JISC

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

JISC, British Library, BBC, National Health Service, Becta, and Museums, Libraries and Archives Council working together to fully realise the potential of e-content for all users. For more information on the Strategic Content Alliance, please visit:

www.jisc.ac.uk/contentalliance

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Collections Trust

Contents

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Executive Summary

Organisations across the UK's public sector are responsible for the management of and provision of access to a huge range of content in many formats. These are likely to range from works with high commercial value, such as fine art and commercial films with attributable artists and/or rights holders and collecting societies, to works of low commercial value but high academic, cultural and historic worth, such as documentary photographs, letters and sound recordings, where a recognised rights holder is unlikely.

Public sector organisations have a critical role as content brokers to other public sector organisations, to users and to the commercial sector, particularly the creative industries. In their capacity as custodians of this content, they will often straddle the mutually inclusive roles of both rights users and rights holders of this content. As rights users, they will be obliged to seek permission for providing online public access to the vast majority of content still in copyright that they own.

The extent of copyright duration in much of this material[1], as well as the likelihood that many of these works in copyright are likely to have been created by amateurs, means that a significant proportion of works owned by public sector bodies include those whereby the rights holder is unknown or cannot be traced, or so-called 'Orphan Works'.

The huge scale and significant impact of Orphan Works, conservatively estimated to be some 25 million items across public sector organisations, has led to a 'locking up' of content with little or no prospect of these items ever making a meaningful contribution to a knowledge economy without potentially complex and costly 'due diligence' processes.

The flow of public sector content and the maximisation of the potential of its value is being disrupted by both the resources necessary to manage copyright and, in particular, Orphan Works. Despite the recognised extent, impact and problem of Orphan Works, particularly for digitisation activities across the globe, there has been a lack of credible evidence to evaluate the scale of the problem across the public sector in the UK. The absence of such an evidence base means that it is nearly impossible to address this problem legislatively and/or through the implementation of suitable licensing schemes. It also means that the problem cannot be managed nor solutions sought to prevent the occurrence of these works in the future.

In recognition of the substantial obstacles created by Orphan Works across the public sector, as well as the lack of a statistically viable evidence base to underpin any potential solutions, the Collections Trust[2] and the Strategic Content Alliance[3] have been working together on a joint initiative to assess the impact of Orphan Works on the delivery of services to the public. The 'In from the Cold' project is the first research of its kind surveying the extent of Orphan Works across the UK's public sector, drawing on international responses as well as qualitative data from over 80 UK-based public sector bodies.

The aim of this project has been four-fold:

- Define the impact of Orphan Works on Public Sector service delivery
- Research the scale and scope of the problem across the SCA communities

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1 For example unpublished text-based works can be protected by the end of 31 December 2039
2 www.collectionstrust.org.uk
3 http://sca.jiscinvolve.org

- Provide qualitative evidence of how access to and use of content are inhibited

- Raise the profile of the issue through strategic advocacy and press relations

Key Research Findings

1. The average proportion of Orphan Works in collections across the UK's public sector was measured at 5% to 10%, whilst in certain sectors (archives) this proportion was higher.

2. The mid-range estimates put the total number of Orphan Works, represented in our sample of 503 responses to the online survey, at a total of in excess of 13 million.

3. Individual estimates suggest that there are single organisations in the survey sample that hold in excess of 7.5 million Orphan Works. If we include even a few of these extreme examples in our calculations, it appears likely that this sample of 503 organisations could represent volumes of Orphan Works well in excess of 50 million.

4. Extrapolated across UK museums and galleries, the number of Orphan Works can conservatively be estimated at 25 million, although this figure is likely to be much higher.

5. The extent of Orphan Works across the public sector and their potential impact is huge. On average, 89% of participants' service delivery is at least occasionally affected, whilst 26% noted that the issue of Orphan Works either frequently affects them or affects everything that they do.

6. The types of works likely to be Orphan Works are those with little commercial value, but high academic and cultural significance and where rights holders, if traced, would usually be happy for their works to be reproduced. User generated content, works by amateur or local artists and works by artists using aliases were also mentioned as at risk of being Orphan Works.

7. A number of factors were identified as leading to Orphan Works, including:

   - Insufficient information identifying the copyright owner

   - The owner of the copyright could not be located

   - The copyright holder has died and there is no further information about ownership of the rights

8. Overall, the most common method for managing Orphan Works is the adoption of a risk managed approach (average of 60%), whilst 4% of respondents gave 'other reasons'. Differences in how organisations might handle Orphan Works occur between sectors.

9. Organisations spent on average less than half of one day tracing rights for each Orphan Work. Therefore it would take in the region of 6 million days effort to trace the rights holders for the 13 million works represented in our on-line survey. In certain high profile projects, some organisations had spent large resources of time on chasing rights holders. However time and additional resources are also being used to educate the public and students and train (and remind) colleagues about the specifications of working with Orphan Works.

10. At least 35% of organisations across all sectors, regardless of the size of their collections, do not have any specific resources in place to help deal with Orphan Works.

It should be noted that responses from non-UK based respondents broadly corroborated the findings across sectoral divides, apart from how organisations handle Orphan Works, which varied between the UK and the international responses.

Conclusions

The scale and impact of Orphan Works across the public sector confirms that the presence of Orphan Works is in essence locking up culture and other public sector content and preventing organ isations from serving the public interest. Works of little and/or variable commercial value but high academic and cultural significance are languishing unused. Access to an immense amount of this material, essential for education and scholarship, is consequently badly constrained, whilst scarce public sector

resources are being used up on complex and unreliable 'due diligence' compliance. Without any kind of UK or European Union-wide legal certainty, there will remain a major risk for all users of Orphan Works. The quantity of Orphan Works and their impact is only accelerating as content is being created and digitised without adherence to any single internationally recognised standard for capturing provenance information.

The data and anecdotal feedback suggests that many public sector organisations are themselves unsure as to the extent of the problem, and that staff awareness and understanding are often limited. There are also suggestions that often works are selected for digitisation based on the fact that they do not pose any copyright issues, thus creating a black hole of 20th century content. These issues stress the need for an informed and skilled public sector to deal with all the issues associated with copyright-related materials, the necessity for access to resources to deal with Orphan Works, and an informed and proportionate understanding of the nature of the risks associated with the use of these works.

It is crucial that policy makers recognise the problems that public sector bodies face in managing and providing public access online to a vast range of works in copyright (including Orphan Works), and create a suite of appropriate legislatively based solutions. Whether the answer is a UK or an international one, involving a change in practice and interpretation and/or a change in legislation, this is clearly a matter of urgency. Without these legal safeguards, the contribution of public sector content to a global digital landscape will continue to be severely curtailed and the levels of public resources to manage copyright will be unacceptable.

1. Introduction

Organisations across the UK's public sector are responsible for the management of and provision of access to a huge range of content in many formats such as:

- Fine art
- Fine art photographs
- Documentary photographs
- Commercial films
- Documentary films
- Published text-based works including books and journals
- Unpublished text-based works such as letters, theses, diaries and manuscripts
- Commercial music-based sound recordings
- Sound recordings of lectures and oral history recordings
- Maps, charts and engineering/design drawings

These are likely to range from works with high commercial value, such as fine art and commercial films with attributable artists and/or rights holders and collecting societies, to works of low commercial value but high academic, cultural and historic worth, such as documentary photographs, letters and sound recordings, where a recognised rights holder is unlikely.

'The material we have got is old; it's not valuable; most of it's not fine art in the classic sense; so the commercial value of it is limited.'

David Dawson, Director, Wiltshire Heritage Museum

Public sector organisations have a critical role as content brokers to other public sector organisations, to users and to the corporate sector. Public sector organisations, in their capacity as custodians of this content, will often straddle the mutually inclusive roles of both rights users and rights holders. As rights users, they will be obliged to seek permission for providing public access to the vast majority of content still in copyright which they own, which they have neither created themselves nor been assigned the rights to. Across the public sector, this will include:

- The provision of online access
- Development of e-learning materials
- Creation of catalogues for exhibitions
- Image creation and sharing within Virtual Learning Environments and enhancement of repositories

Moreover, many internally facing activities which support the collection, curatorship and management of public sector content will also, in theory, require the permission of the rights holder and include:

- Illustration of databases
- Creation of images for collections management purposes such as insurance, security and preservation

- Internal copying activities

For content which is no longer in copyright, or which public sector bodies have created or been assigned the rights to, the ability to copy the works will normally be unhindered.[4]

Regardless of whether they own the rights or not, public sector bodies, as contributors and supporters of the Creative Industries, will invariably recognise the value and importance of copyright, and strive to ensure that creativity is respected. This however will create a tension between the public sector's ability to provide public access to their works to support education, health, public service broadcasting, conservation, research, learning and cultural heritage and the use of public sector resources to try to trace rights holders and seek appropriate permissions.

'We have a very clear copyright policy to do with how we handle copyright and how we check things, in order to maintain our integrity as an organisation and to behave properly and appropriately in relation to what we don't own. How we handle relationships is the most important thing.'

Sandy Nairne, Director, National Portrait Gallery

The extent of copyright duration for much of this material,[5] as well as the likelihood that the majority of these works in copyright will be of low commercial value, means that a significant proportion of works owned by public sector bodies will include those whereby the rights holder is unknown or cannot be traced, or so-called 'Orphan Works'.

Other reasons for Orphan Works include:

- The work has no, or insufficient, information identifying the copyright owner and/or creator associated with it, which may be due to a number of reasons, such as format shifting

- The original owner of copyright can no longer be located at the original address and there are no records of any new address

- The copyright owner does not realise that they benefit from copyright ownership

- The copyright ownership has been assigned to a new owner, and there is insufficient information available about the new owner's name and/or location

- The copyright owner has died and information about what happened to rights on his death is impossible to find

- Where the copyright owner is a business, the business ceased to exist and it is impossible to find out what happened to the copyright which was one of the business assets[6]

The encountering of Orphan Works by professionals working across the public sector will not only mean that resources are drained in tracing rights holders who cannot be found, but will also inevitably create amongst them uncertainty and fear about copyright and the potential lockdown of rich public sector content.

The deployment and development of next generation technologies across the public sector and the ease with which content can be created, adapted, mashed, repurposed, copied and published means that this situation is more complex. The speed of technological advancement together with no universally adhered-to standards relating to the capturing of provenance information and the lack of appropriate legislative change has led to severe issues:

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4   However, there may be other Intellectual Property Rights or legal issues which might preclude their ability to provide public access to their content. For example, out of copyright newspaper articles may still be protected by active trademarks in their mastheads.

5   For example unpublished text-based works can be protected until 31 December 2039

6   **www.bsac.uk.com/reports/orphanworkspaper.pdf**

1. It has increased the likelihood of media rich content, which may consist of a number of works, created by a number of people, containing a number of different rights, mashed together, with uncertain ownership of rights and often uncertain permissions.

2. It means that the user generated content of today is likely to be the Orphan Works of tomorrow.

2. Orphan Works and Public Services

In recognition of the nature and scale of Orphan Works across Europe, the obstacles they pose to large-scale digitisation activities and their potential to obstruct access to cultural heritage services such as Europeana, the i2010 Digital Libraries High-Level Expert Group has stated:

'Clarification and transparency in the copyright status of a work is an essential element in a number of areas including the European Digital Library Initiative.

In some cases rightholders cannot be identified or located; as a result, works can be classified as "orphan". Comprehensive, large-scale digitisation and online accessibility, as well as other uses, are hampered by this phenomenon.

As a result, libraries, museums, archives and other non-profit institutions may be prevented from fully exploiting the benefits of information technology to carry out their preservation and dissemination mandate. Both text-based and audiovisual materials include substantial amounts of works with unclear copyright status; this is so especially in connection with old materials.' [7]

Following this paper, the EC Green Paper on Copyright in the Knowledge Economy[8] has made a similar observation:

'Copyright clearance of Orphan Works can constitute an obstacle to the dissemination of valuable content and can be seen as hampering follow-on creativity. However, the extent to which Orphan Works actually impede uses of works is not clear. There is a scarcity of the necessary economic data which would allow the problem to be quantified on the pan-European level.'

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[7] Report on Digital Preservation, Orphan Works, and Out-of-Print Works: Selected Implementation Issues: **http://ec.europa.eu/information_ society/newsroom/cf/document.cfm?action=display&doc_id=295**

[8] **http://ec.europa.eu/internal_market/copyright/docs/copyright-infso/greenpaper_en.pdf**

In the UK, policy makers have also recognised the need to address the issue of Orphan Works. Most recently, The Gowers Review of Intellectual Property (IP),[9] as informed by a research paper on Orphan Works prepared by the British Screen Advisory Council,[10] proposed a provision for Orphan Works to the European Commission, amending Directive 2001/29/EC, as well as recommending that the then Patent Office:

'should issue clear guidance on the parameters of a 'reasonable search' for Orphan Works, in consultation with rights holders, collecting societies, rights owners and archives, when an Orphan Works exception comes into being.'[11]

This statement was supported by a comment by Edmund Quilty, Copyright and Enforcement Director, UK Intellectual Property Office, at a meeting about Orphan Works for key stakeholders on 29 September 2008, who invited figures to help quantify the problem of Orphan Works.

