

## Orphan Works, Mass-Digitisation of Cultural Heritage, and Licensing Barriers: Lessons from the United Kingdom's Experience

Naomi Korn<sup>1†</sup>, Smita Kheria<sup>2</sup> and Melissa Terras<sup>3</sup>

<sup>1</sup>School of Literatures, Languages and Cultures, University of Edinburgh, Edinburgh, UK

<sup>2</sup>Edinburgh Law School, University of Edinburgh, Edinburgh, UK

<sup>3</sup>Edinburgh School of Art, University of Edinburgh, Edinburgh, UK

Received: 9<sup>th</sup> February 2026

Orphan works - works in copyright whose rights holders are unknown or cannot be traced - present specific and significant challenges to the mass-digitisation of cultural heritage. This article focuses on the legislative history of regulating orphan works and copyright in the United Kingdom (UK), its impact, and the lessons that can be learnt internationally for mass-digitisation. It examines the UK's two separate regulatory initiatives: an exception aimed at facilitating the digitisation and dissemination of orphan works to foster access to cultural heritage, introduced as a result of a result of EU harmonisation, and repealed when the UK left the EU (Brexit); and a general purpose, domestic licensing scheme, introduced to offer a pay-per-use clearance process for the licensing of individual works, which remains the only current legislative solution.

In this article, we explain the specific challenge of orphan works in the context of mass-digitisation, with specific reference to the digitisation of the *Spare Rib* magazine by the British Library and compare the two UK regulatory initiatives including their uptake and suitability. Drawing on examples of other international orphan works licensing schemes, the article then discusses the inadequacies of such schemes in satisfying the online dissemination needs of cultural heritage institutions. Finally, it argues that the loss of the exception in the UK post-Brexit disrupts the balance between copyright protection and public access to knowledge. By applying the broader lessons that can be learnt from orphan works licensing schemes, it concludes by reiterating the need for country-specific exceptions to copyright for orphan works, underpinned by cross-border arrangements, to facilitate the mass-digitisation of cultural heritage.

**Keywords:** Orphan Works, Copyright, Mass-Digitisation, Licensing Schemes, Spare Rib Magazine, Brexit, Orphan Works Exception

Online access to a rich and diverse cultural heritage supports a flourishing global economy. However, whilst the mass-digitisation of cultural heritage is a crucial activity to achieve online access, it can be a time-consuming and costly process, comprising the selection of materials for digitisation, seeking permissions from any rights holders, delivery of the content, audience engagement, digital capability, and reuse.<sup>1</sup> Achieving mass-digitisation and access to cultural content is complicated further by orphan works, works in copyright whereby rights holders are either unknown or cannot be found.<sup>1</sup> Orphan works can comprise all types of media, published and unpublished, including photographs, letters, art works, newspapers, films and pamphlets, spanning unlimited subject matters and time periods. Multiple legal and practical reasons for orphan works have been

acknowledged, including the lengthy duration of copyright, the difficulty in trying to trace rights for works not created for commercial exploitation and the lack of copyright ownership information associated with the work.<sup>2</sup> Whilst the scale of the global orphan works problem is unknown, estimations of the amount of orphan works from the United Kingdom (UK) can provide insights as to the extent of the orphan works issue internationally. A comparative analysis of the UK's regulatory orphan works legislative provisions, moreover, can shed light on their effectiveness in general terms in supporting national mass-digitisation activities.

In this article, we discuss the legislative history of regulating orphan works and copyright in the UK, its impact, and the lessons that can be learnt for the mass-digitisation of cultural heritage. We examine the UK's two separate orphan works specific regulatory initiatives: an exception aimed at facilitating the

<sup>†</sup>Corresponding author: Email: N.A.Korn@sms.ed.ac.uk

digitisation and dissemination of orphan works to foster access to cultural heritage, introduced as a result of a result of EU harmonisation in 2014, and repealed when the UK left the European Union (EU) in 2020; and a general purpose, domestic orphan works licensing scheme (OWLS), introduced also in 2014, facilitating a pay-per-use clearance process for the licensing of individual works, which remains the only orphan works legislative provision in the UK now.

We compare the two regulatory initiatives including their uptake and suitability. Drawing on examples of other international OWLS; we discuss the inadequacies of OWLS in satisfying the online dissemination needs of Cultural heritage institutions (CHIs) and mass-digitisation. With specific reference to the *Spare Rib* magazine, which the British Library (BL) had digitised and published online utilising the Orphan Works exception, and then removed when the UK left the EU, we argue that the loss of the Orphan Work exception in the UK disrupts the balance between copyright protection and public access to knowledge. Finally, we apply the broader lessons that can be learnt from the UK to the international problem of orphan works, emphasising the need for exceptions to copyright for orphan works to facilitate the mass-digitisation of cultural heritage.

