



Intellectual
Property
Office

Orphan works: Review of the first twelve months



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Ministerial Foreword



The UK created the world's first online system to license orphan works, which went live just over one year ago – on time and on budget – on 29 October 2014. From launch, we had a functioning online system, and now almost 300 works have passed through it.

The first twelve months have provided an incredibly varied range of licences. One licence was for the poem read at the 100 year anniversary of the Battle of Gallipoli in April; others have enabled the republishing of old novels as ebooks. Some licences have provided support for academic research, and other orphan works have featured on TV programmes. There have been licences with a local interest as well as those with national importance.

Allowing people to reproduce works where they could not do so before supports creativity and innovation, but we must also protect the right holders in the original works. The use of diligent search guidance has ensured that some right holders have been found without even having to apply for an orphan works licence, which is also a success of the scheme.

I encourage individuals, businesses and cultural heritage organisations to continue to make applications, let us know where improvements can be made and provide evidence to help us make those changes. I look forward to seeing the applications that come through in the next twelve months.

Lucy Neville-Rolfe

Baroness Neville-Rolfe, DBE, CMG
Minister for Intellectual Property

Introduction to the review

Orphan works are creative works or performances protected by copyright where one or more right holders are unknown or cannot be found. Until 2014, copying these works was restricted to the copyright exceptions set out in legislation because permission could not be sought from the right holder.

In the 2011 report, [Digital Opportunity: a Review of Intellectual Property and Growth](#), Professor Ian Hargreaves identified that allowing the licensing of individual orphan works would make those works available to a new audience, while providing safeguards for right holders by requiring a diligent search to be conducted by the applicant. This built on previous recommendations from the [Gowers Review of Intellectual Property](#) in 2006. The Intellectual Property Office (IPO) brought forward legislation in the Enterprise and Regulatory Reform Act 2013 and regulations¹ on orphan works in 2014 to set out the more detailed requirements of the licensing scheme. In the meantime, the EU also published a Directive on certain permitted uses of orphan works, which had to be transposed into UK law in 2014 (see further on the EU Directive below).

On 29 October 2014, the IPO launched the world's first online licensing scheme for orphan works, allowing both individuals and organisations to apply for a licence to reproduce those works, subject to carrying out a diligent search and paying the appropriate fees. The EU Directive came into effect in the UK on the same date.

The regulations on orphan works require an annual report to be completed. During the passage of the Enterprise and Regulatory Reform Act 2013 and the orphan works regulations in 2014, the Minister for Intellectual Property also committed to a review of the orphan works licensing scheme after twelve months. This review meets both these requirements. From 2016, data on the orphan works scheme will be included in the IPO Annual Report rather than having a separate report, for as long as the IPO remains the authorising body for orphan works.

The Government is also committed to reviewing the impact of new policies in the form of a post-implementation review. Such a review looks at the information gathered for the original economic impact assessment for the change and compares this with evidence of actual costs and benefits. The IPO will conduct the post-implementation review on orphan works at the five year point and will collate evidence of how the scheme has affected organisations and individuals, whether applicants, potential users or right holders.

For this review, the IPO also carried out a survey, which was sent to applicants and those who were involved in designing the system as part of sector-specific groups on pricing and licensing or diligent search. Nineteen responses were received out of approximately 80 recipients. The questions are set out in Annex A. Responses to the survey are set out in the review.

¹ [Copyright and Rights in Performances \(Licensing of Orphan Works\) Regulations 2014](#)

UK orphan works licensing scheme

How it works

The UK licensing scheme for orphan works is a groundbreaking [online system](#)² for granting licences for all types of copyright works and performances where the right holder cannot be found or is unknown.

Orphan works licences are:

- granted by the IPO as the authorising body;
- non-exclusive;
- for commercial and non-commercial use, or both;
- limited to the UK;
- capped at 7 years; and
- required to credit the creator or right holder where the name is known.

The scheme has been designed with users in mind, whether they be an applicant or a right holder, and the scheme balances those different priorities.