In response to The Gowers Review of IP, a number of professional organisations have presented position statements on Orphan Works, including:

■ The Libraries and Archives Copyright Alliance (LACA), which issued a statement on Orphan Works[12]

■ The Publishers Association[13]

Published studies – quantifying the problem

Despite the recognised extent, impact and problem of Orphan Works, there is a lack of credible evidence to evaluate the scale of the problem across the public sector, which can be used to develop either evidence-based policy or targeted investment. The absence of such an evidence base means that it is nearly impossible to address this problem legislatively and/or through the implementation of suitable licensing schemes. It also means that the problem cannot be managed nor solutions sought to prevent the occurrence of these works in the future.

The published figures that do exist, whilst providing a piecemeal picture, infer that the problem is substantive:

1. The British Library estimates that over 40% of potentially all creative works in existence are Orphan Works.[14]

2. A study of Orphan Works by the Carnegie Mellon University Libraries, undertaken during a systematic study of the feasibility of obtaining permission to digitise and provide web-based access to its collection, showed that 22% of the publishers could not be found. Moreover, in the same feasibility study:

'Over a third (36%) of the publishers we successfully located did not respond to multiple letters of inquiry. Most (79%) of the books about which they did not respond were out of print. The figure shows the distribution of books for which we got no response from the copyright holder based on the total number of books in the final sample (same

9   www.ipo.gov.uk/policy/policy-issues/policy-issues-gowers.htm
10 www.bsac.uk.com/reports/orphanworkspaper.pdf
11 www.ipo.gov.uk/policy/policy-issues/policy-issues-gowers.htm
12 www.cilip.org.uk/NR/rdonlyres/E6F612ED-6CE1-4723-8348-CB7162D983C2/0/LACAorphanworksstatementFINAL19dec07.pdf
13 www.publishers.org.uk/download.cfm?docid=20B7AAE3-9BA0-41ED-90EAA65C79AFAAFF
14 www.bl.uk/news/pdf/ipmanifesto.pdf

scale as the figure above). The percentages would be higher if the figure was based instead on the number of books for which we successfully located the publisher.'[15]

1. In a (statistically unverified) survey of mainly museums and galleries carried out by the Museums Copyright Group, the percentage of works in collections for which the authors' identity is known is much higher in the case of fine art works than in the case of documentary photographs and other artistic works, where the proportion was found to be in many cases 50% or below.[16]

2. As part of their Archival Sound Project, the British Library identified 299 rights holders whose permission was required. An analysis of the project revealed that:

'A total of 150 hours was spent by a freelance researcher, and 152 hours was spent by British Library staff on seeking permission, which resulted in eight permissions being received.'[17]

'About 85 per cent of our holdings comprise commercially issued material, where we can track the copyright owners; but the other 15 per cent is disproportionately valuable to scholarship, and a lot of those are Orphan Works, that commerce isn't interested in. We have to identify and contact each rights owner, and in large digitisation projects there can be many different individuals concerned. This makes such projects extremely costly. It's a double whammy: most of our holdings are in copyright, and a high proportion of the most interesting material is Orphan Works.'

Richard Ranft, Head of the Sound Archive, National Sound Archive – 4 February 2009

Orphan Works in practice

Apart from a managed approach to risk, the undertaking of 'due diligence searches' is a practical response by many public sector bodies across the UK to the scope and scale of Orphan Works, particularly in the contexts of publishing and online public access. Paper and/or digital records are kept of searches across the public and corporate sectors which show that reasonable efforts have been made to trace rights holders, often referred to as 'due diligence'. Searches might include examining the original object, checking acquisition files or related paperwork, searching for clues on the internet and/or checking with professional contacts. Whilst these efforts are useful to show that any subsequent use of the work has been made in good faith, could aid defence if challenged and may occasionally yield contact details, they hold no legal certainty and present risk for public sector bodies. Due diligence is also time consuming, resource intensive and may not be realistically practical for large-scale digitisation activities.

15 www.copyright.gov/orphan/comments/OW0537-CarnegieMellon.pdf
16 www.farrer.co.uk/Default.aspx?sID=897&cID=814&ctID=11
17 www.ifla.org/IV/ifla74/papers/139-King-en.pdf

Despite the lack of legal certainty, many public sector bodies have incorporated these searches within established operational practices. Moreover, the Collections Trust[18] and the Strategic Content Alliance[19] are amongst organisations representing public sector bodies who have issued specific due diligence guidelines.

In recognition that Orphan Works is a European-wide issue with a European-wide impact upon the realisation of a digital Europe, the Digital Libraries High-Level Expert Group[20] has also issued format-related due diligence guidelines and the European Commission has funded several initiatives which are also trying to address this issue. These include:

- The MILE Project[21], which has created an Orphan Works database to enable image holders to post their own Orphan Works and the public to post information related to the images in the hope of attaining copyright information about these works, as well as acting as a due diligence exercise case study

- The ARROW Project[22] which aims to create a European distributed registry of Orphan Works and access to a network of existing clearance centres for out of print works, in line with the recommendation of the High-Level Expert Group on Digital Libraries. The system will also provide the infrastructure for the management of any type of rights information, so facilitating the actual implementation of innovative business models for both digital libraries and private digital content providers

Internationally, possible solutions to deal with Orphan Works have been discussed in the US, but have reached an impasse, whilst the Canadian approach, which offers some legal certainty, is onerous to administer and has not had a great deal of take-up.

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18 www.collectionslink.org.uk/get_to_grips_with_copyright/copyc/copyc_dk

19 http://sca.jiscinvolve.org

20 http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/orphan/guidelines.pdf

21 www.mileproject.eu/orphanworks

22 http://ec.europa.eu/information_society/activities/econtentplus/projects/dili/arrow/index_en.htm

3. 'In from the Cold' Project and Research Methodology

In recognition of the substantial obstacles posted by Orphan Works across the public sector, as well as the lack of a statistically viable evidence base to underpin any potential solutions, the Collections Trust[23] and the Strategic Content Alliance[24] have been working together on a joint initiative to assess the impact of Orphan Works on the delivery of services to the public. The 'In from the Cold' project is the first research of its kind surveying the extent of Orphan Works across the UK's public sector, drawing on international responses as well as qualitative data from over 80 UK-based public sector bodies.

The aim of the project has been four-fold:

- Define the impact of Orphan Works on public sector service delivery
- Research the scale and scope of the problem across the SCA communities
- Provide qualitative evidence of how access to and use of content are inhibited
- Raise the profile of the issue through strategic advocacy and press relations

In order to determine the current state of Orphan Works across the cultural, heritage, education, health and other public service sectors, the research methodology has comprised three distinct elements. This has provided the scope as well as the depth and granularity of information needed to measure the impact of this phenomenon:

1. DJS Research[25] and Collections Trust worked closely to develop a process to provide a statistically robust measure of the problem and views. This comprised an online survey, running from 16 December 2008 to 12 January 2009, of predominantly closed questions, where respondents were also given the opportunity to type in any relevant comments or anecdotes. The approach taken included the following:

   - Distribution of the survey via email to various e-mailing lists held by the Collections Trust and partners in the SCA
   - Incentive of entry to a £100 prize draw, and a synopsis of the results (interestingly, more respondents requested a synopsis of results than asked to take part in the prize draw)
   - Reminders and updated press releases during the course of the survey

   In total, 503 respondents completed the survey.

2. ABL Cultural Consulting[26] developed 11 questions that aligned with the DJS quantitative study and delved more deeply into the core questions of the Collections Trust study. These questions were developed in conjunction with the Collections Trust and DJS teams and piloted with five interview subjects selected by Collections Trust.

23 www.collectionstrust.org.uk
24 http://sca.jiscinvolve.org
25 www.djsresearch.com
26 www.ablconsulting.com

From December 2008 until early March 2009, ABL conducted interviews with 81 representatives[27] of organisations potentially housing Orphan Works, the large majority of whom had volunteered to be interviewed further at the end of the DJS online survey. A select number of those consulted had not completed the DJS online survey, but were identified by Collections Trust and the Strategic Content Alliance as interesting case studies. The duration of interviews varied from 20 minutes to one hour, with the majority lasting between 25 and 40 minutes. This was dependent on the consultee's familiarity with and experience in working with Orphan Works. A copy of the survey is available in the Appendix.

For both these aspects, it was agreed that the following issues fell outside the scope of the study:

- Rights holders traced but permission not obtained (because rights holders have not responded or have not given consent for work to be used)

- Problems relating to whether a work is protected by copyright or not

- Anonymous or pseudonymous works where the creator is likely to have been dead for at least 70 years

- Out of copyright works

- Crown copyright works

3. James Morrison, a journalist, interviewed senior stakeholders representing organisations across the public sector to gather views about the impact of Orphan Works on strategic, corporate and policy level-related considerations. The results of the interviews are threaded throughout this report.

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[27] All responses published in this report are anonymous and quotes are taken verbatim as indicated

4. Research Findings and Analysis

Online survey respondent profile (Appendix A)

The sample of 503 respondents that participated in the online survey represented a diverse range of organisations in terms of size, sector and location:

- A cross section of organisations responded, predominantly representing museums, libraries, archives, and education and health sectors

- A range of sizes of collection were represented. Whilst the (median) average number of works held was estimated at 50,000 to 100,000, 18% of respondents stated they have 1 million+ works. The average number of works held varied significantly by sector, from 1,001 to 5,000 for health organisations to 500,000 to 1 million for archives

- Overall, 90% of respondents were UK based, with 10% based in overseas locations

The chart (fig. 1.1) provides a breakdown of the sample by sector/type of organisation.

Further analysis shows that the average number of works held varied significantly by sector, from 1,001 to 5,000 for health organisations, to 500,000 to 1 million for archives (see fig. 1.3).

The online survey was distributed to a range of organisations both in the UK and overseas. Overall, 90% of respondents were UK-based, with 10% based in overseas locations. A range of countries were represented, as shown in fig 1.4. Overseas organisations were represented across a range of sectors, although no overseas galleries took part (see fig. 1.5). Overall, it can be seen that the sample of 503 respondents that participated in the survey represent a diverse range of organisations in terms of size, sector and location.

Quantitative survey respondent profile

Eighty-one individuals representing a cross section of organisations were interviewed for the qualitative portion of the study. They represented a range of self-selected organisations, who had agreed to be consulted in an in-depth phone survey, following the completion of the online survey. The data and findings will therefore be skewed towards organisation representatives who are more willing to comment further on their organisation's involvement with Orphan Works.[28] 95% of participants represented organisations located in the UK, with one in 20 from overseas locations.

- Those interviewed represented a range of jobs, from Head of Archives (archivists being the most popular job category, representing about 25% of the sample) to curators, editors, project managers, copyright officers, librarians, information specialists, access officers, keepers of collections, exhibitions officers and research officers. All had direct experience in working with Orphan Works.

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[28] It cannot be assumed that the additional 400 responding to the online survey, not participating in this strand of the study, would offer similar responses. This survey thus must be viewed in alignment with the results of the online survey.

- Depending on the size of the organisation and collection, some of those interviewed were responsible for the organisation's operations and curatorial function (the smallest of organisations), while others represented a very niche role, working directly with a specific collection within a very large organisation.

- In terms of funding, the majority of organisations did not receive funding specifically allocated to deal with Orphan Works. Of the small minority that did receive funding for addressing Orphan Works, it was because the end result of the project was a high-profile published database or catalogue.

Volume of Orphan Works (Appendix B)

The average proportion of Orphan Works in a collection overall was measured at 5% to 10% (fig 2.1), whilst certain sectors, such as archives, have the highest (median) average proportion of Orphan Works (21% to 30%) (fig 2.2). Responses from respondents not based in the UK broadly corroborated these findings across sectoral divides.

These mid-range estimates put the total number of Orphan Works represented in our online sample of 503 at a total of in excess of 13 million.

Looking at the museums sector alone, in 2000, the European Museums Information Institute estimated the total UK museum holdings at around 350 million. This would mean, if our estimates are extrapolated, that the museums sector in the UK is likely to include holdings of more than 25 million Orphan Works. Figures for other sectors such as archives and libraries are likely to be much higher. Clearly these figures are estimates based upon median averages, particularly given that respondents themselves are likely to have been estimating the extent of their own Orphan Works problem.

Twenty-six of the named organisations that took part in the survey stated that their collection contains in excess of one million works. For these organisations, the figure of one million works was used in the above calculations. However, desk research shows that most of these 26 named organisations have collections significantly larger than one million.

These large (1m+) collections that are represented in the survey include, by way of example, a national library holding in excess of 150 million items, and an archive that holds items covering 176 kilometres of shelving. There are also a number of other organisations that hold between five million and ten million works. When these vast collections are taken into account, analysis to calculate the volume of Orphan Works represented in this survey alone starts to become mind-boggling. Individual estimates suggest that there are single organisations in the survey sample that hold in excess of 7.5 million Orphan Works. If we include even a few of these extreme examples in our calculations, it appears likely that this sample of 503 organisations could represent volumes of Orphan Works well in excess of 50 million. This is before we make any attempt to extrapolate these estimates to the 'marketplace' as a whole (ie all the libraries, archives, museums, universities, etc, in the UK or Europe).

Types of works at risk

The types of work held by public sector bodies range from fine art to unpublished text-based objects or audio recordings. Anecdotally those responding to the surveys suggested that the types of works in their collection were more likely to be Orphan Works if they had little commercial value and where rights holders, if traced, would usually be happy for their works to be reproduced. User generated content, works by amateur or local artists and works by artists using aliases were also mentioned as at risk of being Orphan Works.