### Orphan Works Problem

As the curators of valuable cultural content CHIs are “subject to governing laws and ethics principles, and their adherence to both, while stewarding collections in trust for the public, makes them *trusted institutions*.”<sup>3</sup> However, in many cases CHIs will not be the rights holders despite their role in the digital content ecosystem through their custodianship of cultural content, and they are poorly served by the copyright regime. To release cultural content online, CHIs rely on seeking permissions from rights holders. Certain limited copyright exceptions are available to CHIs to use and preserve cultural heritage, without which, unique items on temporary carriers would decompose, degrade or become damaged.<sup>4</sup> Nonetheless, in general terms, exceptions and limitation do not support the ability of CHIs to publish their entire collections online in part due to the limited scope of domestic exceptions (e.g., exceptions being limited to a specific purpose such as criticism or parody),<sup>5</sup> the territorial nature of copyright requiring cross-border arrangements, and the lack of any international instrument or provision aimed at facilitating the needs of CHIs in a digital context.<sup>6</sup>

The UK’s Intellectual Property Office (UKIPO) has estimated that amongst the collections held by UK CHIs, there are 90,674,000 orphan works, representing anywhere between 4-95% of UK collection items, depending on the type of cultural institution.<sup>7</sup> A study by the BL as part of the EU funded ARROW project, reviewed 140 books published between 1870 and 2010 from the BL’s collection and subsequently estimated that 31% of the sample of in-copyright works were orphan works.<sup>8</sup> The challenge is not limited to UK CHIs, but it is pan-European, with orphan works constituting a substantial part of the collections of Europe’s cultural institutions, and particularly affecting twentieth-century content.<sup>9</sup> Whilst numbers of orphan works are lacking from elsewhere, those from the UK indicate that the substantive problem of orphan works on a global scale.

The resources required to seek copyright permissions as part of the digitisation of cultural heritage can be substantial. This often includes the considerable time and resources expended to attempt to locate rights holders. Whilst internet searches can be successful in locating the rights holders of those who are actively exploiting their rights<sup>10</sup> and thus eliminate the highest risks of infringement, most orphan works, particularly those in archival collections, will be unpublished works and/or where the copyright information has not been provided.<sup>11</sup> Whilst the types of searches for rights holders will depend on the subject matter and age of the material, it can take UK CHIs up to half a day per item to either trace rights holders or conclude that their searches are satisfactory to warrant that rights holders are unlikely to be found, i.e., the works are “orphan”, and then to consider a risk management approach associated with online publishing.<sup>12</sup>

Indeed, it has been long established that there is a clear correlation between the amount of resource required to carry out searches for rights holders and organisational appetite for risk.<sup>13</sup> However, the costs of trying to trace rights holder balanced against the risk of infringement is not straight forward and inevitably results in difficult choices. Specifically, some UK CHIs regard the online publication of orphan works as low risk because of the diligence of their efforts in trying to trace rights holders and the relative ease of removing the online content if rights holders do appear. In this case, the amount of time expended in trying to trace rights holders off-set against perceived potential risk may be so substantive as to result in fewer works being

made available online. On the other hand, fewer and less in-depth searches for rights holders might be viewed as higher risk and subsequently for some organisations, would warrant their decision not to publish orphan works at all if their organisational appetite for risk is too high,<sup>14</sup> leading to a “black hole of 20<sup>th</sup> century content”.<sup>15</sup> A general lack of copyright confidence and skills across the sector<sup>16</sup> will invariably impact negatively on any willingness to tolerate risks, despite reports of increases in risk appetites,<sup>17</sup> and risk aversion regarding copyright may well determine decisions about what is digitised particularly if funding is limited.<sup>18</sup>

## UK Legislative Solutions for Orphan Works

### Orphan Works Exception

The EU recognised the challenges posed by orphan works to the mass-digitisation and dissemination of European cultural heritage. In 2012, it introduced a new EU-wide copyright exception to enable certain CHIs, educational establishments and public broadcasters to digitise and publish non-commercially online orphan works from their collections.<sup>19</sup> Creating a principle of mutual recognition in the EU for orphan works disseminated under this Directive,<sup>20</sup> the intention was to facilitate the digitisation and dissemination of orphan works and to foster access to EU’s cultural heritage.<sup>21</sup> Whilst the Directive is limited in scope to EU states and dissemination of orphan works across EU territories, to date it is the only cross-territorial orphan works specific provision that reconciles state sovereignty, with cross border arrangements to try and address the challenges of mass-digitisation.<sup>22</sup>

The Directive requires diligent searches to identify rights holders followed by the registration of each orphan work and the affirmation of this documented on a European Union Intellectual Property Office (EUIPO) orphan works database.<sup>23</sup> The Directive achieves a delicate balance by limiting digitisation risks for CHIs, educational establishments and public broadcasters, and at the same time protecting the interests of rightsholders by limiting the exception to their reappearance i.e. when the rightsholder identifies themselves.<sup>24</sup> Audio-visual and text-based works and their embedded visual works, such as photographs, are included within its scope, however free-standing artistic works are not.<sup>25</sup>

Like other EU member states, the UK transposed the EU Directive by introducing a new orphan works

exception into the domestic copyright framework. Effective from 29 October 2014<sup>26</sup> UKIPO was enthusiastic about the benefits of the Directive noting that:

The Directive will ensure lawful cross-border online access to orphan works contained in the collection of cultural organisations. EU-wide online availability of orphan works promotes Europe’s and the UK’s cultural diversity and increases sources of knowledge and learning. Citizens of the UK and Europe will be able to access consolidated EU library collections from a computing device anywhere in the EU.<sup>27</sup>