Applicants are required to complete a diligent search before making an application. However it is possible to check how much the licence would cost before making the application to allow time to get funding in place or to change the scope of the application to make the cost more acceptable. [Guidance](#) on completing a diligent search and how the scheme operates is available.

Applications may cover up to 30 works in an application and as many uses of those works as the applicant requires. No VAT is payable on the application fee. The application fee level depends on the number of works:

Number of works	Fee	Number of works	Fee	Number of works	Fee
1	£20	11	£42	21	£62
2	£24	12	£44	22	£64
3	£26	13	£46	23	£66
4	£28	14	£48	24	£68
5	£30	15	£50	25	£70
6	£32	16	£52	26	£72
7	£34	17	£54	27	£74
8	£36	18	£56	28	£76
9	£38	19	£58	29	£78
10	£40	20	£60	30	£80

² Government policy is that services should be Digital by Default.

Licence fees for commercial use are calculated to take account of market rates. Non-commercial licences have a nominal fee of £0.10 per work. VAT is payable on licence fees. The licence fee is held on behalf of the missing right holder for eight years by the IPO and paid to them if they come forward. After this period, the unclaimed licence fees can be used to cover the set-up and running costs of the orphan works scheme, with any surplus to fund social, cultural and educational activities. The decision making process on this spend will be established closer to the time.

When an application for an orphan works licence is submitted, the IPO checks and processes the application by checking the diligent search, as well as whether there is potential derogatory treatment or any other reason to refuse the licence. If the application is approved, the applicant should pay the licence fee and the IPO will send an electronic version of the licence to the licensee.

Applicants to the scheme have an appeal right to the Copyright Tribunal on the level of the licence fee, a licence condition or a refusal to grant a licence. Reappearing right holders may appeal to the First-tier Tribunal (General Regulatory Chamber) if the authorising body has acted improperly or failed to comply with its obligations under the regulations.

Works for which an application has been made, or a licence granted, refused or withdrawn, are placed on a publicly accessible [register](#) to help reunite right holders with their works. Right holders – or those who know their contact details – can contact the IPO through the register to identify their works or performances.

The IPO is responsible for three areas on the GOV.uk website in relation to orphan works: [apply for a licence](#); [view the register](#); and [check eligibility for the EU Directive](#). These are all in beta stage, meaning that they can be improved when we receive evidence of the needs of users via feedback, before launching as a fully live service.

Guidance

One of the main areas of guidance provided by the IPO has been the [diligent search guidance](#). There are three sets of guidance:

1. Film and Sound
2. Literary Works
3. Still Visual Art

These were developed before the launch of the scheme with experts from the different sectors. They suggest sources of information on right holders for the different types of copyright work. Although the lists cannot be fully comprehensive, as the precise sources might vary depending on the type of work and the type of right holder, they provide a good starting point. The IPO has been made aware of cases where right holders have been found using sources from the guidance. In addition, some EU Member States have used the UK guidance as a model for their own diligent search guidance under the EU Directive on orphan works (see further on the Directive below). A recent update to the guidance has included some new sources and updated contact details for some existing sources.

The other sets of [guidance](#) are for applicants to the scheme, returning right holders, and for appellants. These have been updated when necessary to include changes in the law. The website monitors when documents are updated so that users can see if a new version is now available.

New prices

The orphan works licensing scheme aims to cover every use for every type of copyright work. The scheme launched with as many prices as possible, but it is inevitable that some prices are not available, such as where prices are normally negotiated on a case by case basis in the open market. Some prices have been amended following requests or at the IPO's initiative.

For example, the IPO received feedback about the number of items specified for some licences which started at 5000, such as the number of pieces of clothing on which to reproduce an image. The user requested smaller quantities to reduce the price of the licence, perhaps as few as 10. Using data gathered from publicly available sources, such as photographic agencies and picture libraries, the IPO was eventually able to reduce the lowest quantity to 500. Should further evidence of low quantity licences be made available, the IPO will be able to consider this further.

