ORPHAN WORKS IN EUROPE:
A CRITICAL REVIEW

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WHERE ARE WE GOING?

WHY should we care?

WHAT are the issues?

WHO deals with them?

HOW are they dealt with?

WHERE should we go next?
WHY SHOULD WE CARE?

LACK OF ACCESS

You cannot go that way.
WHY SHOULD WE CARE?

DEGRADING MATERIALS
WHY SHOULD WE CARE?

LACK OF ACCESS + DEGRADED MATERIALS = NO (STRICTLY LEGAL) DIGITAL RESEARCH.
WHAT ARE THE ISSUES?

THE RIGHTS HOLDER IS UNKNOWN OR CANNOT BE FOUND
WHAT ARE THE ISSUES?

5-10%
WHAT ARE THE ISSUES?

50,000,000 IN THE UK
WHO DEALS WITH THESE ISSUES?

GLAMs

Universities

Private individuals
WHAT TYPES OF WORKS AFFECTED?

Printed media
Audiovisual works
Unpublished works
Still images
WHO DEALS WITH THESE ISSUES?

JISC “IN FROM THE COLD” (2009)

HARGREAVES REPORT (2011)

EU DIRECTIVE 2012/28/EU, aka “THE ORPHAN WORKS DIRECTIVE”
HOW ARE THESE ISSUES DEALT WITH?

THE EU DIRECTIVE AIMED TO:

PROVIDE ADVICE TO MEMBER STATES

FACILITATE REGISTRATION AND SEARCH

ALLOW FOR MASS DIGITIZATION
HOW ARE THESE ISSUES DEALT WITH?

Orphan Works Database

The Orphan Works database is a single publicly accessible database that provides the public with information related to orphan works contained in the collections of publicly accessible libraries, educational establishments and museums, as well as archives, film or audio heritage institutions and public-service broadcasting organisations established in the Member States.
HOW ARE THESE ISSUES DEALT WITH?

Advanced search criteria

- Work type
  - Main Work
  - Embedded Works

- Title of work
  - contains

- Description
  - contains

- Organisation country
  - Belgium

Clean form

Reset to default

Basic Search

Search

Search for Orphan Work with: Work type is Main Work or Embedded Works, and Organisation country is Belgium

No data available

Showing 0 to 0 of 0 entries
How are these issues dealt with?

Category:
- All
- Moving images
- Music notation
- Script and choreography
- Sound recordings
- Still visual art
- Written works

312 results

**Black and white photograph of unknown man, with hand...**

Known creators or right holders: None
Known identifiers: None
Category: Still visual art
Licensee name: The University of Glasgow
Status: Application Received (OWLS000057-5)

**Extract from Doubt Magazine**

Known creators or right holders: Tiffany Thayer - Editor of Doubt Magazine
Known identifiers: None
Category: Written works
Licensee name: The University of Glasgow
Status: Application Received (OWLS000057-4)
HOW ARE THESE ISSUES DEALT WITH?

OVERWHELMINGLY, EUROPEAN COUNTRIES ARE NOT UTILIZING THESE RESOURCES.
WHY?
“GOOD FAITH”
DILIGENT SEARCH

UK EXAMPLE:

5-10%

.5 DAYS PER WORK

50 MILLION WORKS

6.5 MILLION DAYS

18,000 YEARS

OUR LOVE IS LIKE A DILIGENT SEARCH:
COMPLEX, EXPENSIVE, NEVER ENDING.
“GOOD FAITH”
Diligent search is extremely expensive and time consuming
HOW ARE THESE ISSUES DEALT WITH?

UK Survey

59 Respondents (31 Users of OWR)

“currently the amount of effort involved in checking all the agencies etc is a major obstacle - cutting the number would make it easier” - Survey Respondent 17.12.2015
THE SITUATION REMAINS THE SAME

• DILIGENT SEARCH TOO EXPENSIVE

• DIRECTIVE TOO VAGUE FOR MEMBER STATES

• DOES NOT FACILITATE MASS DIGITIZATION
HOW ARE THESE ISSUES DEALT WITH?

WE NEED MORE DATA.
WHERE SHOULD WE GO NEXT?

- Suggestion 1: SAFE HARBOR / FAIR USE
WHERE SHOULD WE GO NEXT?

• Suggestion 1: SAFE HARBOR/FAIR USE
• Suggestion 2: DILIGENT SEARCH GUIDELINES
WHERE SHOULD WE GO NEXT?

• Suggestion 1: SAFE HARBOR/FAIR USE
• Suggestion 2: DILIGENT SEARCH GUIDELINES
• Suggestion 3: MEMBER STATE FEEDBACK
WHERE SHOULD WE GO NEXT?

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• Suggestion 2: DILIGENT SEARCH GUIDELINES
• Suggestion 3: MEMBER STATE FEEDBACK
• Suggestion 4: REVIEW LICENSE FEE STRUCTURE
WHERE SHOULD WE GO NEXT?

• Suggestion 1: SAFE HARBOR/FAIR USE
• Suggestion 2: DILIGENT SEARCH GUIDELINES
• Suggestion 3: MEMBER STATE FEEDBACK
• Suggestion 4: REVIEW LICENSE FEE STRUCTURE
• Suggestion 5: INCORPORATE STILL IMAGES
“ART” BY RICHARD PRINCE

Figured I might as well post this since everyone is texting me. Yes, my portrait is currently displayed at the Frieze Gallery in NYC. Yes, it's just a screenshot (not a painting) of my original post. No, I did not give my permission and yes, the controversial artist Richard Prince put it up anyway. It's already sold ($90K I've been told) during the VIP preview. No, I'm not gonna go after him. And nope, I have no idea who ended up with it 😜 #lifeisstrange #modernart #wannabuyaninstagrampicture

8,930 likes  523 comments
A vast number and array of material collections are inaccessible to researchers for use and reuse because of unclear (or a complete lack of) guidance and legislation.
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