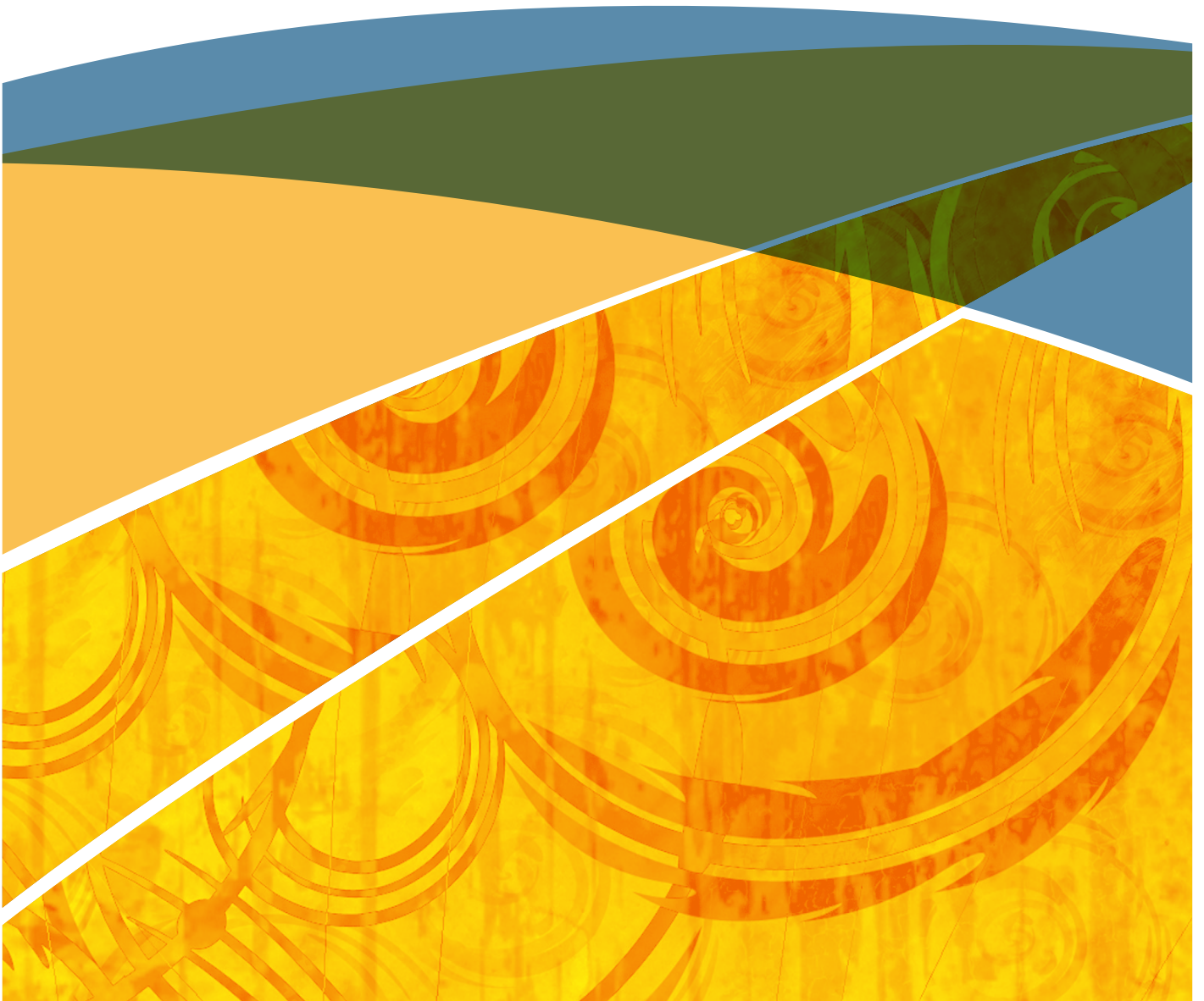




Intellectual
Property
Office

Orphan Works Licensing Scheme Guidance for right holders



Guidance for right holders

1. Overview – the licensing of orphan works

An orphan work is a copyright work where the right holder is unknown or cannot be located. The orphan works licensing scheme allows the Intellectual Property Office (IPO) to grant an applicant a non-exclusive licence to use an orphan work. The scheme was launched on 29 October 2014 when the Copyright and Rights in Performances (Licensing of Orphan Works) Regulations 2014 came into force.

An applicant must conduct a diligent search for the right holders in the work and submit details of that search to us as part of their application. The purpose of the diligent search is to find right holders where they can be found and to demonstrate that all reasonable efforts have been taken where they cannot be found.

We have produced guidance on how to undertake a diligent search for different types of works to ensure that diligent searches are carried out consistently and to a high standard. You may be interested to see which sources could be relevant to different types of copyright work:

www.gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants

We may refuse to grant a licence to an applicant if we believe that the diligent search is inadequate.

An application will also be refused if the proposed treatment of the orphan work is considered derogatory. The legal definition of “derogatory” is when the treatment of a work amounts to distortion or mutilation of the work, or is otherwise prejudicial to the honour or reputation of the author or director. Whether a proposed adaptation might be derogatory will depend on the individual circumstances of each case.