The UK’s implementation of the Directive facilitated UK CHIs to confidently digitise and publish online modern material where copyright holders were not known. This was instantly realized by the BL who used it to digitise and publish online the complete run of 239 monthly editions of *Spare Rib*, “Britain’s most high-prolific feminist magazine in the period of the Women’s Liberation Movement”,<sup>28</sup> which was published between 1972-1993. *Spare Rib*’s editorials, letters, news articles and advertisements charted the rise of the Women’s Liberation Movement, discussing fundamental issues such as women’s reproductive and sexual health, domestic violence, race, and sexuality by 4558 contributors.<sup>29</sup> Many of those authors and artists are now untraceable, and with mixed media content largely written by women, *Spare Rib* exemplifies how difficult it can be to trace women who remain more obscured throughout the digital record.<sup>30</sup> Given few institutions possess the complete print archive of *Spare Rib*, in 2015 the BL utilised the orphan works exception to publish online approximately 11,400 orphan works from the *Spare Rib* magazine, which comprised of approximately 57% of its content.<sup>31</sup> This made the BL the UK’s most prolific user of the EUIPO orphan works database.<sup>32</sup> The digital resource represented a significant contribution to global cultural diversity that the UKIPO intended the orphan works exception would enable.

### Orphan Works Licensing Scheme

Simultaneous to the transposition of the EU-derived orphan works exception into the UK’s legislative framework, on the same day, the UK introduced a more general-purpose domestic regulatory initiative: the OWLS.<sup>33</sup> The UK’s OWLS emerged from a review of intellectual property laws in the UK,<sup>34</sup> and as such, its aim was not to create a tool to enable the mass-digitisation of cultural

heritage through an exception, but instead, it sought to create a domestic clearance process for the licensing of individual orphan works. The initiative authorised the UKIPO to issue a non-exclusive licence, valid for up to seven years, permitting domestic commercial and non-commercial use of any type of orphan work, provided a diligent search has been conducted.<sup>35</sup>

Table 1 below compares the scope of the EU-derived Orphan Works exception and the UK's OWLS. It shows that whilst the OWLS is broader in scope in terms of users and materials covered, its territorial and duration restrictions limit its substance. In essence only the orphan works exception was designed for, and suitable to, enabling online publication of orphan works by CHIs. Furthermore, in their 2013 Impact Assessment preceding the introduction of the two orphan works solutions in the UK, the UKIPO had noted that in contrast to the OWLS, by avoiding both the upfront costs of licensing and the need for financial remuneration to rightsholders only becoming necessary if they surfaced, the orphan works exception would incentivise UK CHIs to legally surface works online they may not have previously considered.<sup>36</sup> Thus, the Orphan Works exception was intended to redress the mass-digitisation challenges described above in balancing the costs of searches for rights holders, with the risks of copyright infringement.

### Brexit and Orphan Works

On 23 June 2016, the UK voted to leave the EU, commonly referred to as "Brexit". Whilst the

mechanisms of Brexit were being agreed, the UK's Free Trade Agreement draft, which provided the framework for the UK and EU to decide the rules for their future trading relationship, was published on 19 May 2019. It included broad statements about Intellectual Property Rights but no detail about the management of orphan works.<sup>37</sup> This omission was disappointing given that the orphan works exception carried cross-border implications grounded in the principle of mutual recognition.

In January 2020, UKIPO published specific guidance for the cultural heritage sector about their management of orphan works. It indicated the lack of cross-border arrangements for orphan works, which had not been included in the EU or the UK versions of the Free Trade Agreement, although at that stage, neither agreement had been finalised.

The EU Orphan Works Directive no longer applies to UK-based institutions and was repealed from UK law. UK institutions may face claims of copyright infringement if they make orphan works available online in the UK or EEA, including works they had placed online before 1 January 2021.<sup>38</sup>

The guidance also indicated that UK CHIs who wish to make orphan works online should now consider seeking a licence under OWLS and limiting access to UK based users.<sup>39</sup> The final Free Trade Agreement was published on the 31 December 2020 in which cross border arrangements, including those that facilitated the Orphan Works exception, were not included.<sup>40</sup> A spokesperson from the UKIPO commented:

Table 1 — A Comparison of the Scope and Key Provisions of the Orphan Works Exception in Comparison to the UK's Orphan Works Licensing Scheme (OWLS)

Online publication of orphan works under UK Law – Pre Brexit	UK Orphan Works exception	UK Orphan Works Licensing Scheme (OWLS)
Eligible organisations	Publicly accessible libraries, educational establishments, and museums, as well as archives, film or audio heritage institutions and public-service broadcasting organisations	Any applicant
Eligible types of materials	Audio visual works, text-based works and any embedded artistic works contained within.	All types of works
Eligible uses	Non-commercial online uses	All non-commercial and commercial uses
Level of searches for rights holders	Determined by cultural heritage organisations but with reference to member state guidance on tracing rights holders.	Diligent searches to the satisfaction of the UK IPO.
Financial costs of non-commercial online use	Free	£0.10 + VAT per work (licence fee) for non-commercial uses + between £2.67 and £20 per work + VAT (admin costs)
Geographical coverage	Across the EU	UK coverage
Duration	Until copyright expires or the rights holder identifies themselves (whichever is sooner)	Up to 7 years (renewable)

Reality of leaving the EU is that we haven't been able to replicate cross border arrangements in EU Trade Agreements (personal communication, January 22, 2021).