Statistics on the UK orphan works licensing scheme

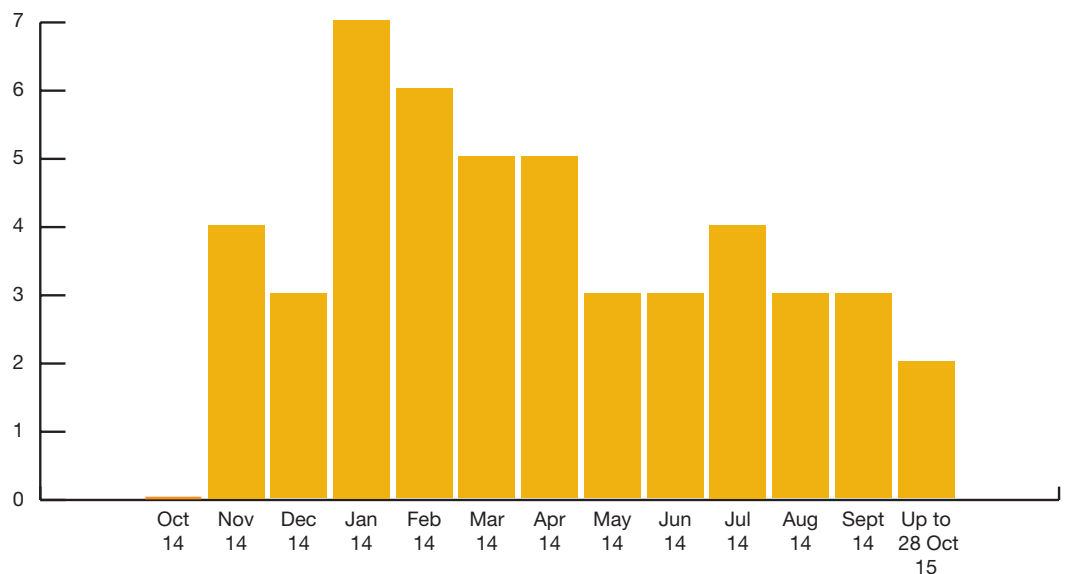
Data covers the period 29 October 2014 – 28 October 2015.

Applications

There have been 48 applications during the first 12 months of the orphan works licensing scheme covering nearly 300 individual works. 79% of these works are still images:

Type of copyright work or performance	Number of works
Moving images	1
Music notation	2
Script and choreography	1
Sound recordings	14
Still images	229
Written works	47
TOTAL	294

The number of applications received per month is shown below:



Application fees collected over the 12 months were £1492 to cover the cost of administering them. As at close of business on 28 October 2015, five applications were under consideration by the IPO.

Licences granted

	Licences granted	Number of works	Value of licences (excluding VAT)
Commercial use	7	35	£7,980.77
Non-commercial use	20	212	£21.20
TOTAL	27	247	£8,001.97

Applications withdrawn

Applicants are not required to specify why they withdraw an application. If an applicant wanted to obtain a licence after withdrawing an application, a new application would be required. 16 applications have been withdrawn in full.

We have collected some information which shows that applications may be withdrawn for a number of reasons, for example:

- the applicant has found an alternative work to use where the right holder is known or located;
- the project is abandoned;
- the application was made in error; or
- the right holder has been found through a diligent search.

Licences refused and appeals

No licences have been refused and no appeals have been lodged during the first year.

Returning right holders

No right holders have made themselves known to the authorising body after granting an application.