In addition, we may refuse to grant a licence if we consider that it would not be in the public interest to do so.

If the IPO grants a licence to use an orphan work, the applicant must pay a licence fee prior to the licence being issued. All licences are non-exclusive, do not permit sub-licensing of the work and can be a maximum of 7 years. The IPO will hold the licence fee on behalf of the right holder.

2. Setting the licence fee

We set the licence fees by looking at the prices charged for using similar non-orphan works in the same way. This follows the requirement set out in the regulations which says that licence fees must be set taking into account relevant factors, including the licence fees charged for similar works that are not orphan.

This means that the licence fees will vary significantly depending on the type of work and what it is being used for.





You should also be aware that fees for non-commercial use of an orphan work are nominal, as the non-commercial use of non-orphan works is often permitted without any charge.

3. Right holders for orphan works

Our aim is only to license works where the right holder genuinely cannot be found after a diligent search. Even so, we expect that, in a small number of cases, we will licence a work as an orphan and the right holder will then come forward at a later date.

4. The Orphan Works Register

The [orphan works register](https://www.orphanworkslicensing.service.gov.uk/view-register) (<https://www.orphanworkslicensing.service.gov.uk/view-register>) contains details of all applications for an orphan works license, all licences that have been granted and all applications that have been refused.

On receipt of an application to use an orphan work, the application details will be checked and then the key details added to the register and will be available to check while the application is being considered by the IPO and the diligent search is checked.

The register is searchable and you can search by:

- title;
- description of the work;
- any known identifying number (such as ISBN for books);
- category of work;
- name of known right holders;
- status of the licence application; and
- orphan works application number

Where the work is a still visual work, for example, a photograph, a picture or a drawing, an image of it will also appear on the register

5. If you think your work is on the register

You should contact us by using the contact form on the register. This ensures that your claim is allocated to the correct work or works.

We will need to be satisfied that you are the right holder or one of the right holders for that work.

Any evidence that you can provide in support will be helpful, particularly copies of any relevant documentation. Example documentation might be:

- contracts;
- wills (for example, if you are the heir to the original creator and right holder); or
- copies of any other relevant correspondence showing that you are the right holder).

6. What happens next?

We will consider whether we are satisfied that you are the right holder for the work in light of any evidence you are able to provide. As part of this process, we may need to come back to you to seek clarification or ask questions related to your claim.

Once we have made our decision we will notify you of it in writing via email.

7. Disputes over who owns a right within an orphan work

Any dispute over the ownership of a right is not a matter for the IPO. This is a matter for the two or more people involved. The IPO will make a decision on whether to pay out licence fees to individuals on a case by case basis.

8. What happens to the orphan works licence?

Once we are satisfied that you are the right holder then, if the work has been licensed as an orphan, that licence will continue for the remainder of its term, but we will not issue any new orphan works licences that cover those rights within that work.

Any new uses of the work will be up to you, as the right holder, to grant permission in respect of the right you own.

The orphan works register will also be updated to reflect the fact that the work is no longer orphan or only partially orphan (where there are other right holders who cannot be found or are unknown).

9. What about the licence fee which was paid?

Where it is less than 8 years since the orphan works licence was issued we will pay you any licence fee in respect of that work (or relevant part of the licence fee where there are multiple right holders).

You will receive any payment due within 2 months of being notified that we accept your claim to be the right holder, unless you decide to waive payment.

10. Multiple orphan right holders

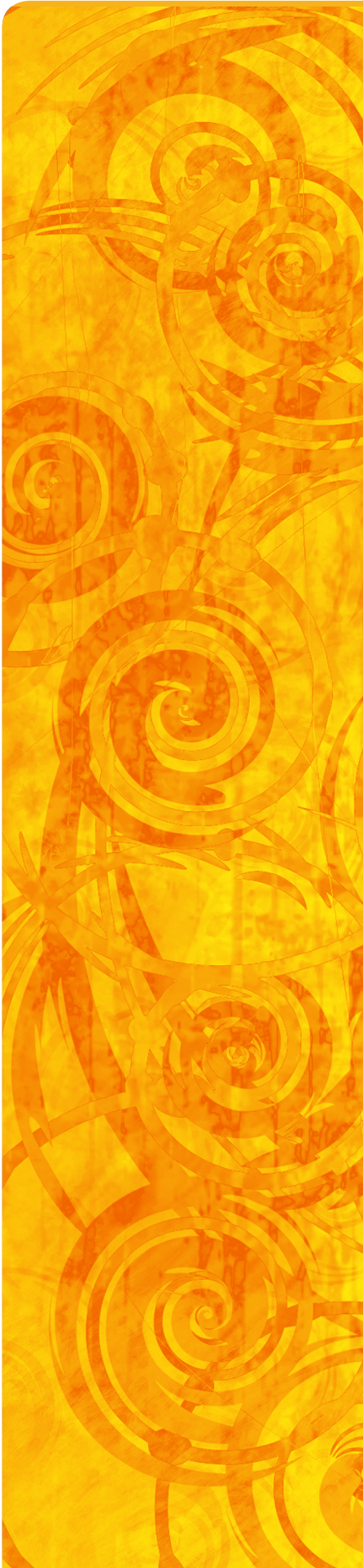
Where there are multiple orphan right holders in the work, you will receive the appropriate proportion of the licence fee that reflects the right(s) that you hold in the work.