On midnight on the 31 December 2020 following Brexit, the Orphan Works exception was repealed from the UK copyright framework<sup>41</sup> and subsequently it no longer applied in the UK. After Brexit, the OWLS remained the only legislative solution specifically enabling the use of orphan works in the UK and furthermore, triggering the BL to remove online access to its digitised archive of the *Spare Rib* magazine which had been the main beneficiary of this legislative measure.<sup>42</sup> The immediate impact of this was the diminishing of access to a rich collection of UK digital cultural heritage.

### Challenges of OWLS to Enable Mass-digitisation

In this section, we argue that OWLS are not suitable replacements for copyright exceptions in facilitating mass-digitisation of cultural heritage for several reasons. First, the limited territorial scope of the UK OWLS applicable to the UK only and its limited duration, typically valid for a maximum of seven years limits its effectiveness in supporting mass-digitisation. OWLS are also in operation in Canada<sup>43</sup>, Hungary<sup>44</sup>, India<sup>45</sup>, Japan<sup>46</sup> and South Korea.<sup>47</sup> The limited duration of the UK's OWLS is typical of other OWLS which also fail to provide permanent licences, ranging from a monthly to five-year licence duration. Second, OWLS is disadvantageous for CHIs as it necessitates payment of fees for every single digitised item in contrast to copyright exceptions, which are usually free, and reflect a recognition that in some circumstances certain non-producer interests outweigh the producer ones.<sup>48</sup> The cumulative costs of licensing fees, administration costs and licence renewal fees mean that such approaches are impractical and negate the likelihood of mass-digitisation projects. For example, the cost of the UK OWLS comprises an application and licence fee with variable charges depending on the number of orphan works, classes of works, and types of use, per application. The greater the number of works listed on one application (to a maximum of 30), would reduce the cost per work.<sup>49</sup> An analysis of the licence fees in aggregate, associated with OWLS operated by other countries can also quickly become unaffordable for multiple numbers of works and "render mass-digitisation unviable for public and non-

profit institutions".<sup>50</sup> Finally, to effectively support mass-digitisation, legislative solutions must extend beyond domestic use and not be constrained by geographic or time limits.<sup>51</sup>

Furthermore, the costs of searches required to satisfy OWLS from different countries can also result in such provisions proving unrealistic for thousands or millions of items. This has been explored in a UK-based study which evaluated the rights clearance costs associated with the digitisation and rights clearance of circa 54,000 items contained within 16 volumes of scrapbooks compiled by the Scottish poet, Edwin Morgan (1920-2020).<sup>52</sup> Using the UKIPO's diligent search guidance for tracing rights holders associated with the OWLS, the research estimated that one person would take nearly 15 years to undertake the associated searches, working for 7 hours a day, 5 days per week, rendering such searches prohibitively expensive for mass-digitisation.

By 6 December 2024, after just over 10 years of the OWLS in operation, a total of only 1832 items had been documented on the OWLS register by all users, across a range of uses, subject matters and content types,<sup>53</sup> bringing in a total of only £53,744.36 in licensing fees collected.<sup>54</sup> But the low take-up of OWLS is not limited to the UK. The number of licences granted from other national OWLS also reflects a similar picture. In Canada between 2020-25, 40 licences were granted; in Hungary, between 2009-14, 39 licences were granted and in Japan, between 1999-2010, 20 licences were granted.<sup>55</sup> We believe that the low uptake of the OWLS, is indicative that the OWLS are administratively cumbersome, expensive and do not represent value for money. We conclude therefore that OWLS are not suitable solutions to enable the mass-digitisation of cultural heritage.

### Orphan Works Legislative Provisions that Could Support Mass-digitisation

Copyright exceptions form a fundamental component of the global copyright framework, by balancing the various stakeholders interests inherent within the context of content creation and use. Acting as an antidote to the exclusive economic rights afforded to copyright holders, the exceptions to copyright facilitate certain public interest uses of copyright works. For UK CHIs, copyright exceptions are already crucial in addressing the competing requirements to care for and preserve collection works. But the Orphan Works exception was a

significant development in the UK that provided CHIs with the legal certainty to publish their collection items online without the need to seek permission or fulfil any licensing obligations, including payment of fees. The revocation of the UK's Orphan Works exception has not only disrupted the important balance between copyright protection and public access to knowledge, but it has diminished global online access to digitised cultural heritage with specific reference to the BL's removal of the *Spare Rib* online archive, a rich and valuable source of socio-cultural content. Yet, contrary to the messaging from UKIPO, the UK's OWLS does not constitute a viable alternative to the Orphan Works exception in facilitating mass-digitisation by CHIs. Moreover, experience from every other domestic OWLs provision demonstrates that OWLS as a rule, are ill-suited to supporting mass-digitisation, principally because of their structural licensing constraints and prohibitive costs.