Feedback

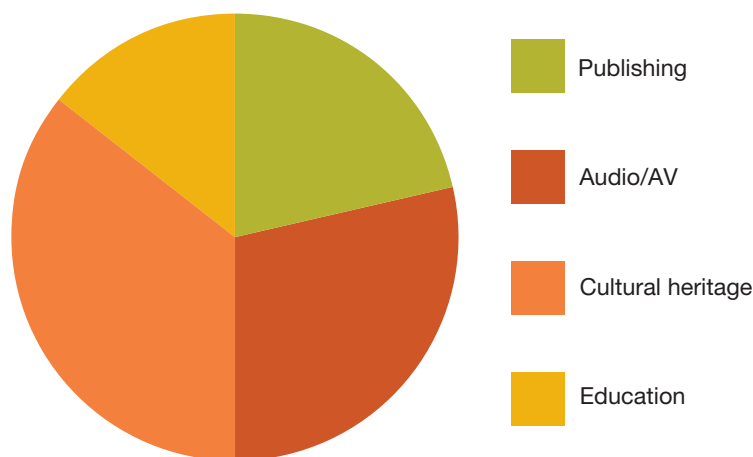
Every applicant and potential applicant is encouraged to give the IPO feedback on the scheme. This feedback is considered in order to make improvements to the system.

In relation to the survey circulated for this review, respondents were not required to complete all questions and some may have answered more than once to a particular question so that the totals are more than 19 for particular questions. While this is a small sample size, it gives us some initial insight into the scheme that we can build on in future years.

All of the responses will be considered for the development of the scheme.

Respondent data

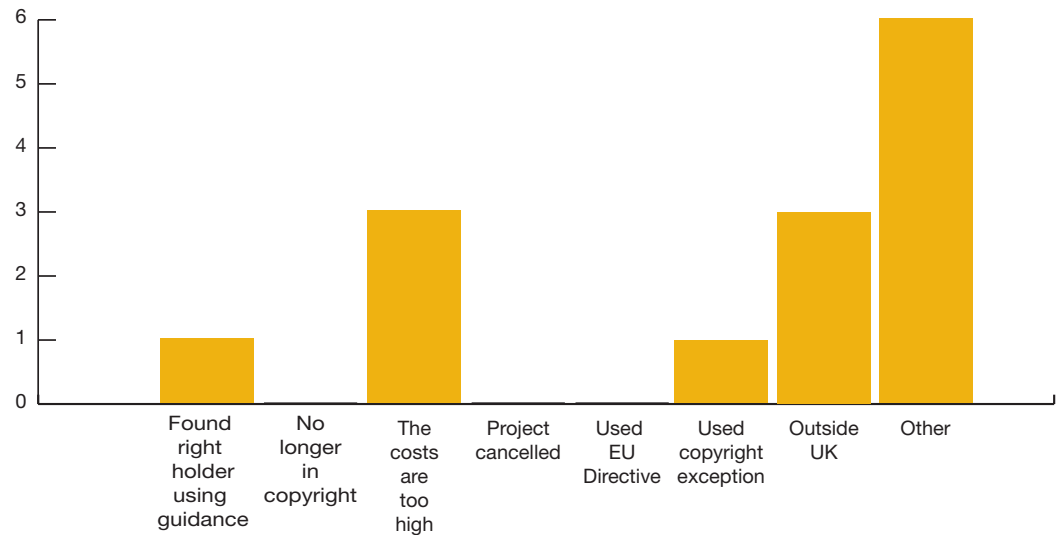
Four respondents were individuals, and there were eight large and eight small organisations. Most respondents had not made an application; eight respondents had made one or more applications. They came from a variety of sectors:



Views on the orphan works licensing scheme

The majority of respondents who indicated their satisfaction with the system were very satisfied or satisfied (six out of seven). The satisfaction level on the diligent search guidance was more mixed. Concerns were raised about the lack of clarity and complexity of language in the guidance, how the guidance should apply to real searches, and professional societies not providing information on potential orphans because they do not have their own collections or databases.