Extent of the Orphan Works problem (Appendix C)

The extent of Orphan Works across the public sector and their potential impact is huge. On average, 89% of participants' service delivery is at least occasionally affected, whilst 26% noted that everything they do is frequently affected by the issue of Orphan Works (fig 3.1). These results varied between sectors; for example, the health sector is the least affected with only 58% of respondents at least occasionally affected, with museums (95%), archives (94%) and galleries (96%) the most likely to be affected (fig 3.2). In the case of archives, which have the largest average collection size (0.5 million to 1 million) and the highest (median) average proportion of Orphan Works (21% to 30%), the impact on this sector is particularly notable. This confirms that the presence of Orphan Works is in essence locking up culture and preventing organisations from serving the public interest.

It is noteworthy that the impact of Orphan Works seemed to affect overseas organisations in the same magnitude (91%), although we would need a larger statistical basis for analysis (fig 3.3).

Other key results demonstrating the impact of Orphan Works on public sector organisations' core objectives and operations include:

- 70% of interviewees argue that Orphan Works are a barrier to delivery, 39% believe it they a barrier to research, 37% believe they restrict access (fig 3.5)
- Organisations are often required to conserve and preserve works, however photographing for the purpose of archiving and insurance is infringement of copyright
- Over 60% report Orphan Works affecting their digitisation efforts (fig 3.6)

Participants in the survey often took time to write detailed accounts (details in Appendix H); this is unusual during the completion of online surveys and is a measure of their strength of feeling about the issues.

'For an archive, the value is the comprehensiveness of a collection. What you are finding in the archive sector at the moment is, say someone wants to digitise a photograph collection; if an archive has to trace the owners of every photograph then in most cases they won't even start the project as just mounting a small proportion of the photos does not make the collection accessible. We see this all the time with really good ideas stopping at first base, because the chances of getting the full clearance required is low, or zero.'

Natalie Ceeney, Chief Executive Officer, National Archive

'It's entirely possible that we will miss the opportunity of Digital Britain. What we will see is a real reduction in the public sector funding from 2012 as the current economic climate kicks in. If we haven't taken part in Digital Britain we will lose out. It's the one we can't miss.'

Nick Poole, Chief Executive Officer, Collections Trust

Factors leading to Orphan Works (Appendix D)

A number of factors were noted as leading to Orphan Works, however by a wide margin the main factors resulting in works being 'orphans' were noted as (fig 4.1):

- Insufficient information identifying the copyright owner (83%)
- The owner of the copyright cannot be located (73%)
- The copyright holder has died and there is no further information about ownership of the rights (70%)

These results show that many of the works for which the rights holders cannot be traced or are unknown result from the loss of important provenance information or the lack of any provenance information at all, and/or relate to works which may be of little intrinsic commercial value, where the rights holders themselves are aware that the works are in copyright.

'The reason why things become orphaned in the first place is because people haven't written things down properly. Part of this battle is to make sure people do write things down [in future].'

Nick Poole, Chief Executive, Collections Trust

Management of Orphan Works (Appendix E) and use of Orphan Works (Appendix G)

Overall, the most common method for managing Orphan Works is the adoption of a risk managed approach (average of 60%), whilst 4% of respondents gave 'other reasons' (fig 7.1). Differences in how organisations might handle Orphan Works occur between sectors. For example, archives and galleries (75% and 85% respectively) appear more likely than average to adopt a risk managed approach, whilst the education sector is more likely to use Orphan Works only for education purposes (27% as opposed to an overall 14% average) (fig 7.2).

Despite the corroborating data from overseas in terms of quantity of Orphan Works and the impact on public sector delivery, overseas organisations are less likely to adopt a risk managed approach (38%), although this is based on a statistically insignificant sample size (fig 7.3). The greatest disparity is between size of collections – those with less than 100 items were considerably less likely to use a risk managed approach (38%) and far more likely to use them for educational purposes (31%) or internally only (23%) (fig 7.4).

Staff capacity (69%), time (60%) and a lack of resources (52%) are the key factors affecting approaches to Orphan Works. A limited understanding of copyright law (39%) and lack of knowledge about how to trace ownership (24%) also affected the approach taken to Orphan Works (fig 5.2).

Please note, some consultees replied with more than one answer, using a different approach depending on the work.

At best, the majority of affected organisations are reliant on adopting a risk managed approach (60% of organisations represented in the survey use Orphan Works within a risk management context), whilst 19% of public sector bodies either do not use them at all, or use them only for internal purposes. A large proportion of the remainder use them regardless. These results may be indicative of the higher level of awareness that the respondents to the online survey may have, and, in reality, the proportion of public sector organisations that use Orphan Works regardless may be greater. In any event, it captures a snapshot of the unacceptable levels of risks that public sector bodies are presented with in dealing with Orphan Works. It also highlights the quantities of works for which access is potentially locked down. Based on a potential number of Orphan Works across the cultural heritage sector of 25 million, this could mean that nearly 20% of all Orphan Works, or approximately 5 million, were not being made publicly accessible (fig 7.1 to 7.3).

'It would be fair to say on their [member organisations'] behalf that copyright is probably the single largest and most intractable problem as far as dealing with preservation and stewardship of the cultural record going forward. It's probably the single biggest barrier to making available the existing cultural record, and cultural and scholarly heritage. It's an enormous, multifaceted, often intractable problem. It creates tremendous liability. It's one that many of our organisations, who are somewhat risk-averse because of their role as public institutions, have had no choice but to approach from a risk management point of view. They have been unwilling to undertake the risks involved in making materials available in some cases.'

Clifford Lynch, Director, Coalition for Networked Information

Time spent tracing rights

More than 40% of those consulted had difficulty quantifying the time spent in tracing rights for Orphan Works, as most described every situation with every Orphan Work as unique. The vast majority of those interviewed also did not have specific funding allocated to dedicated time for tracing rights. In answer to the question 'How long would you typically spend trying to trace the right holder(s) and/or tracing the inheritance of a single Orphan Work?', those organisations that could quantify the time spent reported on average less than half of one day tracing rights (fig 6.1) on each work. In certain high profile cases on projects where making sure of copyright status was more critical, some organisations had spent large resources of time on chasing rights holders. These were often estimates due to the extreme variations from case to case and also due to the fact that many of those consulted said that they would generally do this kind of research in batches rather than item by item.

Even if we were to use the conservative estimate of there being 13 million Orphan Works among our sample of 503 respondents, and assumed that each Orphan Work would take half a day to trace, **it would take 6.5 million working days to trace the rights holders of the Orphan Works contained only in our sample.**

'It's an expense and it slows things down.'

Malcolm Read, Executive Secretary, Joint Information Systems Committee (JISC)

'The cost of trying to track down rights owners [invariably] far exceeds the monetary value of the work, and that's borne out by the financial profiles from the British Library. It costs x to find the owner and it will cost y to pay to license it. ITN did a project called News Film Online – 3,000 hours of video from the archives of ITN, which went on stream last year – and because there was a lot of material there where rights owners couldn't be tracked down, audio and video had to be blanked out

because it was more expeditious to blank out the clip than to track the rights owner. So you will get bits being blanked out, and it will reappear again when the orphaned bit has gone.'

Stuart Dempster, Director, Strategic Content Alliance – 20 February 2009

Methods in tracing rights holders

70% of consultees conduct desk research to trace stakeholder rights (fig 6.3). Many consultees argued that the significant time spent tracing rights be used on other activities. Time and resources are also being used to educate the public and students and train (and remind) colleagues about the specifications of working with Orphan Works. Those falling in the 'other' category included elaborating on their answer of 'desk research' – mentioning specific resources like Google, the Bridgeman Art Gallery, Writers, Artists and their Copyright Holders File (WATCH), JISC and the Design and Artists Copyright Society (DACS), the alumni office and other links within their university, and writing thank you letters!

Resources required to address the Orphan Works problem

At least 35% of organisations across all sectors, regardless of the size of their collections, do not have any specific resources in place to help deal with Orphan Works.

'The main issue for us at JISC is if we are funding digitisation projects we have to spend a lot of time seeking and clearing Orphan Works the cost of digitisation becomes a lot greater. In terms of time and money, digitisation becomes a lot more expensive. If digitisation becomes too expensive, material will not be digitised and it will remain in archives or museums unknown and unloved.'

Alastair Dunning, Programme Manager, Digitisation, JISC

The risk of Orphan Works

More than 60% of consultees surveyed feel they are putting their organisation at low risk either because of their extensive due diligence, or because the Orphan Works concerned are of academic rather than commercial value. 50% of organisations do not know what the risk is to their organisation, or believe their risk has been mitigated, after making efforts to trace rights (fig 6.4). Less than 5% of those consulted will still display, publish or digitise an object even if it presents a high level of risk. It is evident from the consultations that many organisations are keen to limit their liability through a combination of processes, including risk assessment, disclaimers, passing the responsibility onto an enquirer who wants an image, making sure a larger partner in a project takes on risk and refusing permissions to make copies of Orphan Works where the risk is too great. In some cases, this applies to all Orphan Works. In other cases it applies to those categorised as more risky.

'There is the fact that universities are generally very risk-averse – senior management are. Therefore, there's intense nervousness at senior management level about doing some things that may actually be legally okay. You have got these two tensions: individual lecturers who are quite blasè and senior managers who say, "whatever you do, don't do that". For example, if a student wants some work photocopied and that material happens to include a logo, the university photocopying service won't do that.'

Professor Charles Oppenheim, Head of Department of Information Science, Loughborough University

Approach to Orphan Works

At one end of the spectrum, public sector organisations conduct a very thorough investigation and risk assessment, have developed techniques for establishing copyright, or simply 'know where to look'. At the other end, organisations will either put works on display anyway, or leave the work in the cupboard, rather than exhaust resources to deal with the myriad of issues that will undoubtedly arise in attempting to display, publish or digitise an Orphan Work. In the middle of the spectrum are organisations that employ disclaimers as part of the exhibition, display the works but do not allow for commercial publication, put the onus on the enquirer to search for copyright holders, or use the works for educational purposes (in some cases, not realising this is not in compliance with the law).

'We are currently digitising various parts of our collection, and given the length of copyright in the EU (life plus seventy years after the death of the author) unless you digitise pre-1850 material part or all of what you are digitising will be in copyright. Due to the length of copyright, our digitising projects are very much skewed to pre-1900 projects, as the amount of in-copyright and Orphan Works will be statistically relatively low.'

Dame Lynne Brindley, Chief Executive Officer, the British Library

'Most of the artists we cannot find are not well-known. In those cases where we have tracked them down at a later stage post publication, they have always been grateful for the publicity.'

Andy Ellis, Director, The Public Catalogue Foundation

5. Conclusions

The scale and impact of Orphan Works across the public sector confirms that the presence of Orphan Works is in essence locking up culture and other public sector content and preventing organisations from serving the public interest.

'It's a pain. It's safe, but it's not good customer service. It's a pain for us, [but] it's crippling the archive sector.'

Natalie Ceeney, Chief Executive Officer, National Archive

Works of little commercial value but high academic and cultural significance are languishing unused, access to an immense amount of this material essential for education and scholarship is badly constrained and scarce public sector resources are being used up on complex and unreliable compliance.

'The 20th century developed the moving image, and if we can't digitise them then we have that kind of gap in our historical memory.'

Alastair Dunning, Programme Manager, Digitisation, JISC

Public sector organisations have a critical role as content brokers to other public sector organisations, to users and to the corporate sectors. The flow of this content and the maximisation of the potential of its value is being disrupted by both the volume of resources necessary to manage copyright and, in particular, Orphan Works. Without any kind of national or European-wide legal certainty, there will remain a major risk for all users of Orphan Works. The quantity of Orphan Works and their impact is only accelerating as content is being created and digitised without adherence to any internationally recognised standards for capturing provenance information.

The data and anecdotal feedback suggests that many public sector organisations are themselves unsure as to the extent of the problem, and that staff awareness and understanding are often limited. This emphasises the need for an informed and skilled public sector to deal with all the issues associated with copyright-related materials, access to resources to deal with Orphan Works, and an informed and proportionate understanding of the nature of the risks associated with the use of these works.

There is additional evidence of the impact of Orphan Works on public service delivery, with many organisations lacking the resources to deal with the issue effectively. At best, the majority of affected organisations are reliant on adopting a risk managed approach which often inhibits their use of Orphan Works and is creating a black hole of 20th and 21st century content.

'It's a big issue in the digital world, in that we can't digitise our 20th century collections really at all. The steps we are taking are to lobby government to say, "could we have some solution to this problem?" The whole problem didn't matter quite so much before digital delivery came around. The problem is that library and museum-users expect stuff to be digital. It's a bit absurd that schoolchildren can do lots of project work on the First World War because most of that is out of copyright, but they can't do anything on the Second World War because it's all locked up in copyright.'

Toby Bainton, Secretary, Standing Committee on National and University Libraries (SCONUL)

The weight of feeling surrounding the issue by professionals working across the public sector is emphasised by the detailed comments and anecdotes provided by many respondents which include various suggestions for measures that are helping or could help to address the Orphan Works issue.