How might an alternative, additional legislative solution be framed for the UK now, potentially acting as blueprint for other jurisdictions whose mass-digitisation ambitions may also be obstructed by orphan works? Both Israel and Ukraine have implemented Orphan Work exceptions. The Ukrainian orphan works provisions are included in new wide-ranging reforms to their copyright legislation which came into effect on 1 January 2023.<sup>56</sup> Under Article 29, orphan works can be used for non-commercial purposes, subject to "proper searches", by CHIs and organisations involved in the preservation of audio and video recordings) for the purposes of preservation and digitisation. Launched in 2019, the Israeli legislative provision uses a combination of reasonable searches, exceptions, and limited liability to create a framework to enable the use of orphan works that considers their age, subject matters and subsequent use.<sup>57</sup> This is an innovative approach, favouring users of orphan works, particularly CHIs and educational establishments by providing a limitation of liability for non-commercial uses, whilst balancing this with the interests of rights holders by requiring at least basic reasonable searches (determined by the age and subject matter of the items), and an advertised intention to use orphan works commercially prior to use. If works are used commercially and the rights holder emerges, then a licence fee will need to be paid. The Israeli orphan works legislative provisions represents a unique

contemporary hybrid multi-faceted solution, combining elements of an exception with licensing, for a culture grappling how to sensitively show materials which so often have no known copyright holders such as Holocaust materials.<sup>58</sup>

Could the Israeli and Ukrainian approaches to orphan works offer valuable inspiration for the UK and potentially elsewhere? The exception-based provisions, targeted towards CHIs and underpinned by reasonable searches would balance the interests of all stakeholders, if it were to be mirrored by the UK and/or in other jurisdictions. However, they would not be without limitations and challenges. First, exceptions would be limited to domestic effect. But wider adoption of exception-based provisions could create the impetus for the establishment of an international legal framework. Ideally, the mutual recognition and cross-border use of all digitised collections from CHIs (including orphan works) would be desirable, however, this would be dependent on international consensus and compliance with the Berne Convention's three-step-test amongst other issues.<sup>59</sup> Second, clear parameters would be required to distinguish between "non-commercial" as opposed to "commercial" uses. In an environment where CHIs are under increasing pressure to monetise their collections, any ambiguity in these concepts could as a deterrent to reliance on an exception.<sup>60</sup> In this respect, the UKIPO's commercial and non-commercial uses lists associated with the OWLS might provide some useful pointers in terms of differentiating between uses. Finally, other challenges include how this approach could be reconciled with creators' moral rights, which can vary greatly by jurisdictions, and defining the parameters of "reasonable searches" within the context of age and subject matter of the work.

## Conclusion

This research, based on the UK's regulatory experience, but applicable to the global problem of orphan works, argues that CHIs have a central role in facilitating access to cultural assets, acting as the conduits between creators/rights holder and users. Given the costs of mass-digitisation and the enormous volume of orphan works held by UK CHIs, any goal to unlock access to them would only be progressively realised i.e. through a series of small, incremental steps, over time and therefore we would expect that the take up of the Orphan Works exception in the UK

would have reflected this. Its premature removal from the UK's regulatory framework was both detrimental to the potential that the Orphan Works exception could have achieved in time, but also it signalled a blow to the balance of interests that the exceptions could have fulfilled in enabling mass-digitisation of cultural heritage. Currently, the ability of UK CHIs to mass-digitise their collections is constrained by the burdensome and often prohibitively expensive OWLS, which are restricted in terms of duration and only active in just a handful of jurisdictions. We argue that based on the UK experiences and those from other territories with OWLS, that this orphan works legislative provision is entirely unsuitable in supporting mass-digitisation.

Copyright exceptions, on the other hand, are crucial in mediating the balance between the interests of rights holders' interests and the provision of global access to knowledge. The publication and subsequent removal of the online *Spare Rib* archive illustrate both the positive potential of copyright exceptions in enabling global access to significant cultural resources, as well as the negative consequences that follow from regulatory removal. The examples of the recent Israeli and Ukrainian legislative provisions highlight the importance of ensuring that CHIs can be supported in their mass-digitisation activities. More broadly, these examples suggest the need for the development of enhanced domestic legislative mechanisms to reconcile access to, and protection of, cultural heritage. However, online access to a rich and diverse cultural heritage can only fully realised through a geographically unrestricted and affordable solution that is specific to the orphan works problem faced by CHIs. Ultimately, this analysis points to the necessity of country-specific copyright exceptions for orphan works, underpinned by cross-border cooperations and international instruments, as the most effective means of facilitating mass-digitisation of cultural heritage.

