer than 25 employees would feel the cost impacts most.

The Wider Societal and Economic Benefits

While individual organisations and those in their sector may benefit (or not) there were potential wider benefits to society through knock on effects and impacts on individuals and groups. The main benefits to society at large would be increased access to material (twenty-three out of the twenty-four consultees who answered this question), followed by improvements in education and training outputs (eighteen consultees). Eleven organisations mentioned benefits in terms of encouragement for innovation and creativity which would feed through into a greater choice of services and products. There would also be improvements in the quality of services / products and reduced costs. See Figure 3.3.

Figure 3.3. Number of consultees identifying benefits to the wider society and public
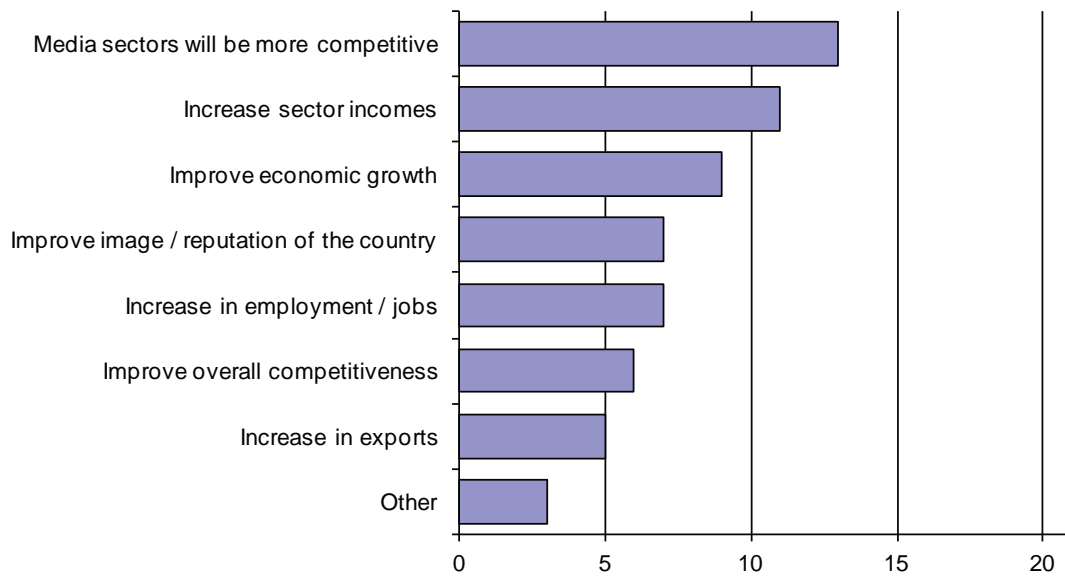

Note: **24 organisations answered this question.**

Source: PACEC – Interviews with UK organisations, absolute numbers

Twenty-one consultees thought that there would be wider economic benefits for the country. The most common responses were that the media sectors would become more competitive (thirteen responses) and sector incomes would grow (eleven responses). Other organisations saw a system improving the general prospects for economic growth with the associated benefits that would flow. See Figure 3.4.

Figure 3.4. Number of consultees identifying wider economic benefits for the country

Note: **Twenty-one organisations responded to this question.**

Source: PACEC – Interviews with UK organisations, absolute numbers

Changes in the Use of Copyright Material

Organisations were asked a series of questions about how the use of material where copyright was known and orphan works material would change if a system was introduced. Sixteen organisations thought that their use of orphan works would increase (but could not say by how much or give a percentage), and three of these thought there would be a significant increase. The use of material where the ownership of material was known would stay the same. Seventeen organisations thought that the overall use of orphan works (across all sectors) would increase, and two of these thought there would be a significant increase in the use. As a counterpoint to this, most thought the use of material where the copyright holder was known would stay about the same.

Hence there would be an overall increase in demand for orphan works material – this reflected the perceived benefits of a system.

