February 19\textsuperscript{th} 2014

Dear Lord Younger

The Libraries and Archives Copyright Alliance (LACA) continues to welcome the efforts of the Intellectual Property Office in trying to address the issue of Orphan Works. In particular we commend the Intellectual Property Office in its engagement with key stakeholders to find adequate solutions with regards to the implementation of the European Directive on Orphan Works, as well as the proposed Orphan Works licensing scheme as outlined in the Enterprise and Regulatory Reform Act 2013.

Following informal discussions with Intellectual Property Office Officials, we understand that the provisions outlined in the Enterprise and Regulatory Reform Act (ERRA) 2013 relating to the reduction of term in certain unpublished text based works from the end of 2039 to lifetime plus 70 years, may not be implemented until April 2015. This is of great concern to us because it means that one of the main causes of Orphan Works as outlined in the UK’s first survey looking at the impact and scale of Orphan Works, “In From the Cold”\textsuperscript{1}, will not be alleviated at the same time as the Orphan Works Licensing Scheme and the Exception are implemented (29 October 2014).

The “In From the Cold” report noted that up to 50\% of archival collections may be Orphan Works, to a large extent because of the impractically long duration of copyright, particularly in letters, manuscripts, diaries etc. This is particularly problematic as many organisations wish to make accessible wartime unpublished text based works which are still within scope of copyright protection, either as copies or displaying the works themselves, as part of the First World War Centenary.

In practical terms, if the duration of copyright in unpublished works is not dealt with at the same time as the Orphan Works solutions are implemented, this means that we will be carrying out at the very least due diligent searches (under the terms of the Exception) and possibly also paying an admin/licence fee (under the terms of the Orphan Works Licensing Scheme), needlessly, for many of these works which are within the scope of the reduction of term measures in the ERRA 2013. In addition, this will mean that IPO will be dealing with works which are strictly not Orphan any

\textsuperscript{1} http://www.jisc.ac.uk/publications/reports/2009/infromthecold.aspx
longer, and also a greater likelihood that these types of Orphans will be registered on the OHIM database, causing confusion across Europe (they will be in copyright in the UK, but presumably out of copyright elsewhere across Europe?), only for them to come off it again once the provisions are implemented in the UK, (if they are able to be deleted?).

We hope that this matter can be resolved. We look forward to hearing from the Minister about when we can expect the measures relating to the duration of term in unpublished text based works to be implemented.

Yours sincerely

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Libraries and Archives Copyright Alliance

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CC: The Rt Hon Mr David Cameron MP; The Rt Hon Dr Vincent Cable MP; The Rt Hon Mr David Willetts MP; The Hon Mr Ed Vaizey MP; Mr Tim Luke; Mr Robin Stout