It is crucial that policy makers recognise the problems that public sector bodies face in managing and providing online public access to a vast range of works in copyright (including Orphan Works), and create a suite of appropriate, legislatively based solutions. Whether the answer is a uk or an international one, involving a change in practice and interpretation and/or a change in legislation, this is clearly a matter of urgency. Without these legal safeguards, the contribution of public sector content to a global digital landscape will continue to be severely curtailed and the levels of public resources to manage copyright will be unacceptable.

Finally, this survey has demonstrated that Orphan Works are widespread across the UK's public sector, and that the issue is also widespread outside the UK. More research is needed to properly analyse the experience of Orphan Works outside the UK to fully measure the scale and impact of Orphan Works on a digital Europe.

6. Recommendations arising from the project

When given the opportunity to contribute suggestions or anecdotes a number of respondents to the online survey and case studies took the time to make suggestions for measures that are helping or could help to address the Orphan Works issue. These can be broadly divided into the following responses, the majority of which – almost 60% – call for legislative change.

Are there any additional resources and/or developments that would help you deal with Orphan Works more effectively?
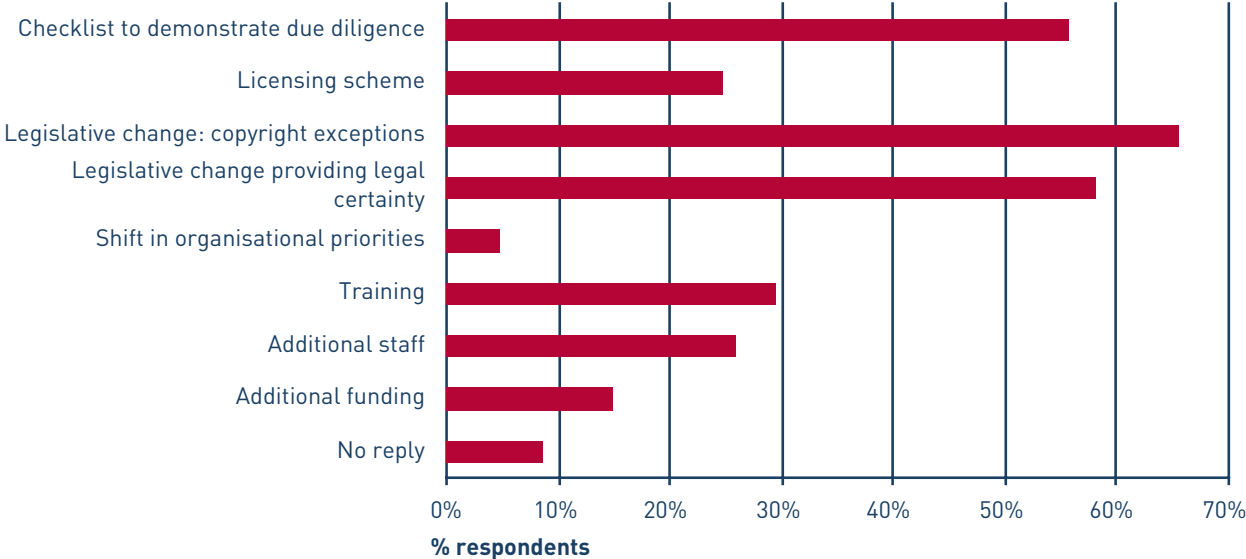
Source: ABL research

European policy

Many consultees suggested that there was much to learn from European policy, and that the sector should monitor the success of recent developments (in Danish law for example) to see if a similar model could be used elsewhere.

'There are other ways of doing this in other countries, procedures, statutes of limitation. In this country you are left to your own devices and every case is treated uniquely.'

'It's about time the UK government really did something about this – they are extremely vague compared to Europe. Across the UK there is a huge waste of time going on trying to pussyfoot around the problem, where in other countries people know where they stand. Where AV is

concerned in the UK, there are no exceptions in legal deposit legislation. So neither copyright legislation or legal deposit legislation help with AV work. Other countries use legal deposit legislation to say what archives can do and it includes information on Orphan Works, eg Finland'.

Technology

Advances in technology are creating ever-increasing challenges in dealing with copyright and an acceleration of the growing numbers of Orphan Works. Whilst forming part of the problem, technology may also be part of the solution to prevent the build-up of Orphan Works.

It was suggested that tightening up on software that allows the copying of digital images while stripping out the metadata is necessary. Software that enables viewing of text and images but disallows downloads was advocated, as was software that distorts or lowers the resolution in copied digital images. Other solutions could include the development of mandatory international standards to record the provenance of works.

'Risk is mitigated as when images are put online, a special software is used that means people have access to view excellent images but that if they copy an image, the resolution is so bad that it cannot be reproduced.'

Licensing schemes

A licensing scheme may have different utility for different organisations, depending on size and access to funds and expertise. Larger organisations would be more likely to buy into a licensing scheme, while some consultees commented that the complex licensing schemes already available were restrictive in themselves. It was noted that there are already a number of licensing schemes for other types of work which do help the smoother functioning of many organisations. Schemes that cover Orphan Works would help those for whom the issue is time-consuming or risky, inhibiting development of commercial strands, or organisations and projects for whom it is impractical to carry out due diligence searches or which are large enough for an extra fee to be incidental.

'Digitisation of sound recordings is a big problem and a clear-cut licence for dealing with these in the same way as exists for newspapers would be very useful.'

Official registration – establishment of a national database

While there are a number of databases that subjects cited during the interviews, some suggested that an official national copyright database would be the solution. It was also suggested that such a database should be on an 'opt-in' basis, so that copyright holders would be responsible for making sure that they put their works into the database if they want to benefit and that, otherwise, organisations could use works as they see fit. Other suggestions included:

- Setting up of a central agency to administer rights
- A common transparent system for recording and granting permissions in real-time and at low cost

Change terminology – 'orphan' is misleading

The dual definition of an Orphan Work, being a work where the copyright holder is either unknown or untraceable, needs clarification; as was suggested by a number of consultees, these are different problems and need to be approached in different ways. It was also suggested that works where the copyright holder is known by name but is untraceable are not really Orphan Works.

Provide comprehensive training

Whether legislation is left as it is or is changed, there was a general feeling that more comprehensive training about copyright and its practical implementation across public sector bodies in general is needed. Those that had attended training courses said how enlightening they were, but that they were surprised at the low number of attendees considering the scale of the problem. Those in senior positions or with more specific knowledge of copyright legislation said that they could monitor the situation when they were there, but that they could not be sure that other staff were as diligent. A mixture of external and internal training programmes and a comprehensive system for rolling it out and supporting those involved could be part of a solution.

Provide more accessible information about Orphan Works legislation and good practice

Some consultees felt that legislation is not clear and that what they needed was a simplified 'pin-up' set of guidelines. It was stated that current information is full of jargon and too long and complex and what is actually needed day-to-day is something very easy to understand by practitioners. Other suggestions included the development of toolkits with workflows for assessing the risk of using Orphan Works in various contexts.

'Another issue in terms of staff and researcher understanding is the difficult language of the copyright guidance documents.'

Amnesty

One solution suggested was to have a total amnesty on the use of Orphan Works. In order for this to be successful, there would need to be a strategy for categorising a work as 'orphan' – for example, developing a checklist of procedures to enable an Orphan Work to be easily classified and accessed. Considering that more than 35% of organisations in this study were not able to commit time and resources to tracing copyright owners, there would need to be a strategy for funding this process.

'The easiest way would be to remove [Orphan Works] from the [copyright] act.'

Establish legal certainty

Although some of the copyright specialists who were interviewed felt that the law is very clear many other consultees felt that it is not. This may be a matter of training or indeed the nature of the work that staff are dealing with (for example, the duration of copyright in photographs and unpublished text-based works can be particularly complicated), however it certainly shows that the law is not clear unless considerable time is taken to come to terms with its intricacies. It is evident from the interviews that there is confusion about what can be done legally with an Orphan Work. Establishing

legal certainty and providing legal safeguards is essential in order to ensure that access to works is not restricted where it need not be, that researchers can use Orphan Works where it is allowed, and that organisations are not working in constant uncertainty about the level of risk that they may incur.

'The law is very clear. We cannot do anything with Orphan Works.'

'If there was a clearer legal position about what was involved it would be easier and more Orphan Works may have been included in the collection. The Orphan Works problem has had a direct impact on our selection.'

Separate the act of copying from the use of the work

It was suggested that the act of copying the work should be distinguished from the use that is made of that copy, therefore enabling legal preservation of many archives in digital format. Currently, this is either not being done and works are at risk of loss, or is being done illegally.

Introduce copyright exceptions

There are a number of ways the copyright exceptions could help with the problems of Orphan Works. Some consultees felt that there should be a distinction between works of high commercial value and of those of low commercial but high academic value. Others felt that if 'educational purposes' was an exception for organisations across the public sector involved in educational activities, then public access to materials was public education and should come under the same umbrella. Alternative suggestions included changing the law for the use of Orphan Works to include details of permitted use if every effort has been made to trace the creators and this can be proved. A more specific recommendation related to the application of the standard term to works, as the Irish have done, or a shorter term, as has been done in the USA and Canada.

'They should make it possible to digitise and make material available to a broad public for non-commercial and educational purposes.'

Stop the problem from here on

Orphan Works are most prevalent in collections that were deposited less recently, in times when copyright was not the issue that it is today, as well as in user generated content. Many organisations in this study recognised that part of the solution is to make sure that the same mistakes are not made from now on and that data is recorded, staff and public are trained, and measures are taken to ensure that the problem does not get any worse. In areas such as web resources and teaching and presentation materials, it was suggested that the problem could get a lot worse as images in particular are lifted from one file to another, often leaving behind their metadata and in effect re-orphaning many works. Awareness-raising and the responsible use of technology must also be addressed if the volume of digitally re-orphaned works is going to be prevented from escalating.

'There is a need for copyright exceptions that allow for preservation. The Creative Industries work for today and tomorrow until it is too late. Then heritage organisations are left to manage the material.'

Appendix A: Statistical Calculations, Accuracy and Respondent Profile

Statistical accuracy

Overall, the sample of 503 provides a robust base for statistics, and includes 90% of respondents from the UK and 10% from overseas. It should be noted that for several questions DJS Research carried out analysis by segment (for example by type of organisation/sector). Some segment base sizes should be treated with caution – for example only 21 galleries and 24 health sector organisations were surveyed, so statistics for these segments are indicative rather than statistically robust.

The overall confidence interval for the online survey data, based on 503 responses, is between 2.62% (if 90% gave a particular response) and 4.37% (if 50% gave a particular response). For example, if 90% of the sample chose a particular response, it is certain that, if the question had been asked of the entire relevant population, between 87.38% (90 minus 2.62) and 92.62% (90 plus 2.62) would have picked that answer. If 50% of the sample chose a particular response, it is certain that, if the question had been asked of the entire relevant population, between 45.63% (50 minus 4.37) and 54.37% (50 plus 4.37) would have picked that answer.

Calculating averages

For several key questions (such as 'number of works held' and 'proportion of Orphan Works') DJS Research calculated an *average* figure, or a series of averages at overall and, for example, sector level. It is important to note that these averages have been calculated using the 'median' average. Median averages cancel out the extremes of data (ie the very large collections held in some archives) therefore the estimates are likely to be conservative.

Multiple responses

Within the sample of 503, there were 20 instances where more than one respondent from the same organisation completed a survey. This has been taken into account in the calculations, and also raises an interesting additional question: did respondents provide the same or similar responses? The answer is – not always. For example, when estimating the proportion of Orphan Works in a collection, estimates from multiple respondents in a single organisation varied by up to 35%. This suggests a degree of uncertainty about the proportion of Orphan Works held, which is further emphasised by the fact that 27% of those affected by Orphan Works could or would not even hazard a guess at the proportion of 'orphans' in their collection. It also reflects the potential for different levels of Orphan Works across any one organisation.

Respondents' profile

FIGURE 1.1   Type of organisation **(Overall statistics)**

Q) What type of organization do you work for?

Organisation	% respondents
Museum	28
Library	20
University	15
Archive	12
Health sector	5
Gallery	4
College	2
School	1
Other*	12

% respondents
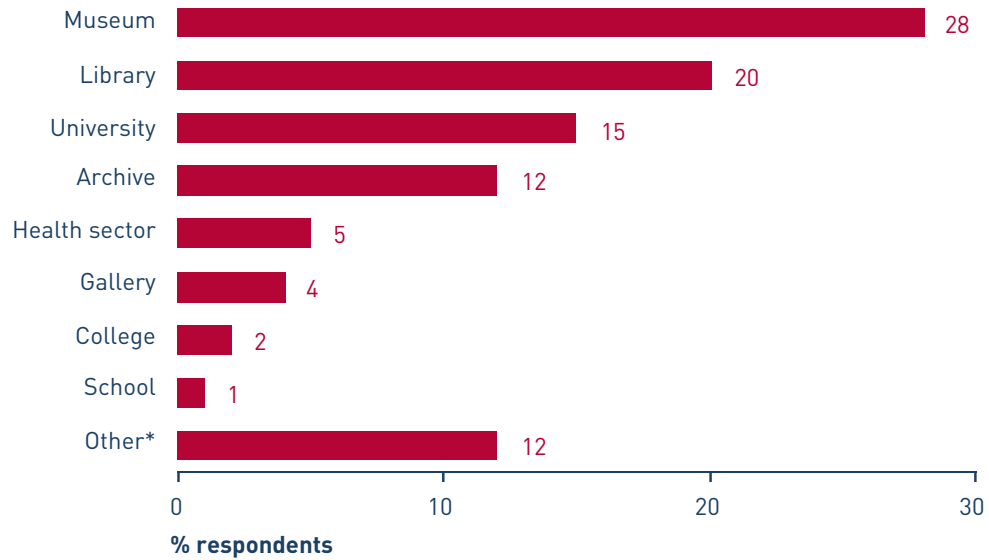
Others include:

Scientific Organisation, Civil Service (Government Art Collection), Local society, University Museum, Public building, Local Government, Museum-Library-Archive, Charity, Library/Archive within a religious body, UK Academy of Science, Literary or history society

Base: All respondents (503)

FIGURE 1.2   Number of works held **(Overall statistics)**

Q) Approximately, how many works do you have in your collection and/or projects?