4. Organisations Overseas: Experience of Their Systems

Overview of the Country Systems

The orphan works systems in the five countries under examination varied to some extent with the models / regimes ranging from a mixed approach i.e. Hungary where collecting societies collect the unclaimed revenues in addition to offering a register of orphan works, to schemes where a fuller role is played by a central agency, for example Canada, Japan and India, where centrally-granted non-exclusive licences are issued. Overall however, the rules in each of the countries vary widely in application and scope. In Denmark, for example, some licensing of orphan works is enabled through ECL systems. Under ECL collecting societies negotiate ECL agreements on behalf of their members which can be extended to apply to all works of the same type, subject to Government approval.

In the analysis which follows the interviews are combined for all the countries. As the overall sample was some twenty-one with four to five in each country on average it is not appropriate to disaggregate the information for each country as the sample size is too small to make country-specific generalisations. The views should therefore be taken as indicative of approaches to dealing with the issue of orphan works overall. The benefits and disbenefits are broadly similar for each country and where there are any slight variations we make a note of this.

The results shown represent the opinions and views of the consultees.

The Characteristics of Organisations

Overall the interviewees in each country had either reasonable knowledge or were very knowledgeable about orphan works systems in their respective countries. The spread of organisations which interviewees represented were Government agencies, industry representative bodies or collecting societies, and a small number being a mix of education, community bodies and museums/archives. The aspects of copyright which they were primarily involved in were protecting the rights of copyright owners, searches and diligence – to identify ownership and authorising and/or licensing the use of material. In terms of the categories of media which they were involved in, this covered the audio and visual sector followed by written material / print and audio / broadcast, sound, music, and photography.

Benefits of the Systems

The organisations overseas were asked what they thought the benefits of their systems were for all types of organisations including revenue generating ones. They were not able to quantify them as on many aspects research had not been carried out. The main types of benefits identified by consultees are shown in Figure 3.5.

Figure 4.1. Number of consultees identifying benefits of an Orphan Works System
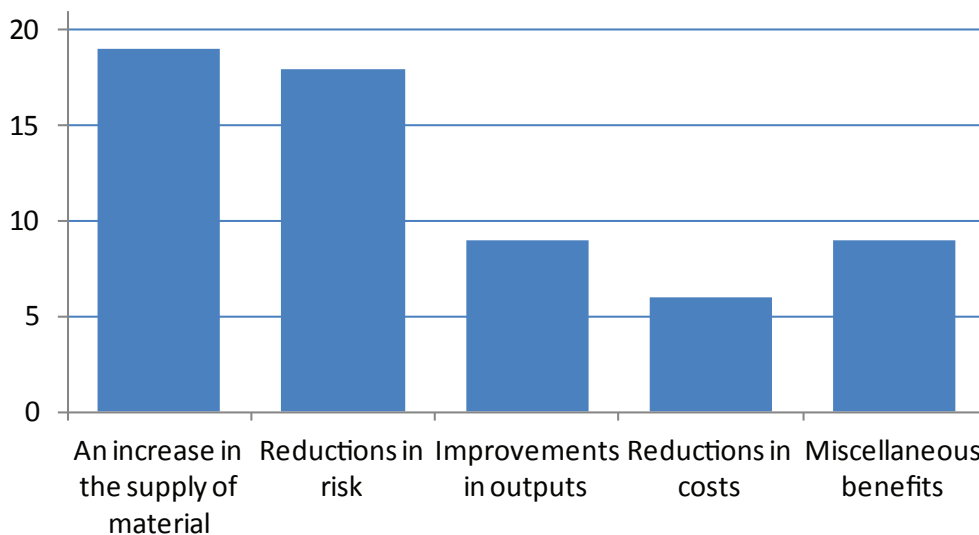
Note: All 21 organisations answered this question.

Source: PACEC - Interviews with overseas organisations, absolute numbers

As with the UK findings the main benefits were primarily in relation to increasing the supply of material that otherwise couldn't be accessed, primarily because of a fear of copyright infringement. The works referred to mainly included audio / visual and print media reflecting the types of organisations interviewed. Table 3.2 shows that within the 'supply of material' overall category, nineteen organisations said that their systems allows increased access to material, and sixteen that it helped to identify new sources / material. Twelve said that it increases the supply of material and ten that it increases the knowledge of sources/materials.

