


|  <b>Regulatory Policy Committee</b>   | <b>Opinion</b>  |                   |
|--|---|-------------------|
| <b>Impact Assessment (IA)</b>  | Orphan works  |                   |
| <b>Lead Department/Agency</b>  | Department for Business, Innovation and Skills (Intellectual Property Office) |                   |
| <b>Stage</b>   | Final   |                   |
| <b>IA number</b>   | BIS1063   |                   |
| <b>Origin</b>  | Domestic  |                   |
| <b>Expected date of implementation</b>   | 1 October 2014 (SNR8)   |                   |
| <b>Date submitted to RPC</b>   | 12 June 2014  |                   |
| <b>RPC opinion date and reference</b>  | 20 June 2014  | RPC11-BIS-1063(5) |
| <b>Departmental assessment</b>   |   |                   |
| <b>One-in, Two-out (OITO) status</b>   | <b>In scope</b>   |                   |
| <b>Estimate of the equivalent net cost to business (EANCB)</b>   | <b>zero net cost</b>  |                   |
|  |   |                   |
| <b>RPC overall assessment</b>  | <b>GREEN</b>  |                   |
| <b>RPC comments</b>  |   |                   |
| <p>The IA is fit for purpose. The main direct benefits of the proposals are to existing users being able to use content that is currently orphaned. The Department is unable to estimate the value of these benefits. As the scheme is voluntary, the Department assumes that the benefits are at least equal to the costs of diligent search, and fees charged by the authorising body. The Department has also identified indirect benefits to new commercial businesses that may emerge once the licensing regime is in force. The Department has classified the proposals as zero net cost for One-in, Two-out purposes. The RPC is able to confirm this assessment.</p> |   |                   |
| <b>Background (extracted from IA)</b>  |   |                   |
| <b>What is the problem under consideration? Why is government intervention necessary?</b>  |   |                   |
| <p><i>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 be copied lawfully only to a very limited extent and its use in books, TV programmes, exhibitions and on websites is curtailed. Rights holders gain nothing and the works' value to society is lost. The Government have brought forward legislation to provide for regulations to license the use of such works while protecting the rights of absent owners.</i></p>   |   |                   |
| <b>What are the policy objectives and the intended effects?</b>  |   |                   |
| <p><i>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.</i></p>  |   |                   |
| <p><i>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.</i></p>   |   |                   |

### **Comments on the robustness of the One-in, Two-out (OITO) assessment**

The IA states that the proposals would exempt orphan works users from existing copyright regulation and are in scope of OITO.

The Department is unable to estimate the value of the benefits of the proposals. However, as the scheme is voluntary, the Department assumes that the benefits to existing users are at least equal to the costs and has, therefore, classified the proposals as zero net cost for One-in, Two-out purposes.

This treatment of permissive changes is in line with paragraph 1.9.20-1.9.21 of the Better Regulation Framework Manual and, based on the evidence presented, this provides a reasonable assessment of the likely impacts and is consistent with paragraph 1.9.12 of the Better Regulation Framework Manual (July 2013).

### **Comments on the robustness of the small & micro-business assessment (SaMBA)**

The proposals are deregulatory for business. A SaMBA is, therefore, not applicable. The IA explains that micro-businesses are not excluded from the scope of the proposals because there would be an overall benefit for them from being able to use orphan works.

### **Quality of the analysis and evidence presented in the IA**

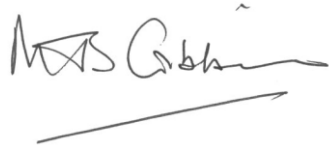
The IA states that the proposals would mean holders and users of works, where the creator is unknown or cannot be located, would be exempt from the regulatory framework surrounding copyrighted works. The proposals would recast regulation in order to reduce the burden on existing organisations holding or wishing to use orphan works. There would be a series of safeguards around the use of orphan works. These would have a direct impact on businesses only when they choose to use an orphan work.

The main benefits of the proposals are to existing users, who will be able to use content that is currently orphaned. The Department is unable to estimate the value of these benefits. As the scheme is voluntary, it assumes that the benefits are at least equal to the costs of diligent searches, and administration fees charged by the authorising body. The Department has also identified indirect benefits to new commercial businesses that may emerge once the licensing regime is in force.

The main costs of the proposals are the set up and running costs of the public sector authorising body and the costs of undertaking diligent searches by users, such as museums, galleries, libraries, archives and others such as broadcasters, publishers and production companies. Such searches would be voluntary and undertaken only if potential users believe it worth the effort of conducting them.

To support this assumption, the Department includes an estimate of the value of these costs - totalling £235,700 each year.

**Signed**

A handwritten signature in black ink, appearing to read "Michael Gibbons". The signature is written in a cursive style with a long horizontal stroke at the end. There is a small mark above the letter 'i' in "Gibbons".

**Michael Gibbons, Chairman**