Respondents who had not applied for a licence reported a variety of reasons for not having done so:



Where the reason was ‘other’, comments included:

- “The licensing scheme is unsuitable for mass digitisation”
- “Our organisation only uses images where the right holder is known”
- “I had to [change my use and] apply for a non-commercial licence because the commercial licence was too costly”
- “A seven year licence is not long enough”
- “The time and administrative costs are not worth it”

Future use of the orphan works licensing scheme

Just over half the respondents expect to make applications over the next 12 months:

For how many works do you expect to apply for a licence over the next 12 months?	
0	9
1 – 30	6
31 – 60	0
61 or more	0
Don't know	4
Prefer not to say	0
TOTAL	19

Respondents were also asked to identify the one thing that would make them more likely to use the scheme:

- Set a licence fee for the use of complete film works.
- Publishers should be made more aware of the scheme as an option.
- The structure should be improved.
- Adopt a more pragmatic approach to identifying right holders
- Reduce the cost for bulk applications.
- Lower the costs for fees and diligent searches.
- Create more reasonable commercial rates for smaller runs of licensing.
- Extend the licence period.

All of this feedback will be considered in relation to improvements that could be made to the system.

Responding to feedback

The online system launched as a [beta service](#), using Government Digital Service principles, which allows services to be tested and improved before finalising the service. The system was designed by the IPO, using feedback from volunteer users and stakeholders to ensure that it met their needs as far as possible. The IPO Customer Insight team as well as the team on orphan works have obtained feedback from users and made changes and improvements to the system over the year.

Drawing on feedback we have made the following changes:

- better sign-posting to guidance from the application;
- more opportunities to save the application during completion; and
- fixes to bugs and other minor changes.

Further updates will be made in due course, based on feedback received and potential improvements identified in-house. Significant changes to the system would need a business case, supported by evidence from users in the form of feedback. Dependent on the scale and cost of change, it might also require central Government permission, as the Government Digital Service has an overview of all digital services. The IPO has not yet gone to a fully live system in order to allow more time for applications to be made and feedback obtained to inform improvement work.

Web analytics

As the orphan works licensing scheme is a digital-only service, we are able to use web analytics to understand use of the three websites making up orphan works content.

Visitors to the websites

Month	Apply for a licence	View the register	Check EU eligibility
October	84	68	29
November	325	534	180
December	103	325	68
January	82	441	80
February	100	356	108
March	104	413	118
April	78	495	100
May	80	368	89
June	108	374	125
July	100	444	95
August	75	334	78
September	116	412	113
up to 28 October	86	482	116
TOTAL	1441	5046	1299

There have been over 2000 visitors to the [main page on orphan works](#) on GOV.uk, which links to the application system and all the guidance on orphan works. The page was published in this form in May 2015³.

³ Analytics on visits to the site which was in place from 29 October 2014 to May 2015 are not available.

Stages where users exit the application process

This information helps identify where users leave the application process and match it with further feedback received to help provide evidence for improvements to the process. For example, a user can generate a price without committing to an application, so we would expect a higher dropout rate at work price and work summary. It is not clear why users might drop out at the work title stage.

Month	Work title	Work price	Work summary	Description of work details	Applicant details	Application summary	Declaration of truth ⁴	Payment
Oct-14	41	7	10	2	0	0	0	1
Nov-14	133	36	27	5	0	1	1	1
Dec-14	34	13	15	2	0	0	1	1
Jan-15	21	7	5	1	0	0	0	4
Feb-15	28	18	6	0	0	0	1	0
Mar-15	25	6	9	4	0	0	1	1
Apr-15	18	5	3	1	0	0	0	0
May-15	19	4	5	1	0	0	0	3
Jun-15	24	11	2	1	0	0	0	6
Jul-15	22	0	9	5	0	0	0	0
Aug-15	23	5	5	1	0	0	0	0
Sep-15	33	17	7	2	2	0	0	0
Oct-15	18	7	4	1	0	0	0	0
TOTAL	439	136	107	26	2	1	4	17

⁴ At the end of the application process, applicants are required to state that the information they have provided is true.

Raising awareness on orphan works

The introduction of the orphan works licensing scheme marked a big change in the sector. One of the challenges we faced was raising awareness among the wide range of potential users that the scheme sought to benefit.