Other benefits which were identified were the 'reductions in risk' with some eighteen organisations saying that the systems in their countries provided legal certainty / protection and seventeen saying that they allow confidence and a reduction in the risk of challenges, with this being the main benefit. Fourteen organisations said that their systems provided an effective mechanism for obtaining permission to use copy.

Nine organisations said they experienced benefits in terms of improvements in outputs and particularly in relation to the scope/quantity of products and services and the range and quality of products and services.

Nine organisations said their systems allowed both the collective and non-collective use of copy. Not many said that their systems facilitated reductions in costs and the use of resources, with six saying that their systems allowed material to be used cost-effectively.

Table 4.2 The benefits for all groups of the orphan works systems

	Number of respondents
	Total
The Supply of material	
Increases access to material	19
Helps identify new sources / material	16
Improves the free movement of knowledge / information	10
Improves the ability to search for content electronically	8
Increases the supply of material	12
Increases knowledge of sources/materials	10
Reductions in risk	
Helps to prevent piracy	9
Allows confidence / reduces risk of challenges etc…	17
Provides legal certainty / protection	18
Clarifies suspected orphan works status	14
Provides an effective mechanism for obtaining permission	14
Improvements in outputs	
Improves the scope/quantity of products / services	9
Improves the range of products/services	7
Improves the quality of products/services	6
Improves Innovation/creativity	5
Improves experimentation/testing	3
Reductions in costs	
Reduces diligent search	6
Reduces the need for ownership searches and associated costs	4
Reduces the tariff/cost/price of using material	4
Allows material to be used cost-effectively	6
Provides a mechanism for challenging tariffs / price	2
Miscellaneous	
Allows collective use	9
Allows non-collective use	7

Note: All 21 organisations answered this question

The main benefits for revenue generating organisations were that the systems allow commercial use, with nine citing this benefit. Other benefits identified, although to a lesser extent, were that the systems improved product content and ideas and improved sales and revenue, although some interviewees were uncertain about these outcomes.

The types of organisations which were seen as benefiting most from the orphan works systems were primarily the libraries, museums and the archives sector with all but one of the organisations mentioning these. The exploitation of literary works was mentioned mostly along with film archive. Thirteen of those consulted said that universities and research organisations would benefit, and eight were of the view that businesses (primarily larger ones and in the creative industries sector) benefit. Nine identified voluntary and community groups as beneficiaries. A small number considered that government agencies (two consultees) and bodies representing industry (one consultee) or collecting societies (one consultee) benefited to any great extent.

In terms of the limited variation across the countries, the views were broadly similar. However, Canadian organisations were, for example, marginally more likely to say that their system allows for collective use and that it provides an effective mechanism for obtaining permission and providing legal certainty. On the other hand in Hungary there was more of an emphasis on the system providing confidence to users along with a reduction of risk in terms legal challenges. Respondents in Denmark were more likely to report that their system reduces diligent search and conversely much less likely than the other countries to report that it clarifies suspected orphan works. Usage of the system in Hungary and Canada were considered to be quite low with most noting that the systems had negligible overall economic impacts in their countries. In each of the countries it was mentioned that the systems could be used more widely as they are currently under used. The Canadian Government agency in particular said that their system influenced behavioural and cultural change which helped to ensure that copyright law was adhered to. Some organisations said that a good system was largely dependent on the rules and standards of appropriate due diligence, which differed to some extent across the different countries although the basis was similar (in their view). Moreover, it was this process which some organisations mentioned as being overly onerous, particularly in terms of the amount of time required to obtain a license.

Disbenefits of the Systems

The overseas organisations did not identify many disbenefits arising from their orphan works systems. Four main disadvantages were raised by the eighteen consultees reporting disbenefits. The main disbenefit was that the orphan works process to allow the use of a copy takes too long, with fifteen consultees noting this. This was followed by the view that the orphan works system is too complex, with twelve mentioning this, and in India to a far lesser extent. This potentially affected use and the quality of outputs in the short run. Finally, four organisations (from India and Canada) considered that where digitisation was part of their schemes, it could increase the risk of piracy and three (from India, Canada, and Japan) stated that it could increase potential for the invasion of privacy. Other than this there was no notable variation amongst the countries in relation to reported disbenefits. See Figure 3.6.