## Reference

- 1 Martinez M & Terras M, 'Not adopted': The UK orphan works licensing scheme and how the crisis of copyright in the cultural heritage sector restricts access to digital content, *Open Library of Humanities*, 5(1) (2019) 36, 1, doi:10.16995/olh.335.
- 2 Korn N, *In from the Cold: An Assessment of the Scope Of 'Orphan Works' and Its Impact on the Delivery of Services to the Public*, (Collections Trust, Cambridge), 2009, 7 [https://naomikorn.com/wp-content/uploads/2020/09/SCA\\_CollTrust\\_Orphan\\_Works\\_v1-final.pdf](https://naomikorn.com/wp-content/uploads/2020/09/SCA_CollTrust_Orphan_Works_v1-final.pdf); de la
- 3 Durantaye K, Orphan works: A comparative and international perspective, in Gervais D J (Ed.), *International Intellectual Property: A Handbook of Contemporary Research* (Edward Elgar, Cheltenham), 2015, p. 190–214, 190-191.
- 4 World Intellectual Property Organisation, 2024, *Toolkit on Preservation*. World Intellectual Property Organization. <https://www.wipo.int/documents/d/copyright/docs-en-toolkit-on-preservation.pdf> (accessed on 16 September 2025).
- 5 For example, Copyright, Designs and Patents Act (CDPA) 1988, s 42; Intellectual Property Office, *Exceptions to copyright: Libraries, archives and museums*, 2014, 4-5 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/375956/Libraries\\_Archives\\_and\\_Museums.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/375956/Libraries_Archives_and_Museums.pdf) (accessed on 27 August 2025).
- 6 See for example CDPA 1988, ss.29-30A.
- 7 As such, all that is available at the international level are WIPO toolkits. Oruç P, *Digitising Cultural Heritage: Clashes with Copyright Law* (Hart Publishing, Oxford & Dublin), 2025, The Art Law Library. 101.
- 8 Intellectual Property Office, *Impact Assessment: Orphan Works*, 2014. [https://www.legislation.gov.uk/ukia/2014/431/pdfs/ukia\\_20140431\\_en.pdf](https://www.legislation.gov.uk/ukia/2014/431/pdfs/ukia_20140431_en.pdf) (accessed on 25 September 2025).
- 9 Stratton B, *Seeking New Landscapes: A Rights Clearance Study in the Context of Mass Digitisation of 140 Books Published Between 1870 and 2010* (British Library, London), 2011. 5.
- 10 European Commission, Directorate-General for Communications Networks, Content and Technology, McGuinn J, Spröge J, Omersa E, et al., *Study on the application of the Orphan Works Directive (2012/28/EU) – Final report*, Publications Office of the European Union, 2021, p.28 <https://data.europa.eu/doi/10.2759/32123> (accessed on 25 September 2025).
- 11 These might include basic Google reverse image search, and the use of the WATCH file database of writers, artists and their rights holders which can be accessed here: <https://norman.hrc.utexas.edu/watch/> (accessed on 13 September 2025).
- 12 Korn N, *In from the Cold: An Assessment of the Scope Of 'Orphan Works' and Its Impact on the Delivery of Services to the Public*, (Collections Trust, Cambridge), 2009, 9 [https://naomikorn.com/wp-content/uploads/2020/09/SCA\\_CollTrust\\_Orphan\\_Works\\_v1-final.pdf](https://naomikorn.com/wp-content/uploads/2020/09/SCA_CollTrust_Orphan_Works_v1-final.pdf) (accessed on 13 September 2025).
- 13 Korn N, *In from the Cold: An Assessment of the Scope Of 'Orphan Works' and Its Impact on the Delivery of Services to the Public*, (Collections Trust, Cambridge), 2009, 6 [https://naomikorn.com/wp-content/uploads/2020/09/SCA\\_CollTrust\\_Orphan\\_Works\\_v1-final.pdf](https://naomikorn.com/wp-content/uploads/2020/09/SCA_CollTrust_Orphan_Works_v1-final.pdf) (accessed on 13 September 2025).
- 14 Korn N, *In from the Cold: An Assessment of the Scope Of 'Orphan Works' and Its Impact on the Delivery of Services to the Public*, (Collections Trust, Cambridge), 2009, 7 [https://naomikorn.com/wp-content/uploads/2020/09/SCA\\_CollTrust\\_Orphan\\_Works\\_v1-final.pdf](https://naomikorn.com/wp-content/uploads/2020/09/SCA_CollTrust_Orphan_Works_v1-final.pdf) (13 September 2025)
- 15 Korn N, *In from the Cold: An Assessment of the Scope Of 'Orphan Works' and Its Impact on the Delivery of Services to the Public*, (Collections Trust, Cambridge), 2009, 22-23

