

The Orphan Works

Exceptions: A Brexit Saga (abridged version)

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We need to talk about the Orphans...

- **British Library Collection – over 180 million items and growing**
- **A large amount of material (and a lot of the unique content) is unpublished**
- **The UK (and by extension the EU) has an unpublished ‘rule’ meaning the majority of these works are protected by copyright until at least 2040 regardless of its age.**
- **So there are a HUGE number of ‘Orphan Works’ within the collection**

The doors are opened! (Exception, Policy & Use)

- **2012 - Directive 2012/28/EU on certain permitted uses of orphan works**
- **2014 - The Copyright and Rights in Performances (Certain Permitted Uses of Orphan Works) Regulations 2014**
- **These opened the door to digitisation and dissemination of 'Orphan Works' if permission could not be cleared**
- **Since then the British Library has incorporated the exception into its clearance process and registered over 11,000 works as orphans**

And then along came a Brexit...

- The Orphan Work exception is enshrined in national law...
- ...BUT the UK can no longer rely on reciprocal protection from other EEA member states
- So the UK IPO have decided to remove the orphan work exception provisions from UK copyright law
- As it stands all works registered as orphans under the exception by UK institutions will lose their protection on 31st October 2019

Impact

- On existing archives:
 - Some have content removed
 - Some entire archives being taken down
- On ongoing projects:
 - Suddenly some content is no longer viable
 - Potential breaches of funding agreements
- On future archives:
 - Changes to what digitisation projects will be approved

What does the future hold?

- Institutions increase their risk appetite to compensate? Unlikely...
- UK Orphan Works License
 - UK-only protection
 - Limited term and cost
 - Lack of bulk application infrastructure
- Digital Single Market Directive on Copyright
 - Out of commerce provisions – could fill the gap and more!
 - Will the UK Implement it?
 - How will it work?

Thank you

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