Figure 4.3 Number of consultees identifying disbenefits to all groups from the system
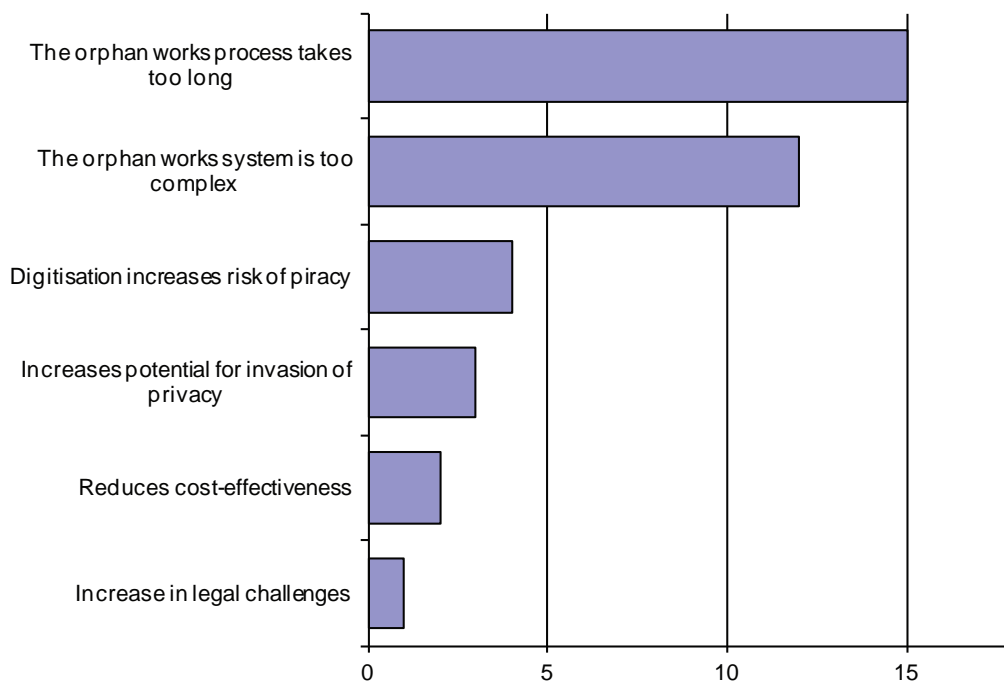
Note: Eighteen consultees identified disbenefits and answered this question.

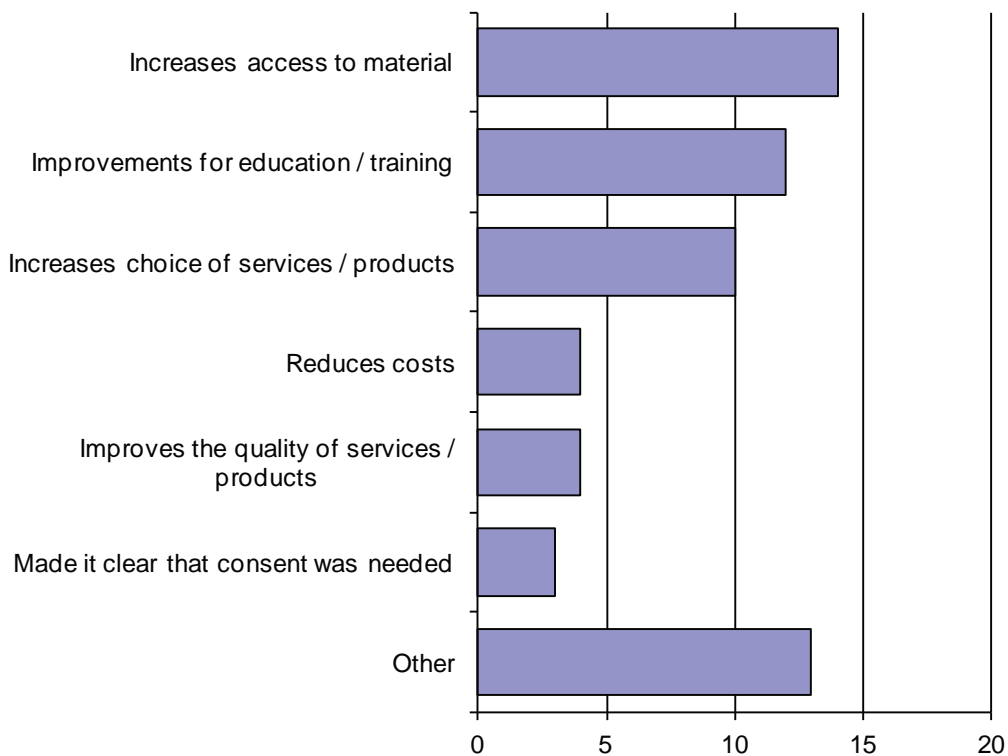Source: PACEC - Interviews with overseas organisations, absolute numbers