- [https://naomikorn.com/wp-content/uploads/2020/09/SCA\\_CollTrust\\_Orphan\\_Works\\_v1-final.pdf](https://naomikorn.com/wp-content/uploads/2020/09/SCA_CollTrust_Orphan_Works_v1-final.pdf) (accessed on 13 September 2025).
- 15 Korn N, *In from the Cold: An Assessment of the Scope Of 'Orphan Works' and Its Impact on the Delivery of Services to the Public*, (Collections Trust, Cambridge), 2009, 1 [https://naomikorn.com/wp-content/uploads/2020/09/SCA\\_CollTrust\\_Orphan\\_Works\\_v1-final.pdf](https://naomikorn.com/wp-content/uploads/2020/09/SCA_CollTrust_Orphan_Works_v1-final.pdf) (accessed on 13 September 2025).
  - 16 Wallace A, A Culture of Copyright: A scoping study on open access to digital cultural heritage collections in the UK, *Towards a National Collection*, 2022. 80.
  - 17 Hudson E, *Drafting Copyright Exceptions: From the Law in Books to the Law in Action* (Cambridge University Press, Cambridge), 2020. 307.
  - 18 Oruç P, *Digitising Cultural Heritage: Clashes with Copyright Law* (Hart Publishing, Oxford & Dublin), 2025, The Art Law Library. 52.
  - 19 Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works [2012] OJ L299/5, Art 6.
  - 20 Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works [2012] OJ L299/5, Art 4.
  - 21 Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works [2012] OJ L299/5, Recitals 3, 23.
  - 22 Some EU Members states have also implemented various Extended Collective Licensing Schemes, for example across Norway, Sweden, Finland, Iceland and Denmark, as well as Out-Of-Commerce Works Provisions - Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market, amending Directives 96/9/EC and 2001/29/EC, OJ L 130, 17 May 2019 <https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng?> (15 September 2025) which will encompass orphan works but are not orphan work specific.
  - 23 The EUIPO Orphan Works Database requires manual registration of all orphan works for which the exception will be apply <https://euiipo.europa.eu/orphanworks/> (13 September 2025)
  - 24 Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works [2012] OJ L299/5, Art 5
  - 25 Intellectual Property Office, *Impact Assessment: Orphan Works EU Directive*, 2013. 4
  - 26 CDPA 1988, ss 44B, 76A, and sch ZA1. It also introduced a similar exception for performers rights in sch2 (para 6I) CDPA 1988 as outlined in the Copyright and Rights in Performances (Certain Permitted Uses of Orphan Works) Regulations 2014.
  - 27 Intellectual Property Office, *Impact Assessment: Orphan Works EU Directive*, 2013. 15 [https://www.legislation.gov.uk/ukia/2014/213/pdfs/ukia\\_20140213\\_en.pdf](https://www.legislation.gov.uk/ukia/2014/213/pdfs/ukia_20140213_en.pdf) (accessed on 13 September 2025).
  - 28 Delap L & Strimpel Z, Spare Rib and the print culture of women's liberation, in Forster L & Hollows J (Eds.), *Women's Periodicals and Print Culture in Britain, 1940s–2000s: The Postwar and Contemporary Period* (Edinburgh University Press, Edinburgh), 2020. 46.
  - 29 British Library, Knowledge Matters blog: Digitising Spare Rib magazine – the inside story, 2015. Available at: <https://blogs.bl.uk/living-knowledge/2015/05/digitising-spare-rib-magazine-the-inside-story.html>. (accessed on 13 September 2025).
  - 30 Wilson N, Battershill C, Clarkson H, Hannah M N, Nokhrin I & Willson Gordon E, Digital critical archives, copyright, and feminist praxis, *Archival Science*, 22 (2022) 295–317. 312.
  - 31 British Library, Knowledge Matters blog: *Digitising Spare Rib magazine – the inside story*, 2015. Available at: <https://blogs.bl.uk/living-knowledge/2015/05/digitising-spare-rib-magazine-the-inside-story.html>. (accessed on 13 September 2025).
  - 32 This number was collected by the researcher who analysed the EUIPO Orphan Works Database in November 2020. Prior to the EU Orphan Works Exception no longer applying to the UK.
  - 33 CDPA 1988, s116A; The launch of both orphan works legislative provisions in the UK was accompanied by a press release: <https://www.gov.uk/government/news/uk-opens-access-to-91-million-orphan-works> (accessed on 15 September 2025).
  - 34 Hargreaves I, *Digital Opportunity: A Review of Intellectual Property and Growth* (Intellectual Property Office, London), 2011.
  - 35 For more information about the OWLS see <https://www.gov.uk/guidance/copyright-orphan-works> (accessed on 15 September 2025).
  - 36 Intellectual Property Office, *Impact Assessment: Orphan Works EU Directive*, 2013. 16 [https://www.legislation.gov.uk/ukia/2014/213/pdfs/ukia\\_20140213\\_en.pdf](https://www.legislation.gov.uk/ukia/2014/213/pdfs/ukia_20140213_en.pdf) (accessed on 13 September 2025).
  - 37 Prime Minister's Office, Draft working text for a comprehensive free trade agreement between the United Kingdom and the European Union, 2020. [https://assets.publishing.service.gov.uk/media/5ec3b820d3bf7f5d3e24b03c/DRAFT\\_UK-EU\\_Comprehensive\\_Free\\_Trade\\_Agreement.pdf](https://assets.publishing.service.gov.uk/media/5ec3b820d3bf7f5d3e24b03c/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf) (accessed on 13 September 2025).
  - 38 Intellectual Property Office, *Orphan Works and Cultural Heritage*, 2020 <https://www.gov.uk/guidance/orphan-works-and-cultural-heritage-institutions> (accessed on 13 September 2025).
  - 39 Intellectual Property Office, *Orphan Works and Cultural Heritage*, 2020 <https://www.gov.uk/guidance/orphan-works-and-cultural-heritage-institutions> (accessed on 13 September 2025).
  - 40 EC Europa, *EU–UK Trade and Cooperation Agreement*, 2020. [https://commission.europa.eu/strategy-and-policy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement\\_en](https://commission.europa.eu/strategy-and-policy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en). (accessed on 15 September 2025).
  - 41 Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019 (regs 11, 12, and 23).
  - 42 British Library, Social Science blog: *Digitised Spare Rib resource*, 2020. <https://blogs.bl.uk/socialscience/2020/12/digitised-spare-rib-resource.html> (accessed on 13 September 20205).
  - 43 Canadian Copyright Act, 2012. Part VII. 2. s 77. <https://laws-lois.justice.gc.ca/eng/acts/C-42/page-20.html#h-105208>

