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Yet More Orphans

What's this all about?

The EU has finally passed a Directive on Certain Permitted Uses of Orphan Works (2012/28/EU), and yet commercial uses of Orphan Works had purposefully been omitted from it.

The Directive was aimed at permitting public institutions to digitise the immense volume of material (potentially still in copyright) that is held in their collections, without having to face the fury (and the law-suits) of previously unknown angry rights holders claiming compensation for this use.

The rest of the industry was therefore left to face such fury (and law-suits), until the saving force of the Enterprise and Regulatory Reform Act came into effect in the UK in July this year.

Why should I care?

If you are an aspiring licensee in UK and you want to license a work that is still in copyright but where the right holder is still unknown after a 'diligent search', you will be happy to know that, as long as you can prove that you have undertaken such a search and got a Government-appointed authorising body to confirm that this is the case, you can now apply for a licence and use your orphan work as you please.

Conclusion

Problem solved, then?

Not quite!

The said Government-appointed authorising body will license the work to you "for the going rate".

And a recent comparative study across seven jurisdictions and for a number of works, "Copyright, and the Regulation of Orphan Works", IPO, shows what everybody in the industry already knew, i.e. that *there is not such a thing as a going rate*. We might just be opening a scenario of cartel and non-negotiable rates imposed from above, and soon be facing the same scenarios that have plagued collecting societies for years: suits for unfair competition.

Any chance of the industry players being consulted before any definitive procedure is statutorily brought into force?

Perhaps! But 'going rates' awarded by courts rarely seem reasonable to me!

Please contact us for further information.

Richard Philpott
ZOOID PICTURES LIMITED

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Please call me on +44 20 7267 9990 if you would like to discuss any of the above

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