The main disbenefit of an orphan works scheme in the opinion of the interviewees was that it could be expensive to administer compared to current arrangements. However, this was mentioned by a handful of organisations interviewed.

The main types of organisations which were thought to experience the disbenefits noted above were libraries, museums and archives. While also being the main beneficiaries of the systems, these types of organisations were also more likely to experience the greatest downsides because they are the most prevalent users of orphan works. Organisations interviewed in Denmark were more likely to say that businesses would feel the disbenefits the most.

Wider Societal and Economic Benefits

The main societal benefit identified was that the systems increased access to material with fourteen of those overseas noting this. Other key benefits were that the systems facilitate improvements for education and training (for twelve), and that they increased the choice of services and products for the public. A very small number of organisations said that their system helped to reduce costs and improved the quality of services and products. A further benefit was that the very existence of a system demonstrates to potential users of copyright material, where the creator is unknown, that there are laws and regulations in place which have to be adhered to. In the view of the consultees, this helps to change behaviour as to whether material should be used or not and what the processes are to obtain use. See Figure 3.7.

Figure 4.4. Number of consultees identifying wider societal benefits

Note: Twenty consultees identified wider benefits and answered this question.

Source: PACEC - Interviews with overseas organisations, absolute numbers

In terms of the wider economic benefits for the respective countries the main one (according to seven interviewees) was that the systems improve the image and/or reputation of the countries through greater fairness and transparency. The other benefits were increases in the income for some sectors, especially the media sector (three interviewees) and an improvement in competitiveness (five). Overall, it was considered that the economic benefits were important. However, a small number of interviewees did not see them as significant. It was very difficult for the majority of the respondents to establish whether there have been any major economic benefits at the macro level, although the benefits identified could have some influence. Interviewees in Denmark were more likely to say that there were education and training benefits because more information was available to both teachers and trainees, as well as increasing the choice of services and products, and that the scheme encouraged innovation/creativity.

Changes in the Use of Copyright Material

Most of the organisations either used the content/copy from their system a little or not at all, albeit they were clearly involved in the system. The use of orphan works by their sector (i.e. the interviewees) had probably increased for five of the organisations while the use where ownership was known remained the same, i.e. there were no adverse displacement effects. Finally, the overall use of orphan works material had increased in the view of five organisations, and use where ownership is known had remained the same – not resulting in any displacement effects. Generally, it appears that the existence of the orphan works systems had some positive impact on the usage of material (albeit it was not significant) based on the views from these organisations. However, it was considered that the existence of a system deterred the use of material from potential users who might consider using it without permission. This was also cited as a key benefit.

Improvements to the systems

Fifteen organisations across all the countries said there could be improvements to their orphan works systems. Figure 3.8 below shows that the main ones were that the processes should be speeded up to enable quicker access (identified by eight organisations) and that there should be longer periods of access/usage (seven citations). A further five said the system should be widened for all categories of the media sector. In terms of specific sectors suggested these included the audio / broadcast and sound sector and to a lesser extent written material, photographic and cinematic sector.