Number of works	% respondents
Not specified	5
Less than 100	6
101-500	3
501-1,000	3
1,001-5,000	10
5,001-10,000	10
10,001 – 25,000	9
25,001 - 50,000	4
50,001 - 100,000	11
100,001 – 500,000	12
500,001 – 1,000,000	9
More than 1,000,000	18

Overall average 50,000 - 100,000 works in collection
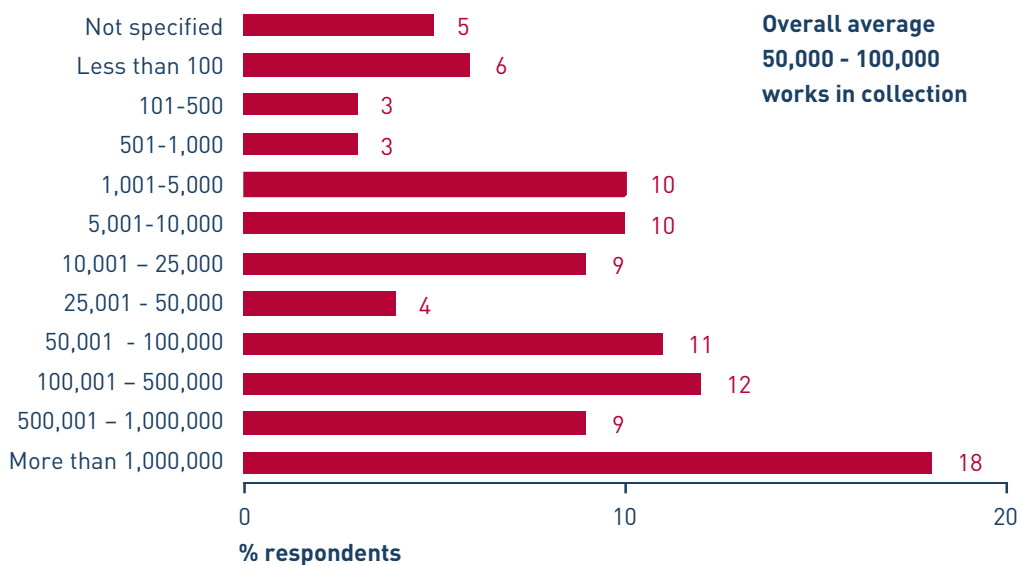
% respondents

Base: All respondents (503)

FIGURE 1.3   Number of works held (By sector)

**Q) Approximately, how many works do you have in your collection and/or projects?
SPLIT BY SECTOR (%)**

	OVERALL (503)	Museum (143)	Library (101)	Archive (61)	Gallery (21)	Education sector (90)	Health Sector (24)
Less than 100	6	2	2	0	5	11	21
101-1,000	6	4	5	4	5	7	8
1,001-5,000	10	17	7	5	29	8	33
5,001-10,000	10	12	4	10	14	9	13
10,001 – 25,000	9	18	3	2	5	8	13
25,001 – 50,000	4	6	5	5	5	0	0
50,001 – 100,000	11	10	17	3	24	9	0
100,001 – 500,000	12	10	13	20	5	17	4
500,001 – 1,000,000	9	8	14	10	5	9	0
More than 1,000,000	18	10	29	43	5	11	0

= Denotes median average level

Base: See sector heading (n)

FIGURE 1.4   Location of organisation (By sector)

Q) In which country is your organisation based? OVERSEAS RESPONDENTS

Austria x 1	France x 1	Malta x 1
Belgium x2	Germany x 8	Netherlands x 2
Cyprus x 1	Hungary x 1	Romania x 1
Denmark X 1	Italy x 4	Spain x 1
Finland x 1	Luxembourg x 1	Sweden x 1

Canada x 2
USA x 5
Russian Federation x 1
Ireland x 7
Asia
North America
Europe
Africa
Central and South America
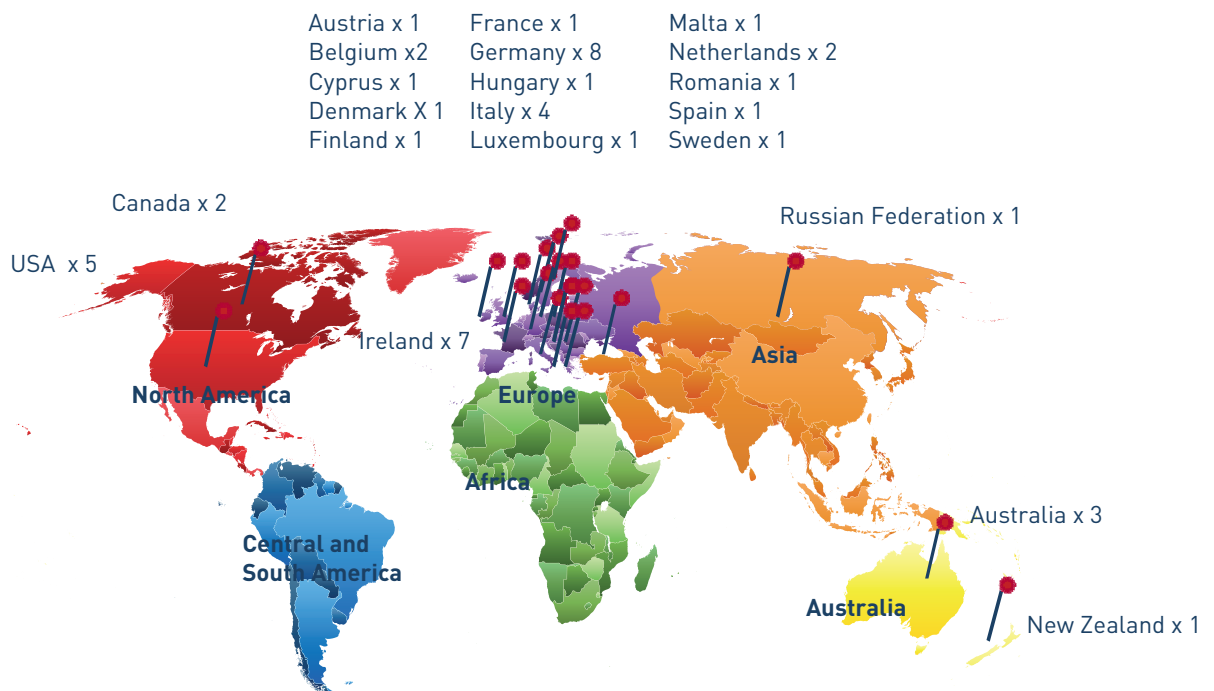Australia x 3
Australia
New Zealand x 1

FIGURE 1.5   Location of organisation **(By sector)**

Q) In which country is your organisation based? SPLIT BY SECTOR (%)

	OVERALL (503)	Museum (143)	Library (101)	Archive (61)	Gallery (21)	Education sector (90)	Health Sector (24)
In the United Kingdom	90	94	82	87	100	90	96
Outside of the United Kingdom	10	6	18	13	0	10	4

■ = Higher than average
■ = Lower than average

Base: See sector heading (n)

Appendix B: Volume of Orphan Works Held

In order to further understand the extent of the Orphan Works issue, respondents to both the online survey and detailed case studies were asked to answer the following question:

FIGURE 2.1   Proportion of collections made up of Orphan Works **(Overall statistics)**

Q) Approximately what proportion of your collection and/or projects is made up of Orphan Works?

Overall average of 5% to 10% of collection made up of orphan works

% respondents
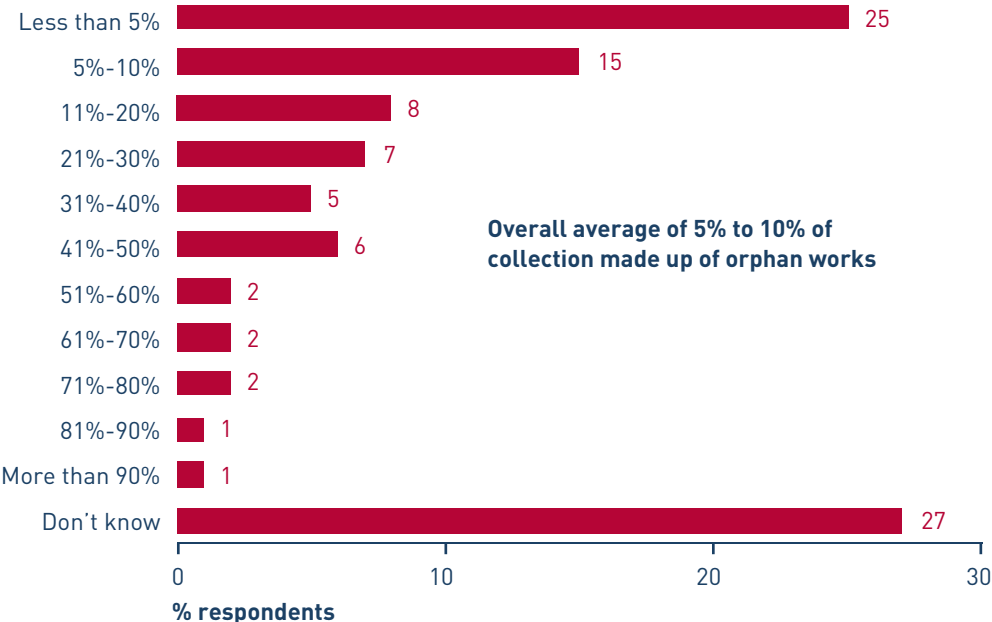
Base: All affected by orphan works (447)

Responses were provided using a banded scale (ie <5%, 5–10%, 11–20% etc).

The average proportion of Orphan Works in a collection overall was measured at 5% to 10%. This is a conservative average calculated using the 'median', therefore indicating the extent to which an 'average' organisation is affected.

FIGURE 2.2   Proportion of collections made up of Orphan Works **(By sector)**

Q) Approximately what proportion of your collection and/or projects is made up of Orphan Works? SPLIT BY SECTOR (%)

	OVERALL (447)	Museum (136)	Library (89)	Archive (57)	Gallery (20)	Education sector (83)	Health Sector (14)
Less than 5%	25	24	22	5	30	28	79
5%-10%	15	15	11	14	30	19	14
11%-20%	8	7	8	14	10	7	0
21%-30%	7	9	3	12	5	4	0
31%-40%	5	6	4	7	5	4	0
41%-50%	6	10	2	9	10	5	0
>50%	8	5	8	15	0	9	7
Don't know	27	26	39	25	10	24	0

= Denotes average level

Base: See sector heading (n)

In most sectors the (median) average proportion of Orphan Works is 5% to 10%. The exceptions are archives where the average is higher at 21% to 30%, and the health sector with a lower average of under 5%.

FIGURE 2.3   Proportion of collections made up of Orphan Works by location **(By location)**

Q) Approximately what proportion of your collection and/or projects is made up of Orphan Works? FINDINGS BY SECTOR (%)

	OVERALL (447)	UK (402)	Overseas (45)
Less than 5%	25	25	24
5%-10%	15	15	16
11%-20%	8	7	16
21%-30%	7	7	9
31%-40%	5	5	4
41%-50%	6	7	2
>50%	8	8	10
Don't know	27	28	18

= Denotes average level

The average proportion of Orphan Works was the same for overseas organisations as for the UK.