11. What happens if I come forward more than 8 years after the licence was issued?

While a right holder has no right to the licence fee after 8 years, we do still have discretion to pay a right holder who comes forward after 8 years have passed.

In such circumstances, you will need to tell us why you think that there are good reasons for us to pay you the licence fee, even though you are outside the 8 year time limit.





Unclaimed licence fees will be used to offset the costs of setting up and running the licensing scheme. Any surplus funds will then be used to fund social, cultural and educational activities, or otherwise at the discretion of the Secretary of State.

12. Complaints & appeals

If you want to appeal against a decision we have made, then you should contact us in the first instance. You should provide full details of the decision you are appealing against and explain why. Please attach any relevant documentation or e-mails.

orphanworkslicensing@ipo.gov.uk

If you remain unhappy, you can ask for your complaint to be referred to an IPO Manager who was not involved in your case

For all appeals, we will acknowledge your appeal on the day we receive it. We aim to reply within two weeks of receiving your appeal, but if the problem is complex and we need more time, we will tell you.

13. Appealing against a decision by the IPO

If you remain dissatisfied, **and** you can show that the IPO has either acted improperly or failed to comply with its obligations under the Regulations then you have the right to appeal to the First Tier Tribunal. The First Tier Tribunal can only consider complaints on the grounds that the IPO has acted improperly or not met its obligations under the Regulations.

Separate guidance is available on appeal processes

14. General complaints

If you want to make a general complaint, which is not an appeal against a specific decision we have made, please fill in our customer [feedback form](#)

15. Further queries

Please e-mail orphanworkslicensing@ipo.gov.uk

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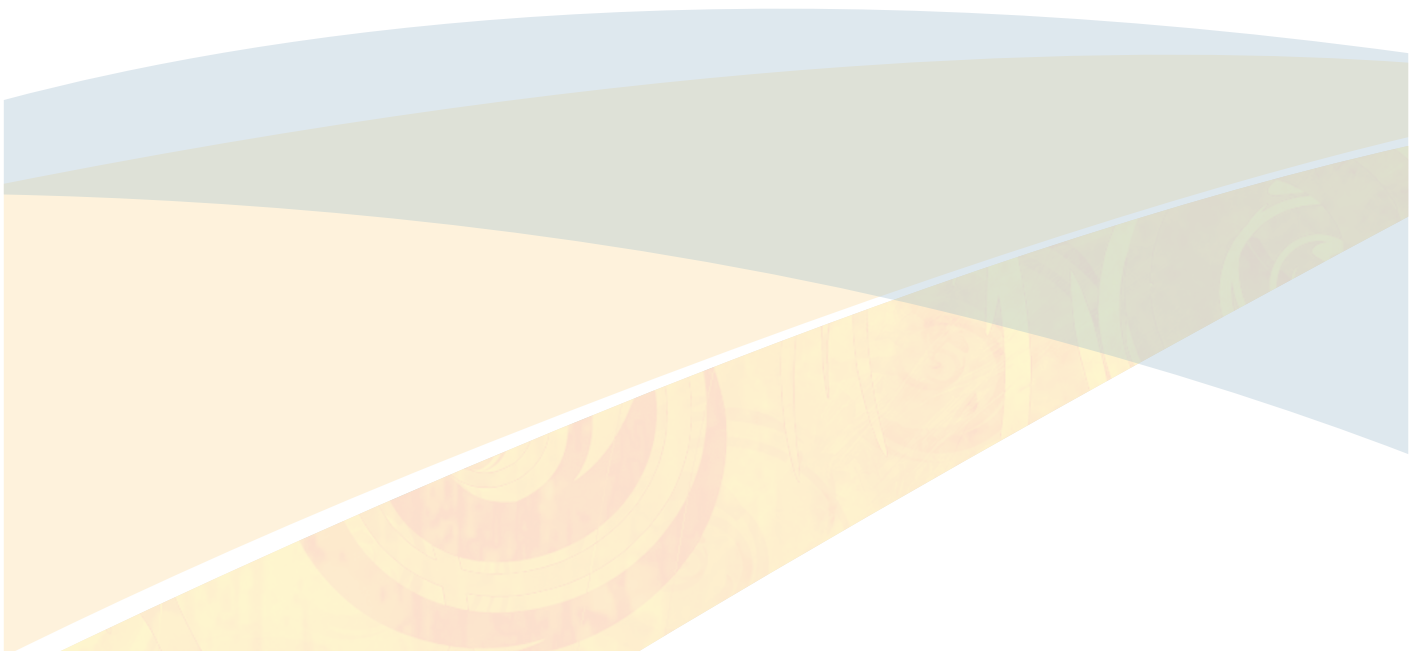
If you have any enquiries regarding this document/publication, email information@ipo.gov.uk or write to us at:

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