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Dear Naomi,

Thank you for your letter of 3 March. I have asked my officials to investigate these matters and I am now in a position to respond.

The first thing to note is that it is not clear that the works in question are out of copyright.

One of the purposes of the UK's orphan works licensing scheme is to offer a legal mechanism for potential users of copyright works, including museums, libraries and archives, to make use of those works without risk of liability for copyright infringement.

It is true that in certain circumstances the use of a work may be permissible without the need to obtain a licence, either from the rightholder themselves or via the orphan works licensing scheme. These include cases where an exception to copyright applies, or where copyright has expired. However, as you are aware, reliance on exceptions or complex calculations as to expiry of copyright in relation to works of unknown authorship is not always free from risk.

It is therefore the case that copyright exceptions and provisions as to works of unknown authorship do not afford the most certain legal protection to a potential user of an orphan work. The most certain protection available is an orphan works licence granted under the orphan works licensing scheme.

Finally I would note that the IPO was in close contact with the department responsible for bona vacantia during the development of the orphan works licensing scheme and took care to ensure that the two systems were compatible.

Thank you for raising these issues with me, I hope you will now be able to reassure your members on these points.

Warm regards

Lady Neville-Rolfe

BARONESS NEVILLE-ROLFE DBE CMG