FIGURE 2.4   Volume of orphan works **(By sector type/organisation)**

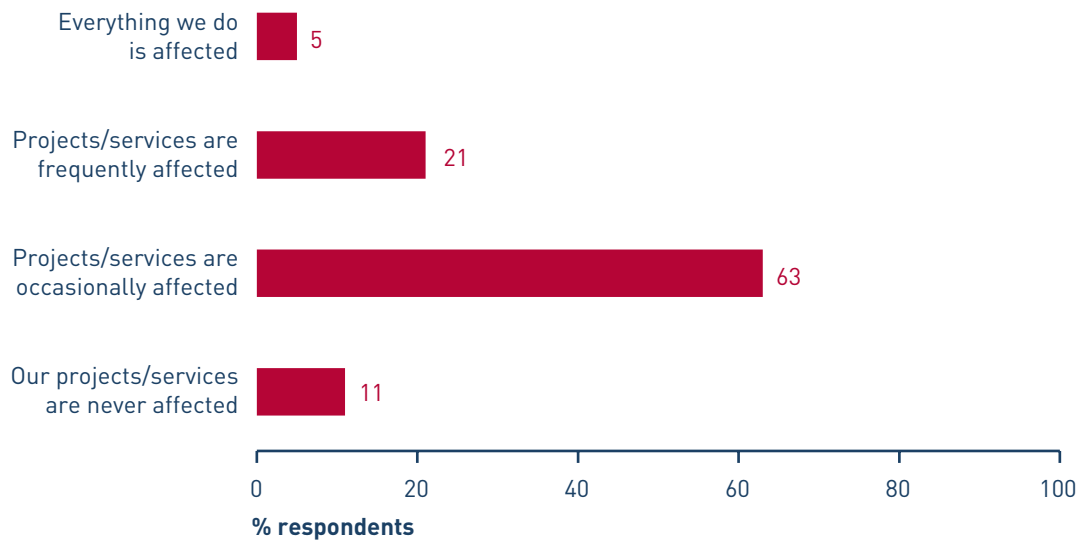|	Museum (143)	Library (101)	Archive (61)	Gallery (21)	Education sector (90)	Health Sector (24)
a) Mid-range estimate of average number of works in collection (mid-point of scale)	17,500	300,000	750,000	7,500	75,000	3,000
b) Mid-range estimate of average proportion of works that are orphans (mid-point of scale)	7.5%	7.5%	25.5%	7.5%	7.5%	2.5%
c) Mid-range estimate of average number of works per organisation	1,312	22,500	191,250	562	5,625	75
d) Proportion of organisations affected by orphan works	95%	88%	94%	96%	91%	58%
e) Number of organisations in sample affected by orphan works	136	89	57	20	82	14
f) Mid-range estimate of total number or orphan works represented in this survey (c x e)	178,432	2,002,500	10,901,250	11,240	461,250	1,050

The analysis used to produce the results above took a mid-range estimate (taking the mid-point of the scales for 'number of works in collection'. Taking a mid-range estimate ignores the vast collections at the top end of the spectrum and is likely to give a conservative total estimation of Orphan Works.

Appendix C: Extent of the Orphan Works Problem

As part of both the online survey and the interviews, in order to provide an overall gauge of the extent of the Orphan Works issue, respondents were asked the following question:

FIGURE 3.1 Extent of the Orphan Works problem **(Overall statistics)**

Q) To what extent do works for which the rights holders cannot be traced or are unknown ('Orphan Works'), present a problem for the fulfillment of your organisation's public service delivery?

Category	% respondents
Everything we do is affected	5
Projects/services are frequently affected	21
Projects/services are occasionally affected	63
Our projects/services are never affected	11

% respondents

Base: All respondents (503)

89% of participants stated that their service delivery is at least occasionally affected by Orphan Works, with over a quarter stating that they are frequently affected or that everything they do is affected.

FIGURE 3.2 Extent of the Orphan Works problem (By sector)

Q) To what extent do works for which the rights holders cannot be traced or are unknown ('Orphan Works'), present a problem for the fulfillment of your organisation's public service delivery? SPLIT BY SECTOR (%)

	OVERALL (503)	Museum (143)	Library (101)	Archive (61)	Gallery (21)	Education sector (90)	Health Sector (24)
Everything we do is affected	5	4	4	7	10	4	0
Projects/services are frequently affected	21	20	20	36	19	24	4
Projects/services are occasionally affected	63	71	64	51	67	63	54
Our projects/ services are never affected	11	5	12	6	4	9	42
% affected (at least occasionally)	89	95	88	94	96	91	58

= Higher than average

= Lower than average

Base: See sector heading (n)

Analysis by sector suggests that the health sector is least affected by Orphan Works, and that archives are most affected. This basic data was substantiated by the information collected from the detailed case study interviews.

FIGURE 3.3 Extent of the Orphan Works problem (By location)

Q) To what extent do works for which the rights holders cannot be traced or are unknown ('Orphan Works'), present a problem for the fulfillment of your organisation's public service delivery? SPLIT BY LOCATION (%)

	OVERALL (503)	UK (454)	Overseas (49)
Everything we do is affected	5	4	6
Projects/services are frequently affected	21	22	16
Projects/services are occasionally affected	63	63	69
Our projects/services are never affected	11	11	9
% affected (at least occasionally)	89	89	91

Base: See location heading (n)

Analysis by location suggests that Orphan Works are a significant issue both in the UK and overseas.

FIGURE 3.4 Summary of impact of Orphan Works **(By sector type/organisation)**

	OVERALL (503)	Museum (143)	Library (101)	Archive (61)	Gallery (21)	Education sector (90)	Health Sector (24)
Average number of works in collection	50,000 to 100,000 works	10,000 to 25,000 works	100,000 to 500,000 works	500,000 to 1 million works	5,000 to 10,000 works	50,000 to 100,000 works	1,000 to 5,000 works
Proportion of organisations affected by orphan works	89%	95%	88%	94%	96%	91%	58%
Average proportion of works that are orphans	5% to 10%	5% to 10%	5% to 10%	21% to 30%	5% to 10%	5% to 10%	Less than 5%

Figure 3.4 breaks down the results shown in figures 3.1 to 3.3. It should again be noted that the averages for 'number of works in collection' and 'average proportion of Orphan Works' are conservative. These averages have been calculated using the 'median' which cancels out extremes in the data (ie the very large collections such as some archives). The 'overall' figures therefore provide an estimate of how the 'average' organisation is affected by the issue.

FIGURE 3.5 Summary of impact of Orphan Works **(By sector type/organisation)**

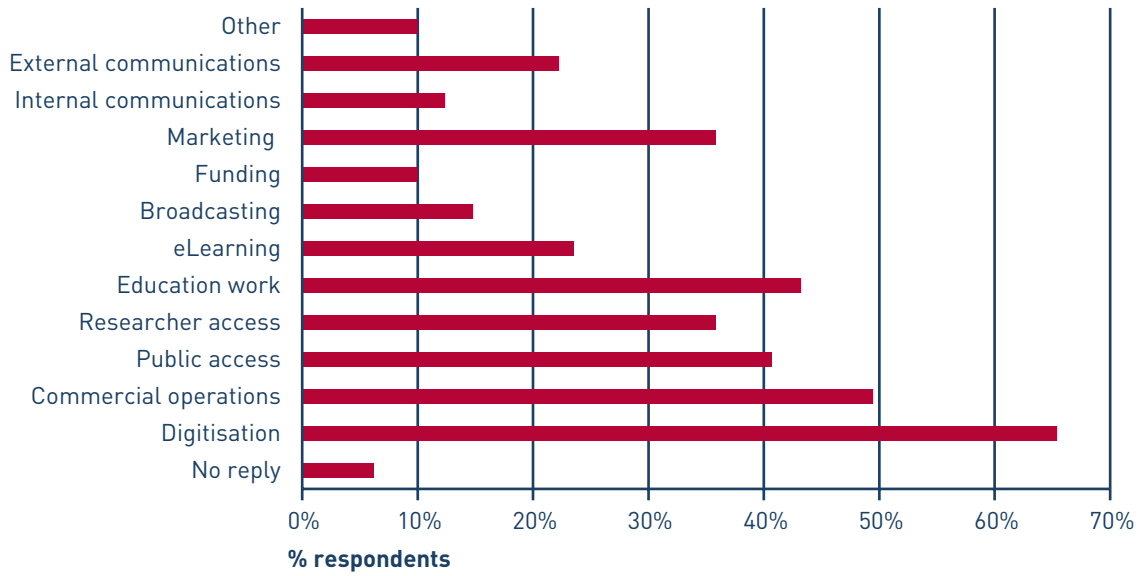**Q) How do Orphan Works prevent the delivery of key objectives?**

Source: ABL Research

Data provided above is as a result of the in-depth telephone interviews conducted by ABL.

FIGURE 3.6 Which operations are affected by Orphan Works

Q) Which aspects of operations are affected?
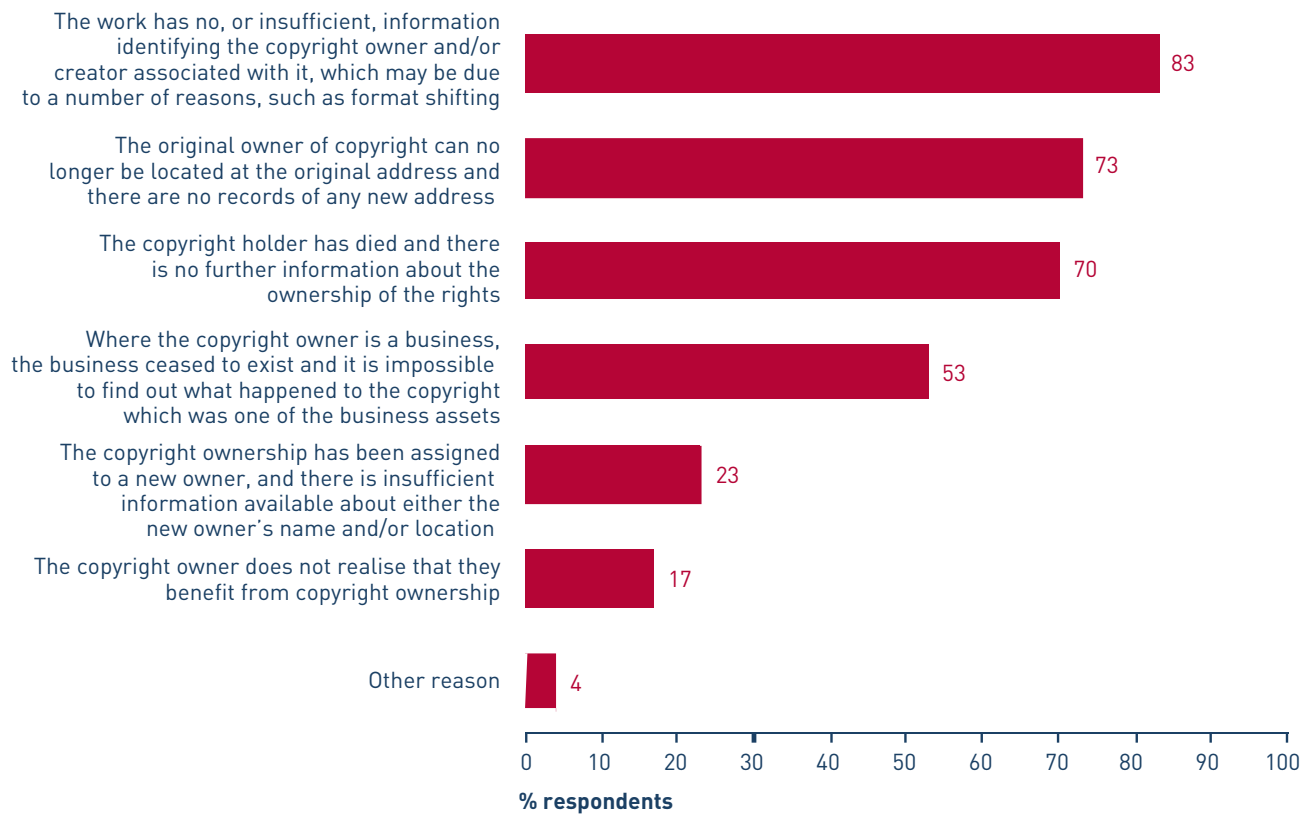

Source: ABL Research

Data provided above is as a result of the in-depth telephone interviews conducted by ABL.

Appendix D: Factors Leading to Orphan Works

Those affected by Orphan Works were asked to give the reasons why works might be 'orphans':

FIGURE 4.1   Reason for works being Orphan Works **(Overall statistics)**

Q) What are the most likely reasons for works in your collections and/or projects being 'orphans'?

Reason	% respondents
The work has no, or insufficient, information identifying the copyright owner and/or creator associated with it, which may be due to a number of reasons, such as format shifting	83
The original owner of copyright can no longer be located at the original address and there are no records of any new address	73
The copyright holder has died and there is no further information about the ownership of the rights	70
Where the copyright owner is a business, the business ceased to exist and it is impossible to find out what happened to the copyright which was one of the business assets	53
The copyright ownership has been assigned to a new owner, and there is insufficient information available about either the new owner's name and/or location	23
The copyright owner does not realise that they benefit from copyright ownership	17
Other reason	4

% respondents

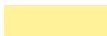*Base: All affected by orphan works (447)*

Respondents gave a variety and often a combination of reasons for works being orphans.

