

ORPHAN WORKS

Orphan Works are letters/poems/emails/artistic compositions and any other creative works which are “in copyright” but where the rights holders are unknown or cannot be traced. There are over 50 million Orphan Works across the public sector with new Orphan Works being created every day. The British Library estimates that 40% of all works created are Orphan Works and up to 50% of collection works can be Orphans.

IF A WORK IS AN ORPHAN WORK, CAN I USE IT ANYWAY?

No, this is an infringement of copyright. However you can mitigate your risks if you first make efforts to trace rights holders and document your efforts. This is called ‘due diligence’.

CAN I USE THE WORK AFTER I’VE CARRIED OUT THE DUE DILIGENCE FOR THAT WORK?

If you can’t trace rights holders, your organisation still needs to decide about its appetite for risk before it uses the work. If the work is then used, consider a risk managed approach together with further risk mitigating strategies. These could be an appropriately worded copyright statement as well as ‘notice and take down’ procedures so that if the rights holders come forward, you can remove the work from your website.

HOW CAN I PREVENT CREATING ORPHAN WORKS IN THE FUTURE?

- › Request permission from rights holders to use works when they are acquired by your organisation;
- › Document information about rights holders
- › Credit rights holders and embed ownership and contact information in metadata about the work.

WHERE CAN I FIND OUT MORE ?

Strategic Content Alliance IPR and Licensing Toolkit
<http://sca.jiscinvolve.org/wp/ipr-publications/> for further detailed practical information about managing and preventing orphan works. For general advice and guidance contact JISC Legal
www.jisclegal.ac.uk

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