The Orphan Works Exceptions: A Brexit Saga (abridged version)

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We need to talk about the Orphans…

• British Library Collection – over 180 million items and growing

• A large amount of material (and a lot of the unique content) is unpublished

• The UK (and by extension the EU) has an unpublished ‘rule’ meaning the majority of these works are protected by copyright until at least 2040 regardless of its age.

• So there are a HUGE number of ‘Orphan Works’ within the collection
The doors are opened! (Exception, Policy & Use)

- 2012 - Directive 2012/28/EU on certain permitted uses of orphan works

- 2014 - The Copyright and Rights in Performances (Certain Permitted Uses of Orphan Works) Regulations 2014

- These opened the door to digitisation and dissemination of ‘Orphan Works’ if permission could not be cleared

- Since then the British Library has incorporated the exception into its clearance process and registered over 11,000 works as orphans
And then along came a Brexit...

- The Orphan Work exception is enshrined in national law...

- ...BUT the UK can no longer rely on reciprocal protection from other EEA member states

- So the UK IPO have decided to remove the orphan work exception provisions from UK copyright law

- As it stands all works registered as orphans under the exception by UK institutions will lose their protection on 31st October 2019
Impact

• On existing archives:
  • Some have content removed
  • Some entire archives being taken down

• On ongoing projects:
  • Suddenly some content is no longer viable
  • Potential breaches of funding agreements

• On future archives:
  • Changes to what digitisation projects will be approved
What does the future hold?

• Institutions increase their risk appetite to compensate? Unlikely...

• UK Orphan Works License
  • UK-only protection
  • Limited term and cost
  • Lack of bulk application infrastructure

• Digital Single Market Directive on Copyright
  • Out of commerce provisions – could fill the gap and more!
  • Will the UK Implement it?
  • How will it work?
Thank you

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