Figure 4.5 What improvements would you like to see?
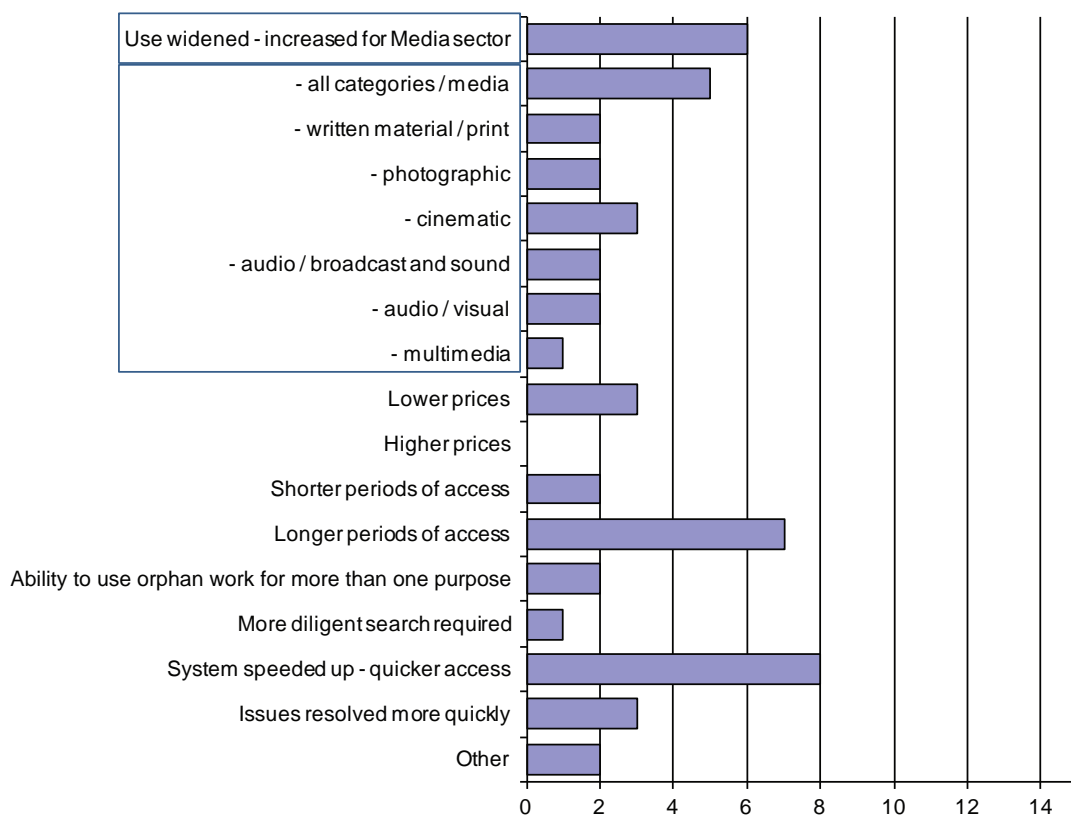
Note: Fifteen organisations identified improvements and answered this question.

Source: PACEC – Interviews with overseas organisations, absolute numbers

In terms of the types of organisations that would benefit from improvements almost all were mentioned with main ones being businesses, libraries, museums and archives and voluntary and community groups. Fewer respondents said that the improvements would affect industry representative bodies or collecting societies.

Supplementary Questions: Types of Uses for Systems

The representatives of organisations overseas were asked some supplementary questions about some specific uses / applications of orphan works copy / material. The aim was to assess whether or not the system had made it easier to develop the type of use (or not) and whether the system influenced and / or encouraged the use or not. There were six uses or applications which are shown below, along with the views of the interviewees. While some twenty interviewees were contacted, just over half did not have a view or the effects could not be determined. Some nine responses were received which covered all the countries. Most interviewees indicated they were replying on behalf of colleagues that had been consulted by them. The results are mainly qualitative, and can only be seen as illustrative of the countries / respondents.

a. Developing mobile phone video games using photographs, maps, motion pictures and audio recordings. The main points were:

   – This use was made easier by the orphan works schemes, but for some it was not relevant

   – The system encouraged the use and increased it by a negligible amount.

b. Making graphic material more available by digitising collections of graphic works (e.g. posters, illustrations etc). The main points were:

   – The system made it easier (especially for non-commercial use).