- More about the Orphan Works Scheme operated by the Copyright Board of Canada is provided here: <http://www.cb-cda.gc.ca/en/unlocatable-owners> (accessed on 1 September 2025).
- 44 Act No. LXXVI of 1999 on Copyright (Copyright Act) and the Government Decree No. 138/2014. (IV.30.) [https://www.wipo.int/wipolex/en/legislation/details/10761?utm\\_source=chatgpt.com](https://www.wipo.int/wipolex/en/legislation/details/10761?utm_source=chatgpt.com) More about the Hungarian Orphan Works Licensing Scheme operated by the Hungarian Intellectual Property Office is provided here: <https://www.sztnh.gov.hu/en/copyrights-and-related-rights/orphan-works>.
- 45 Indian Copyright Act, 1957 Section 31A(1) <https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf> - amended in 2012 (accessed on 1 September 2025).
- 46 Copyright Act (Act No. 48 of 1970), Section 67 <https://www.cric.or.jp/english/clj/cl2.html> (accessed on 1 September 2025).
- 47 Copyright Act 1957 Article 50 [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=32626&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=32626&lang=ENG) (accessed on 13 September 2025).
- 48 Brown A, Kheria S, Cornwell J & Iljadica M, *Contemporary intellectual property: Law and policy*, 6 edn, Oxford University Press, (2023) Ch2.
- 49 Intellectual Property Office, *Impact Assessment: Orphan Works*, 2014. 8 [https://www.legislation.gov.uk/ukia/2014/431/pdfs/ukia\\_20140431\\_en.pdf](https://www.legislation.gov.uk/ukia/2014/431/pdfs/ukia_20140431_en.pdf) (accessed on 13 September 2025).
- 50 Favale M, Homberg F, Kretschmer M, Mendis S & Secchi D, Copyright and the regulation of orphan works: A comparative review of seven jurisdictions and a rights clearance simulation, *SSRN*, June 2 (2015) 82. Available at: <https://ssrn.com/abstract=2613498> (accessed on 15 September 2025).
- 51 Favale M, Homberg F, Kretschmer M, Mendis S & Secchi D, Copyright and the regulation of orphan works: A comparative review of seven jurisdictions and a rights clearance simulation, *SSRN*, June 2 (2015). Available at: <https://ssrn.com/abstract=2613498> (accessed on 13 September 2025).
- 52 Patterson K, *Diligent Searching in the Dark – Identifying images out of content. Create Blog* (2015), available at: <https://www.create.ac.uk/blog/2015/06/03/diligent-searching-in-the-dark-identifying-images-out-of-context/> (accessed on 22 June 2022).
- 53 <https://www.orphanworkslicensing.service.gov.uk/view-register> (10 November 2023)
- 54 In response to the researcher’s FOI request to UK IPO on the 5<sup>th</sup> November 2023, in which they requested information about “The total amount of money (in pounds sterling) from licensing fees collected by the IPO for Orphan Works Licences since the launch of the Orphan Works Licensing Scheme”, UK IPO responded with this figure on the 29 November 2024.
- 55 These figures have been collated, with reference to the latest available published numbers obtained from previously published scholarly research and online databases where indicated. Information about orphan works licences granted in India and South Korea was unavailable. Canada: [https://decisions.cb-cda.gc.ca/cb-cda/refusees-other-autre/en/nav\\_date.do](https://decisions.cb-cda.gc.ca/cb-cda/refusees-other-autre/en/nav_date.do) (13 September 2025); Hungary: Mezei P, *The new orphan works regulation of Hungary, International Review of Intellectual Property and Competition Law (IIC)*, 45 (2014) 940–952. 944. Japan: Favale M, Homberg F, Kretschmer M, Mendis S & Secchi D, *Copyright and the regulation of orphan works: A comparative review of seven jurisdictions and a rights clearance simulation*, *SSRN*, June 2 (2015) 45 <https://ssrn.com/abstract=2613498> (accessed on 13 September 2025).
- 56 Law No. 2811-IX “On Copyrights and Related Rights” (the “Copyright Law”), which came into effect on January 1, 2023. For more information see: <https://ipkitten.blogspot.com/2023/01/guest-post-new-law-on-copyright-and.html?>; <https://kopirait.com.ua/en/orphan-works-under-copyright-law/> (accessed on 4 September 2025).
- 57 More about the Israeli orphan works legislative provisions are available here: [https://www.wipo.int/edocs/mdocs/sme/en/wipo\\_smes\\_ge\\_10/wipo\\_smes\\_ge\\_10\\_ref\\_theme11\\_02.pdf](https://www.wipo.int/edocs/mdocs/sme/en/wipo_smes_ge_10/wipo_smes_ge_10_ref_theme11_02.pdf) (accessed on 13 September 2025).
- 58 Pessach G & Shur-Ofry M, Copyright and the holocaust, *Yale Journal of Law and the Humanities*, 30 (2018) 121.
- 59 Oruç P, *Digitising Cultural Heritage: Clashes with Copyright Law* (Hart Publishing, Oxford & Dublin), 2025, The Art Law Library. 208-212.
- 60 Department for Culture, Media & Sport. *DCMS-sponsored museums and galleries annual performance indicators 2023/24: Headline Release*. Published 17 July 2025. Available from: <https://www.gov.uk/government/statistics/dcms-sponsored-museums-and-galleries-annual-performance-indicators-202324/dcms-sponsored-museums-and-galleries-annual-performance-indicators-202324-headline-release> (accessed on 25 September 2025).