The IPO has produced a wide range of materials.

Animation: providing introductory information for potential users, including pointers on general copyright issues. This is available on the IPO YouTube channel as well as on GOV.uk.

Guidance: all of the guidance is available online, in keeping with the 'Digital by Default' principles. However, IPO has also produced some limited hard copy material when needed. For example, the Cambridge Archivists Group asked for a poster that they could display in the reading rooms of College Archives for their users, which was produced in-house. Subsequently, this was also translated into Welsh at the request of the National Library of Wales.

Case studies: The IPO publishes case studies to help businesses and individuals understand how to make the most of their intellectual property. There have been two case studies on orphan works which provide advice on making applications as well as describing the type of projects which they can help. The first case study was in March 2015, from the [Leeds Museums and Galleries](#) which was digitising some of its collection of paintings by the artist Charles Ginner, who had strong connections with the city. A case study from the [Museum of the Order of St John](#) was published in September 2015 about its creation of a learning resource using photographs of a St John Ambulance hospital in France during the First World War.

Outreach work

IPO staff have presented on orphan works to different groups who are interested, including local historians and legal representatives. We have spoken to representatives of archives from University institutions, museums and specialist film archives, amongst others. Orphan works were represented at the *Who Do You Think You Are? LIVE* show in Birmingham NEC in April 2015, with members of the team speaking to both amateur and professional family historians and genealogists.

Future activity

The IPO is developing further guidance following a request from a number of archives, including local authority record offices. This builds on meetings and questions received during the year.

Communications activity will continue to be an important part of improving knowledge and take-up of the orphan works licensing scheme. Further presentations have been scheduled with Bectu, the entertainment union, and the Society of Genealogists.

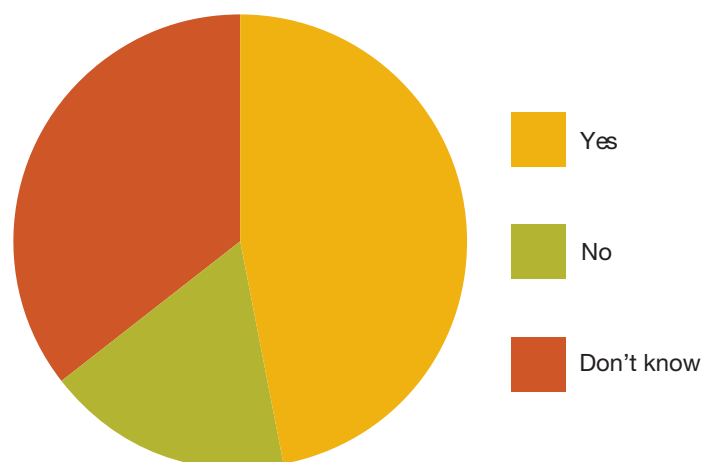
The IPO is always happy to provide information, consider giving a presentation or discuss potential orphan works applications or new price categories:
orphanworkslicensing@ipo.gov.uk.

EU Directive on certain permitted uses of orphan works

This Directive provides an exception which allows cultural and heritage organisations to digitise some orphan works to put on their website for non-commercial use. The works have orphan work status across the 28 EU Member States and are placed on a [database](#) maintained by the Office for Harmonization in the Internal Market (OHIM). On the database entry the user confirms that a diligent search has been completed according to the criteria set out in the Directive, but the detailed record of the search is kept by the cultural organisation. No fee is paid by the organisation; fair compensation will be negotiated between the user and the right holder if they come forward.

The IPO takes the role of National Competent Authority for the Directive. This does not require the IPO to check diligent searches in the way that it would for the UK scheme, but the IPO provides a single point of contact for OHIM in the UK in relation to orphan works.

In the survey for this review, we asked whether respondents were entitled to use the Directive; almost a third did not know, which suggests that we may need to make it clearer about who may make use of the Directive and for what purposes.



Beneficiary Organisations

Cultural heritage organisations must register as beneficiary organisations with OHIM database in order to make use of the Directive. To date, 10 organisations in the UK have registered for this status.