   – The system had helped to increase the use of works (especially for the non-commercial sector). Some thought there was up to 20% increase; for others it was negligible (i.e. 5%).

c. Allowed the use of traditional folk music and sound recordings for educational purposes. The main points were:

   – The use was made easier (especially in the non-commercial sector).

   – The system had allowed the use to increase (particularly in the non-commercial sector). However, the increase was negligible.

d. The re-issue of older TV programmes as part of digital on demand services. The main points were:

   – There was significant uncertainty about whether the system had made this use easier or not, although for some commercial use was probably easier

   – The use had been influenced in both the commercial and non-commercial sectors. However, the increase was negligible.

e. Creating an online gallery of archive material (following digitisation) containing photographs, maps, motion pictures and audio recordings. The main points were:

– This use was made easier for both the commercial and non-commercial sectors.

– The system had influenced an increase in the use – by a negligible amount of about 5%.

f. Making books available through digitisation of material. The main points were:

– No one was able to say whether their system made this use easier or not

– No one could say whether their system had influenced an increase in this use.

Overall, the view was that the systems had made it easier to develop the uses and applications above (apart from books being made available through digitisation). The increases in use were thought to be negligible, and it was considered that the systems were still being developed to make some uses easier, for example, through digitisation.

Overall Conclusions

This chapter draws on the results from the research presented in the previous chapters. The interviews with organisations in the UK showed that most supported the introduction of an orphan works system. A small number that did not, considered that it would be too costly to administer, and that the costs would outweigh the benefits, as the use would be low. Some sectors such as photography would lose income as orphan works could crowd out their services.

There were considered to be benefits in terms of the competitiveness of businesses, especially for the smaller ones (where the cost of accessing material would be reduced, coupled with an increase in the supply) and firms in the media, TV, film and publicity sectors. Hence, there could be wider economic benefits and some stimulation of growth. The main benefits to society were considered to be increased access to materials, followed by training and educational benefits. The education sector, with museums, galleries, and archives would benefit most, as would the community and voluntary sectors.

The perceived disbenefits were potentially that the system could be too complex and cumbersome, and licenses could take too long to be issued.

It was considered that there would be an increase in demand for orphan works material and other overseas material as well.

The interviews with organisations in Canada, Denmark, Hungary, India and Japan indicate stronger benefits than disbenefits. The main economic benefits were considered to be an increase in competitiveness and income and revenue, especially for the media sector. A related factor was an overall improvement in the image and reputation of countries, primarily as a result of having a system that was reasonably transparent, combined with the fact that they had introduced a system at all in an attempt to ensure that material was used on a "fair" basis. The main benefits to society were through the increase in access to material which improved education and training, and the choice of services for the public as "public goods".

Overseas organisations did not identify many disbenefits. The main ones were that the process to obtain use could take too long, and the system could be complex. The numbers interviewed were very small and therefore it would be difficult to draw any conclusions on a country by country basis, though some distinctions are made in the report.

The orphan works systems had increased the supply of useable materials overseas primarily because of a reduced risk of copyright infringement, and greater certainty and confidence. The systems helped to change behaviour as to whether material should be used or not, and what the processes are to obtain use.

The use of orphan works had increased overseas, and had not crowded out the use of works where ownership was known. Hence, the overall use of material had risen over the years.

There was very little difference in the perceived benefits and disbenefits of systems overseas, as compared to the potential UK system, based on the perceptions of the organisations in these countries.

Appendix A - Interview Topics

The interview topics for organisations in the UK on the proposed orphan works system and organisations overseas were similar so that the responses could be compared. The main topics were:

- Contact information: the type and role of organisations re: orphan works.

- Benefits of the orphan works systems (e.g. increase in material available, permits confidence in use, reduces risk and costs)

- Disbenefits of the system (e.g. length of time and complexity).

- Groups offered by benefits / disbenefits.

- Wider economic benefits (e.g. competitiveness).

- Societal benefits (e.g. access to material, educational and cultural benefits).

- Changes in the use of orphan works / no orphan works material.

- Overseas. Possible improvements to the system.

Overseas organisations were also asked how their systems had influenced any specific types of users.

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