

## EU Orphan Works Exception and a No-Deal Brexit Statement on Impact and Alternatives

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If the UK leaves the EU with a no-deal Brexit, libraries, archives and other cultural heritage organisations will no longer benefit from the [EU orphan works exception](#). This statement provides an overview of the exception and the alternatives that could be considered if it is lost.

### **The EU orphan works exception:**

- Covers orphan works (works that are in-copyright, but where the rights holders are unknown or cannot be traced)
- Applies to use only by cultural heritage organisations, educational establishments and public broadcasters
- Includes films, sound recordings, text-based works and any 'orphan' artistic works that may be embedded within them, but not standalone artistic works
- Permits online non-commercial use, following a diligent search for the rights holder(s) and registration of the work on the EU IPO's Orphan Works Database

The UK Government has [published a statement](#) and drafted legislation to immediately remove the EU orphan works exception from the UK's legislative framework upon a no-deal Brexit. This means that once revoked, UK-based organisations that have used the exception will no longer be covered for those uses, while the provisions of the exception will no longer apply to any UK works registered on the EU IPO's Orphan Works Database.

In this scenario, UK organisations that currently benefit from the exception may want to consider the alternative options for providing access to orphan works described below.

### **Other exceptions to copyright**

Although in a no-deal Brexit scenario, this exception would be lost, there are a range of other exceptions to copyright in the UK, some of which may be helpful depending on how an orphan work is to be used. For example, the 'dedicated terminals' exception to copyright may enable organisations to provide onsite access to orphan works for their users without the need to undertake specific searches for potential copyright owners or register the work. LACA has [published guidance](#) on the 'dedicated terminals' exception.<sup>1</sup>

LACA is a vocal proponent of the use of the exceptions to copyright and is committed to ensuring the appropriate balance is reached between rights holders' interests and user's rights.

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<sup>1</sup> <http://uklaca.org/329/>

Further information on the exceptions to copyright is available from:

- [CopyrightUser](#)<sup>2</sup>
- [LACA](#)<sup>3</sup>
- [UK Government](#)<sup>4</sup>
- [Copyright, Designs and Patents Act 1988](#)<sup>5</sup>

### **UK Orphan Works Licensing Scheme**

Libraries, archives, other organisations, and individuals can apply for an [orphan works licence](#) from the UK Government. Licences are limited to coverage of use in the UK for up to 7 years upon payment of a licence fee, an administration fee and the carrying out of a diligent search for rights holders. The licensing scheme covers all types of in-copyright works, whereas the exception does not apply to stand alone artistic works.

### **Risk Management**

Whilst the nature of any risk-managed approach is an organisational decision, carefully weighed up against the potential consequences of such an approach and the particular circumstances and context of use, LACA has always supported the use of risk management within the context of rights management. With a loss of the EU orphan works exception, a risk-managed approach may mean an organisation takes steps to consider the specific risks in subsequently making orphan works available online for non-commercial use.

Risk mitigation activities could include carrying out reasonable searches for rights owners, a notice and take down procedure, suitable staff training, and appropriate attribution. An organisation may also consider whether to rely on diligent searches already undertaken in relation to an orphan work that previously benefited from the EU orphan works exception.

LACA and its members are committed to building confidence about copyright, promoting the importance of the use of the exceptions to copyright and supporting the role of risk management in order to open up access to copyright works, including orphan works. LACA strongly believes that an appropriate appetite for risk within the context of copyright compliance is vital for the health and resilience of our sector and is fundamental to supporting greater creativity, innovation and research.

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*LACA continues to object to and advocate against the potential revocation of the EU orphan works exception in the case of a no-deal Brexit. We published a Brexit briefing on the orphan works exception in February 2019: <http://uklaca.org/555/>.*

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<sup>2</sup> <https://www.copyrightuser.org/understand/exceptions/>

<sup>3</sup> <http://uklaca.org/tag/copyright-exceptions/>

<sup>4</sup> <https://www.gov.uk/guidance/exceptions-to-copyright>

<sup>5</sup> <https://www.legislation.gov.uk/ukpga/1988/48/part/II/chapter/III>