FIGURE 4.2   Reasons for works being Orphan Works (By sector)

Q) What are the most likely reasons for works in your collections and/or projects being 'orphans'? SPLIT BY SECTOR (%)

	OVERALL (447)	Museum (136)	Library (89)	Archive (57)	Gallery (20)	Education sector (83)	Health Sector (14)
The work has no, or insufficient, information identifying the copyright owner ...	83	88	73	88	70	83	86
The original owner of copyright can no longer be located at the original address ...	73	71	79	74	90	72	57
The copyright holder has died	70	71	72	82	75	60	50
Where the copyright owner is a business, the business ceased to exist	53	50	66	68	30	42	36
The copyright ownership has been assigned to a new owner...	23	18	33	19	30	25	7
The copyright owner does not realise that they benefit	17	22	16	19	30	11	7

■ = Higher than average

■ = Lower than average
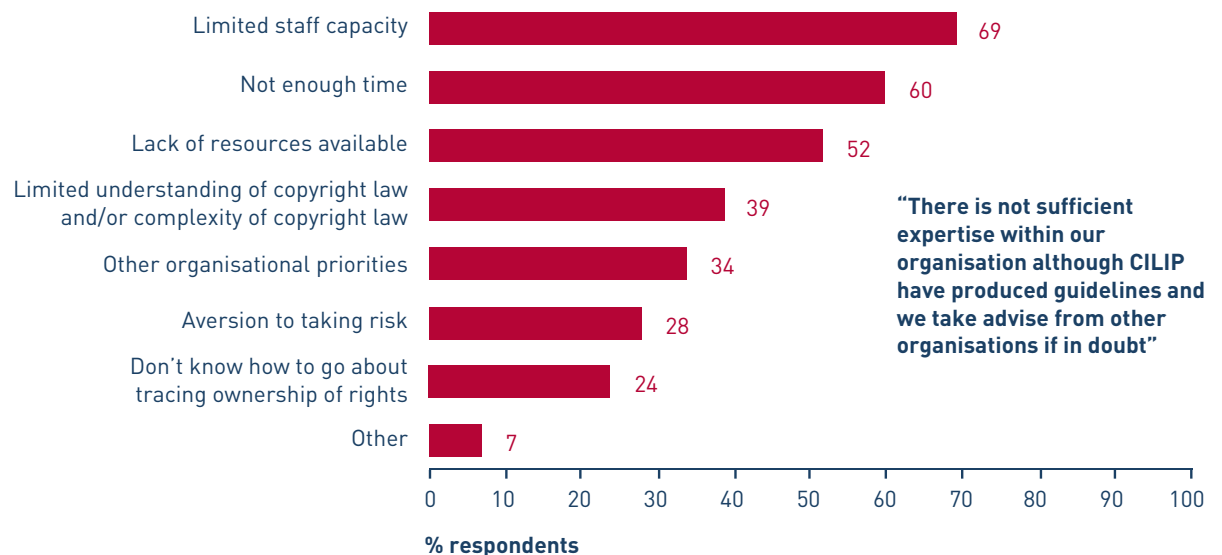
Base: See sector heading (n)

There are a number of differences by sector, for example archives appear to be more prone to issues where the copyright holder has died, or the copyright owner is a business which ceased to exist.

Appendix E: Management of Orphan Works

The following question was asked regarding factors affecting approaches to the Orphan Works issue:

FIGURE 5.1   Factors affecting the approach to Orphan Works **(Overall statistics)**

Q) Which of the following factors affect your approach to using orphan works?

"There is not sufficient expertise within our organisation although CILIP have produced guidelines and we take advise from other organisations if in doubt"

% respondents

Base: All affected by orphan works (447)

FIGURE 5.2   Factors affecting the approach to Orphan Works (By sector)

Q) Which of the following factors affect your approach to using orphan works? SPLIT BY SECTOR (%)

	OVERALL (447)	Museum (136)	Library (89)	Archive (57)	Gallery (20)	Education sector (83)	Health Sector (14)
Limited staff capacity	69	76	65	68	70	66	57
Not enough time	60	63	52	68	55	60	71
Lack of resources available	52	61	40	53	45	54	50
Limited understanding of copyright law ...	39	47	42	35	15	39	43
Other organisational priorities	34	40	30	23	25	31	43
Aversion to taking risk	28	22	33	32	15	30	36
Don't know how to go about tracing ownership of rights	24	23	24	28	15	23	43
Other	7	4	10	11	20	6	7

= Higher than average

= Lower than average

Base: See sector heading (n)

Analysis by sector shows that resources and understanding of copyright law appear to affect museums in particular. Time, capacity and resources appear to be key factors affecting the approach taken to Orphan Works.

Appendix F: Current Practice

FIGURE 6.1   Time spent tracing rights

Q) How long would you typically spend trying to trace the rights holder(s) and/or tracing the inheritance of a single Orphan Work?
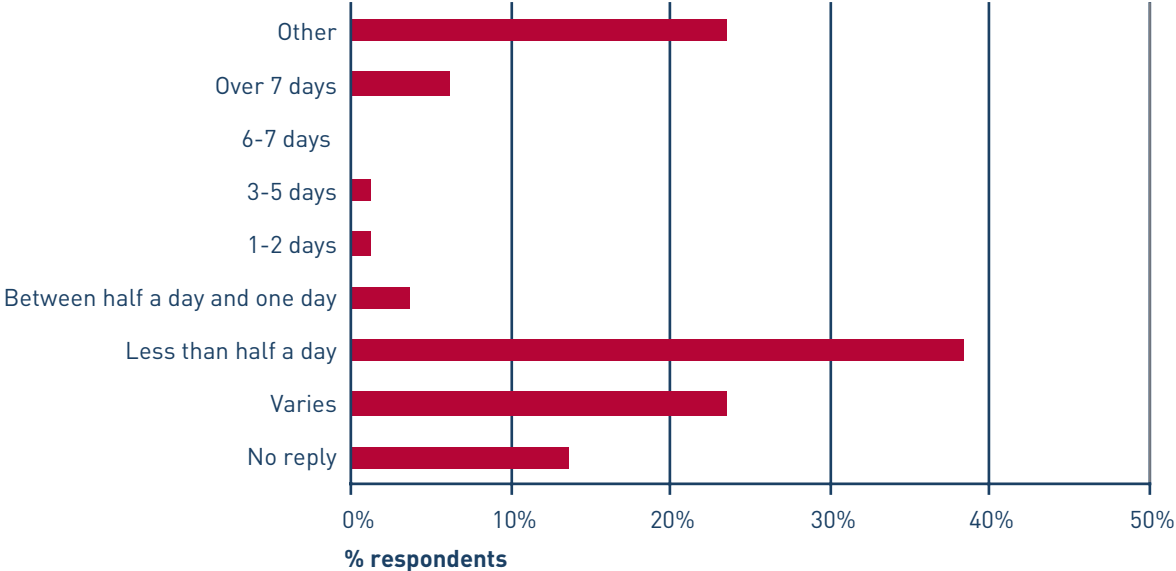

Source: ABL Research

The time spent on each Orphan Work to try to establish who owns the copyright was often based on estimates. This was due to the extreme variations from case to case and also due to the fact that many consultees said that they would generally do this kind of research in batches rather than item by item.

FIGURE 6.2   Breakdown of time spent for those spending less than half a day on each orphan works

Q) If you spent less than 1/2 day, can you be more specific about the time you spent tracing righs?
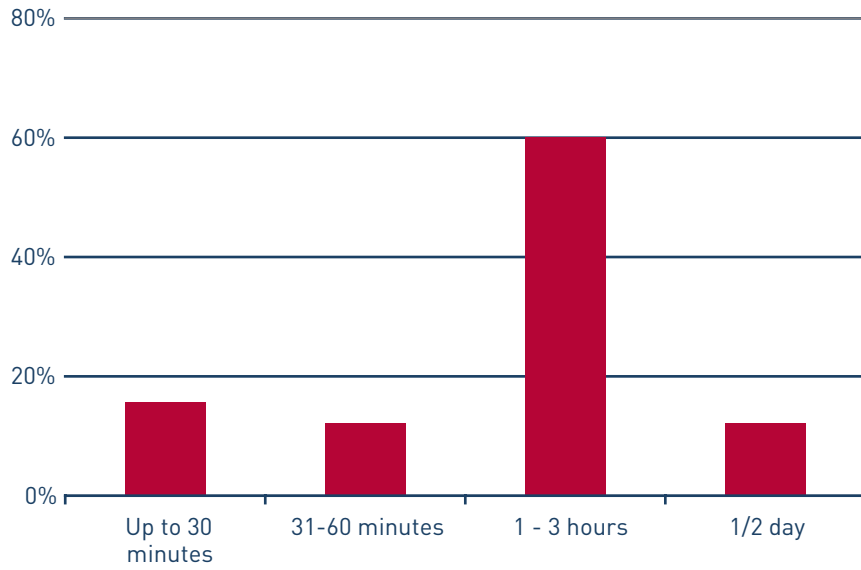
Although an interesting snapshot, we would not recommend extrapolating this to time spent by the entire sector on tracing Orphan Works as this sample size (25) is statistically insignificant.

FIGURE 6.3   How time is spent investigating Orphan Works

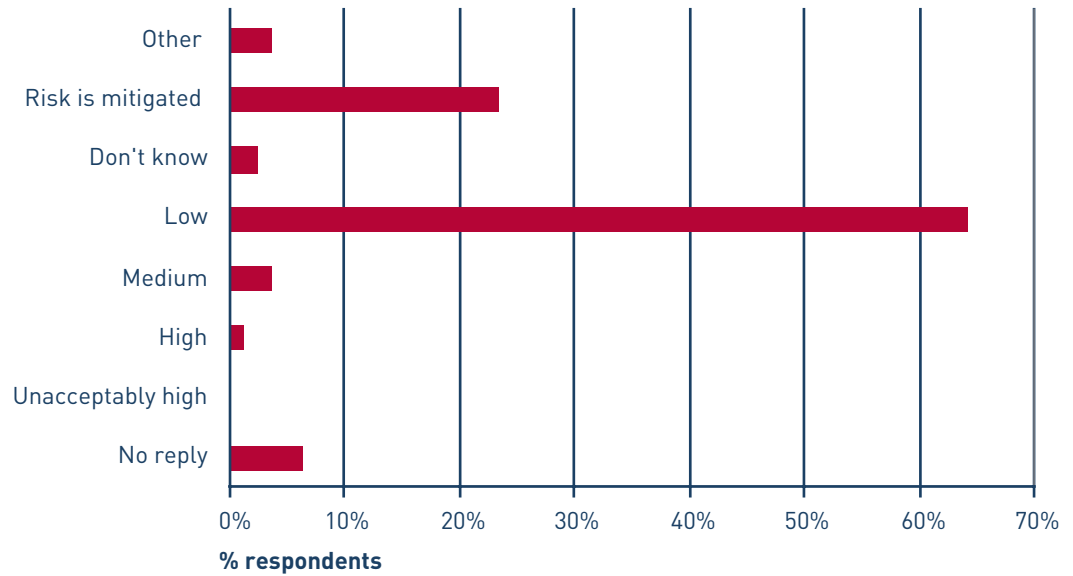**Q) How would you spend this time?**
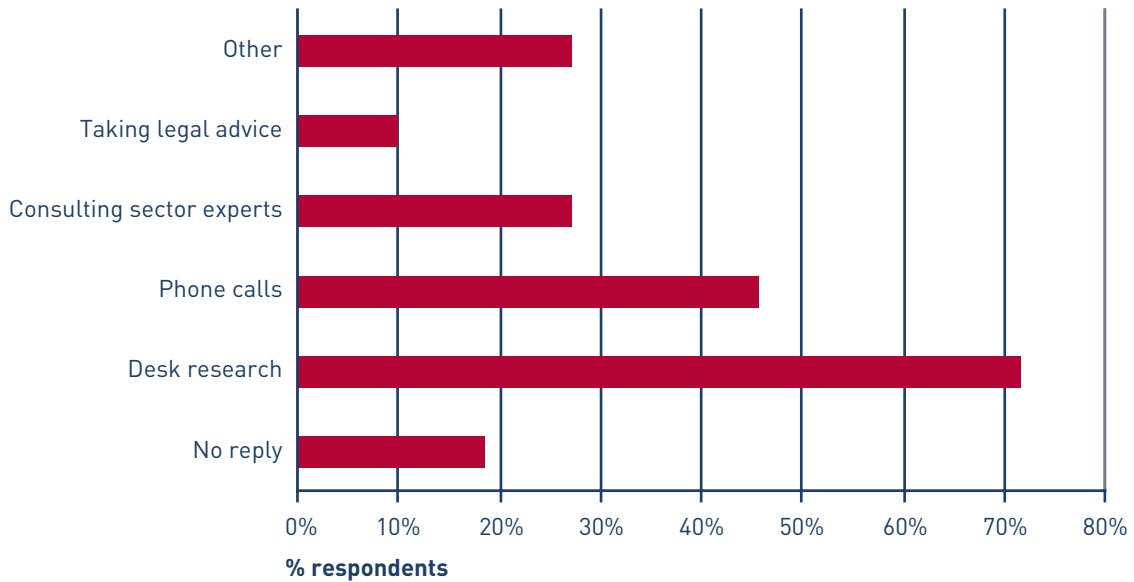
% respondents

Source: ABL Research

FIGURE 6.4   Respondents' estimation of the risk to their organisation

Q) What position does this place your organisation in in terms of risk?

