

Name of respondent: Richard Paterson

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Public Body

1. Collecting societies have a very real interest in identifying creative workers whom they represent in order to ensure any license of a work provides remuneration to those of its members who have contributed to it. For any purported orphan work it is incumbent on CMOs to do their utmost to ensure as far as possible that the required diligent search will identify and locate the rightsholders. This is not always simple, and we have at times provided the necessary information from our databases for CMOs needing to distribute monies collected under the Cable and Satellite Directive.

It will be important, as the Orphan Works scheme is introduced, that CMOs ensure that those seeking to licence a work have access to their databases as part of the diligent search they must conduct. However, it is not an area where CMOs should be expected to improve their overall expertise unduly unless this is requested by a significant number of members.

2. Transferability of an orphan works licence is unnecessary given the non-exclusive nature of any Orphan Works licence and the subsequent transparency of the diligent search information held. Any new licence should follow the prescribed pattern for submission and approval.
3. This would have been an excellent idea if the European Directive had not been enacted. However, given the coverage of the Directive is for exactly these kinds of high volume use by public bodies wishing to make their collections accessible in a non-commercial way the need for an annual licence would be very limited.
4. This is obviously problematic given the term of copyright in any work. However, as indicated in the document the emergence of rightsholders in other jurisdictions has been extremely unusual, so any time limit would be unfair and against the spirit of the overarching principles of copyright.
5. This is another problematic area given the cost to the public purse of running the scheme, the unknown level of use, and the unresolved question of beneficiaries from any unclaimed funds. In principle we would suggest that any 'surplus' – and this should be accounted for to include interest on licence fees collected - should be redistributed after seven years i.e at the end of a licence's term.
6. Our preferred use of unclaimed funds would be to invest in public collections – usually maintained from the public purse and from which many orphan

works will be sourced, as well as into training and other schemes which provide benefits to creative workers.

7. The proposed appeal routes seem appropriate.
8. The extent of our use of the Orphan works scheme is difficult to estimate at the moment. In most cases, where the use is in fulfilment of our cultural and educational objectives, we will opt to use the EU scheme as this entails less bureaucracy and requires less resources, financial and human, to implement. It is probable that we might use this scheme 10 or more times each year. Where we decide to clear orphan works for commercial use – for instance, in making material available through a VoD platform – the UK scheme would be used. This might occur once or twice a year.
9. Types of use:
 - Free online resources for education
 - In venue resources providing free or charged public access
 - Video on demand, especially via the BFI Player
10. This will clearly be a major factor affecting any producer of documentaries which utilises orphaned material or where a documentary is based on embedded material which is orphaned. The chilling effect of a non-exclusive licence is difficult to predict but could be significant.
11. Again the limitation of the UK legislation to use in the UK could inhibit the inclusion of orphan material in programmes or other materials which will be distributed internationally. We assume that E&O insurance would be required to cover wider international exploitation beyond the UK in these circumstances.
12. In the first instance we would use the Orphan Work provisions to clear individual items. We had assumed that the ECL provisions were intended to enable the licensing of whole collections, whether orphan or not, so we are a little uncertain why this question is being asked. In the audiovisual sphere there will be very few ‘collections’ which are orphan and where a single diligent search would be sufficient to cover the whole collection
13. We hold a considerable quantity of unpublished works in our Collections many of which are orphan. These may be films or what we describe as special collections (papers, scripts, posters, designs etc). We have as yet not considered the proportion of applications we might make for these works to be licensed as orphan works although it is possible that in future we might use the scheme to secure licences for works which will be utilised in merchandising. We are aware of the uncertainty regarding the act of publication of film works which have neither been broadcast nor included in a published DVD and would welcome clarification from the IPO on this matter as we hold many such works which we believe are otherwise subject to the 2039 rule (CDPA 1988 Schedule 12).

14. We will explore a number of options but in the first instance the provisions will allow us to de-risk the use material in our access provision through online offers such as BFI Player and in-venue access through our Mediatheques.
15. This is not a question for which there are any statistics. However, from our experience whilst there are some cases where a rights holder is uncovered, and this we estimate is possibly one in three cases, it is the exception rather than the rule.
16. Yes we expect to use the provisions in the EU Directive. Our archive provides public access through a number of platforms: research access where the copyright exceptions are applicable; public access in Mediatheques across the UK where material is cleared with rights owners and similarly educational access online through www.screenonline.org.uk. We would expect to use each of these platforms and others to provide public access to works identified as orphaned.
17. This will obviously be determined on a case by case decision where we believe there is sufficient commercial justification above and beyond what is allowed under the terms of the Directive to take an orphan work and make it available for retail on whichever platform is deemed most suitable.
18. This will occur very infrequently if ever
19. This is very difficult to assess. When making material available commercially an assessment is made every time of the likely return on investment. When a judgment is made that something is of sufficient cultural importance recovery of full costs might not be required. However, in these straitened financial times these judgements are less frequent.
20. We might publish a DVD which contains the material or make it available online through BFI Player, our new Video on Demand service.
21. We would not rule this out but no such partnership is currently planned.
22. Yes
23. For audiovisual works we would suggest adding Companies House and the Charities Commission as possible sources of information.
24. Yes we agree with the addition of non published works under Part 2 of the Schedule but as noted in our answer to Question 13 we would request further clarification as to what constitutes an unpublished work in the audiovisual sphere. We have no other data sources specific to unpublished works to suggest adding to the list for diligent search.
25. Civil sanctions are a proportionate response to any issues which arise and require determination.
26. This is not an area within our competence.

27. As noted under Question 7, we concur with the suggested appeal routes.

28. OTHER COMMENTS. None