Statistics on the use of the EU Directive on certain permitted uses of orphan works

Data covers the period 29 October 2014 – 28 October 2015.

	UK	Total EU
Active beneficiary organisations	10	61
Database records ⁵	53	1374
Embedded work records	14	25
Right holder claims made	2	25

Database records registered by month, including claimed, edited and draft records:

Month (2014-15)	UK	Total EU
October	45	49
November	0	1
December	0	0
January	2	4
February	1	5
March	0	48
April	0	49
May	7	41
June	0	15
July	0	50
August	0	376
September	0	17
up to 28 October	2	745
TOTAL	57	1400

⁵ This is the number of records in the database which are visible to the public. Some records may not yet be visible although received in this period.

Future work on the Directive

OHIM continues to work with beneficiary organisations and National Competent Authorities across member states of the EU, to encourage further orphan works records to be registered on the database and more beneficiary organisations to register. OHIM has already made improvements to the online system, improving the upload and search functions as well as working on pilot projects to provide a bulk upload facility.

The IPO has participated in the network on this issue and in training on uploading records to the database. In light of this, the IPO as the National Competent Authority will run a training event on uploading records for UK beneficiary organisations in 2016.

The Directive is due to be reviewed by the European Commission, though it is not yet certain when this will happen. Various groups and individuals have asked for their concerns on the scope of the Directive to be addressed. For example, the Directive does not apply to standalone artistic works, and there are restrictions on using unpublished works. These issues have been highlighted to OHIM and the IPO will continue to liaise with OHIM and the Commission during the review.

Annex – Questions from twelve month survey

Nineteen responses out of approximately 80 surveys distributed.

Question	Respondents	
Are you:	From a large organisation (>250 employees)	8
	From a small or medium organisation (≤250 employees)	8
	An individual	4
In what sector do you operate?	Publishing	3
	Audio or audiovisual	4
	Cultural heritage	5
	Educational	2
	Retail	0
	Other	3 ⁶
How many applications have you made to the orphan works licensing scheme?	0	11
	1-2	6
	3 or more	2
How satisfied were you with the ease of use of the online applications process	Very satisfied	2
	Satisfied	4
	Neither satisfied nor dissatisfied	0
	Dissatisfied	1
	Very dissatisfied	0
If your application was unsuccessful or you withdrew it, what did you do?	Used another copyright work where the right holder was found	0
	Commissioned a new copyright work	0
	Stopped the project	0
	Other	1 ⁷
Did you submit feedback on the online application through the GOV.uk website?	Yes	2
	No	5
If you used the diligent search guidance, how satisfied were you with its helpfulness?	Very satisfied	2
	Satisfied	2
	Neither satisfied nor dissatisfied	1
	Dissatisfied	2
	Very dissatisfied	0
Comments	5	

6 Charitable giving; all of the above; membership organisation/registered charity in visual arts.

7 “Managed to trace the surviving author direct via methods suggested on the orphan form”

Question	Respondents	
If you have you not applied for a licence, or you identified a work as a potential orphan work but still did not apply for a licence, why was this?	I found the right holder using the diligent search process	1
	The work is no longer in copyright	0
	The costs are too high	3
	The project has been cancelled (for any reason)	0
	I used the EU Directive on orphan works instead	0
	A copyright exception was used	1
	I needed a licence for use outside the UK	3
	Other	6*
Are you entitled to use the EU Directive on certain permitted uses of orphan works?	Yes	8
	No	3
	Don't know	6
Would your organisation be interested in training on how to use the OHIM database of orphan works	Yes	4
	No	8
For how many works do you expect to apply for a licence over the next 12 months?	0	9
	1-30	6
	31-60	0
	61 or more	0
	Don't know	4
	Prefer not to say	0
What one thing would make you more likely to use the orphan works licensing scheme?	14*	

*Comments and specifications set out or summarised in the main text of this review

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