Source: ABL Research

FIGURE 6.5   Respondents' estimation of the risk to their organisation by approach taken

|	No reply	Unaccep-tably high	High	Medium	Low	Don't know	Risk is mitigated
No reply	40.00%						5.26%
Not used					21.15%		26.32%
Used after efforts made to trace rights holders	60.00%			66.67%	44.23%	50.00%	57.89%
Use for educational purposes only					19.23%		21.05%
Use internally only					13.46%		15.79%
Use regardless				33.33%	26.92%	50.00%	15.79%

Source: ABL Research

Appendix G: Use of Orphan Works

The following question was asked regarding how respondents manage the Orphan Works issue:

FIGURE 7.1   How Orphan Works are managed (Overall statistics)

Q) Typically, what are you likely to do with works for which you are unable to trace the rights holders or the rights holders are unknown?
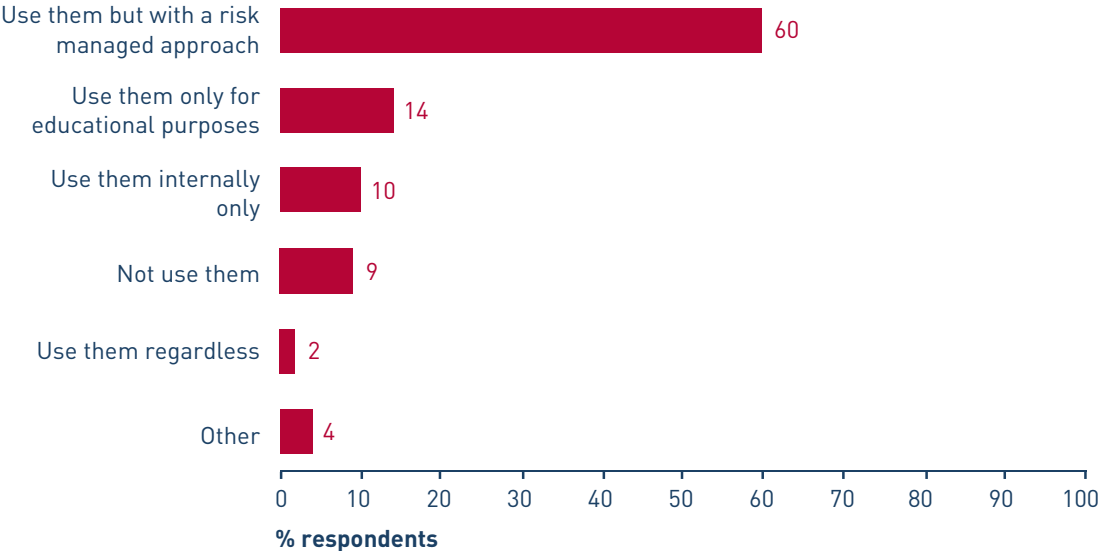
Base: All affected by orphan works (447)

Overall, the most common method for managing Orphan Works is the adoption of a risk managed approach (60%).

FIGURE 7.2   How Orphan Works are managed (By sector)

Q) Typically, what are you likely to do with works for which you are unable to trace the rights holders or the rights holders are unknown? SPLIT BY SECTOR (%)

	OVERALL (447)	Museum (136)	Library (89)	Archive (57)	Gallery (20)	Education sector (83)	Health Sector (14)
Use them but with a risk managed approach	60	58	56	75	85	52	36
Use them only for educational purposes	14	14	15	4	0	27	14
Use them internally only	10	13	8	7	10	8	21
Not use them	9	10	10	9	0	8	21
Use them regardless	2	2	2	2	0	2	0
Other	4	3	9	4	5	2	7

▇ = Higher than average

▇ = Lower than average

Base: See sector heading (n)

There are differences in the way different sectors use Orphan Works. For example, archives and galleries appear more likely than average to adopt a risk managed approach, whilst those in the education sector are (unsurprisingly) more likely to use Orphan Works for educational purposes only.

FIGURE 7.3   How Orphan Works are managed (by location)

Q) Typically, what are you likely to do with works for which you are unable to trace the rights holders or the rights holders are unknown? SPLIT BY LOCATION (%)

	OVERALL (447)	UK (402)	Overseas (45)
Use them but with a risk managed approach	60	63	38
Use them only for educational purposes	14	13	22
Use them internally only	10	9	20
Not use them	9	10	7
Use them regardless	2	2	4
Other	4	4	9

▇ = Higher than average

▇ = Lower than average

Base: See sector heading (n)

The analysis by location suggests that overseas organisations may be less likely to adopt a risk managed approach.

FIGURE 7.4   How Orphan Works are managed **(By size of collection)**

Q) Typically, what are you likely to do with works for which you are unable to trace the rights holders or the rights holders are unknown? SPLIT BY SIZE OF COLLECTION (%): K = '000

	OVERALL (447)	<100	101 TO 1K	1.1 K TO 5K	5.1K TO 10K	10.1K TO 25K	25.1K TO 100K	100.1K TO 500K	500.1K TO 1 MILLION	>1 MILLION
Use them but with a risk managed approach	60	38	54	64	61	56	70	46	63	69
Use them only for educational purposes	14	31	15	23	16	12	13	17	5	7
Use them internally only	10	23	15	5	9	14	6	12	14	9
Not use them	9	0	8	5	9	16	10	15	14	3
Use them regardless	2	8	4	2	2	0	1	2	2	1
Other	4	0	4	2	2	2	0	8	2	10

     = Higher than average

     = Lower than average

Base: See heading (n)

Analysis by size of collection (fig. 7.4) suggests that those organisations with small collections (<100) appear more likely to use Orphan Works internally or for educational purposes, and are less likely to manage risk.

Please note, some consultees replied with more than one answer, using a different approach depending on the work.

Appendix H: Quotes from the Interview Analysis

During the in-depth telephone surveys conducted by ABL many interviewees provided insight into aspects of our research that could not be quantified statistically. We have provided a selection of relevant quotes under the sections of our surveys.

Types of works at risk

'The bulk of our collection is journal issues/volumes and we have never had to search for a copyright owner, so I'm not sure which of the above would apply. Otherwise, our most likely Orphan Works would be our older theses.'

'Unpublished manuscripts without information that could identify current/previous rights holders.'

'It is impossible to establish the nature of agreements made with creators for (apparently) commissioned work on behalf of our organisation during the 1920s–40s in Eastern Europe. As a result, we often don't know who owned the copyright originally.'

'Material from overseas, where there have been territorial and legal changes.'

'Photographs in family albums.'

'Unpublished manuscripts may be very old and have no clear provenance but still benefit from copyright.'

'For architectural drawings of our buildings the copyright is a liability for which the designer can be sued if there is a problem, so a design firm would not want to take on liability for the works of a practice it took over.'

'Creation of grey literature by [feminist] collectives – permission may come from one person but may not be agreed by the rest of the [now dispersed] collective.'

'Orphan Works present a particularly acute problem for documentary photographic collections. These have often been neglected in heritage collections, with the result that provenance records have often not been kept. Moreover, there are few records for professional photographers that are comparable with, say, current or deceased artists. Many commercial photographs are produced by extinct companies, and it is often impossible to glean what happened to the company's intellectual assets.'

'This is a huge problem for museums with ethnographic (world cultures) collections, which are affected even if the works they hold are not classified as ''fine art''.'

Extent of the Orphan Works problem

'As we come under increased expectation to increase collections access, particularly online, this is a critical issue for us as we hold large photo archives from a wide range of sources.'

'We strongly support this work as we appreciate the need for clarity on this issue, which would enable museums to provide access (eg for educational or online use) to large quantities of material which they are restricted from at present. Staff time, resource and funding are all limiting factors which prevent us from using Orphan Works in our collection in the way in which we would wish to. The restrictions of current copyright law on making copies of copyright Orphan Works for preservation/collections management purposes is a growing and important issue that requires resolution across our museum and the sector as a whole. The risk of inaction is the loss (due to deterioration) of cultural material which cannot be replaced.'

'My comments relate to manuscripts, where 19th century letters from EU countries are governed by a different copyright from UK and USA copyright – we have to trace descendants of writers and that is simply impossible in many cases.'

'Most members of public are totally unaware of the implications of Orphan Works and this can cause problems when staff are unable to meet what customers consider to be legitimate requests.'

'Copyright is limiting things that it doesn't intend to limit'.

'One big problem is preservation of images – if a copy of an image can't be made, there is a danger it will be ruined with age sooner or later and be lost altogether.'

'At the minute we are not optimising the potential opportunities. The resources are not there to do large scale copyright checks of collections so they get de-prioritised where they could potentially be useful.'

Factors leading to Orphan Works

'Popular music, in particular, has often been published by short-lived companies that can no longer be traced or have no known successors. The problem will be exacerbated in the future by online self-publishing.'

'Many of the materials in our collections are being assessed retrospectively. On accession essential details were not taken, therefore we have limited options on tracing current copyright owners.'

'The majority of our ''Orphan Works'' consist of photographs and broadcast quality audio-visual recordings where provenance has either been lost or the contact details – often private addresses of journalists – are out of date. We have decided to take a careful risk management approach on a case by case basis.'

'We are very aware that a problem is that when many of our collections came in in the 1940s, 1950s and 1960s the importance of the copyright issue was not fully appreciated so there is usually insufficient information. Whilst literary works can be easier because of the provisions for use of old works in the 1956 Act, we have particular problems with artistic works, eg maps and photographs.'

'Our main problem is finding the copyright holders and obtaining their permission to use images on our collections database. The majority of the collection is currently a collection of art student work and in some cases it has been difficult to track down the copyright holders. Some may be deceased but in particular I feel that some female students will have been married in later years and we do not have the necessary information regarding their married names.'

Factors affecting approaches to Orphan Works

'The problem of orphan unpublished literary works is greater in the UK than elsewhere in Europe because they attract copyright under UK law until 2039 at the earliest no matter how old they are, so that works hundreds of years old are in copyright and almost inevitably orphan. One simple solution would be to apply the standard term, as the Irish have done, or a shorter term, as has been done in the USA and Canada. There is an Orphan Works exception for 100 year old unpublished literary works available in a record office whose author has been dead for at least 50 years, but it permits only a single publication.'

'All potential uses are assessed case-by-case and those that present a high risk are avoided.'

'Pragmatism.'

'We tend not to use Orphan Works ourselves if IP rights are questionable, but we do provide advice to customers about tracing IP rights.'

Current practice

'Orphan Works create huge confusion throughout the academic world.'

'We don't have the time or resources to do this.'

'It depends. The first step is to get hold of the person who donated them, but often this contact had ended and it is hard to follow them again, or they have forgotten! If you get a promising lead, you follow it, yet that can still take several months.'

'You couldn't put an average on that. Some might take five minutes because you just ring up and ask, and others might be abroad and involve closed-down companiesÖso it's impossible to quantify.'

'We usually put the onus on the person who requests a workÖwe tend to avoid using Orphan Works themselves because of the complications.'

'One case took several months, tracking someone down to the Philippines – this much attention was given to the search because it regarded photographs that had been taken over a long time and which were being asked for by several people.'

'By the end of the project, the team will have spent the equivalent of one person working full time 8 hours a day for a year just on clearing rights.'

'On the project, it took two people three years full time to work on the copyright for 40,000 works.'

'If the work is from the 20th century, one to two hours may be spent searching for the rights holder. Anything prior to 1900 and there would be no point bothering.'

'This is a multi-layered process, including writing letters, making calls and web searches.'

'I write letters, publish adverts in The Times, put the image on the web asking for information – it is time-consuming.'

'Orphan Works are used with a risk managed approach – if someone wants a work for personal use and reference, they are allowed it. If it is for commercial use a measured approach will be taken and a decision made depending on the perceived risk.'

'Risk is an interesting part of the copyright issue. It is very useful that we deal mostly with works that have high academic value, but low commercial value.'

'We try to keep risk low, but it is a balancing act because we are here to make things accessible to people and they do get frustrated if they can't have them.'

Use of Orphan Works

'A rigorous approach to using Orphan Works is being employed in our current digitisation project, and efforts are being made to trace rights holders before they are put up on the website.'

'The purpose of the museum service owning these works of art is for them to be on display. They are therefore displayed regardless of knowledge of rights.'

'We do not currently prioritise or display Orphan Works because there are so many other interesting projects going on that do not require research and resources to address the uncertainty. We would like to do much more [with the Orphan Works] as it is very much an un-captured source. The time will come when we really want to realise the potential of the Orphan Works in our photographic [and other] collections.'

'We use a risk managed approach, but would still put an image on the website, along with a clause saying that we don't know the copyright holder and that if anyone knows any information they should get in touchÖWe can offer a royalty once we know who the copyright holder is. A couple of times people have got back in touch but they don't usually want an image taken down when there is the option to have royalties!'

'We tend to publish and be damned. If our rights are challenged we would sort it out, but we have had no bad experiences so far.'

'As and when we come across items that may still be in copyright, usually photographs or paintings, we would check the provenance information and see if there is any information from the copyright owner (often artist/photographer) that allows us to use the item. If unknown and we couldn't assume copyright as the owner of the item then we would only use internally.'

'We have successfully pursued a risk assessed approach to microfilming a run of a discontinued local newspaper.'

'We serve a large number of "remote users" who cannot visit the library and view material in person so need copies. Sometimes we decline to copy, sometimes we ask enquirers to demonstrate that they have taken steps to ascertain ownership, sometimes we take a guess as to the likely ownership of material. It's frustrating to have no proper procedure for knowing when to disseminate information.'

'It is usually the practice to ensure the end user knows the nature of the problem and is urged to explore orphan ownership as completely as possible prior to publication.'

'We take a risk-managed approach towards copying: if the risk is low then we go ahead.'

'Orphan Works are currently automatically excluded from any digitisation project conducted within the organisation, owing to the complexity and time required to trace ownership. This has a marked effect on the accessibility and scope of collections (photographic, archival and sound recordings in particular) made available to the public.'

In from the Cold
An assessment of the scope of 'Orphan Works' and its impact on the delivery of services to the public

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