Copyright Consultation

Orphan Works

The issue

Some possible uses of orphan images

- Online use by museums, galleries, archives, libraries – often unique, unpublished works
- TV documentaries – photos within
- Book publishing – eg poetry anthology
- Postcards of collections to raise funds

Focus on uses where there are less likely to be substitutes
Key principles

• Minimising market distortion between orphan & non-orphan works
• Maximising the benefits to economic growth
• Minimising/eliminating perverse incentives/opportunities to ‘orphan’ works
• Through these & other measures, to ensure adequate protection for the interests of absent rights holders

Ways to enable use of orphan works

• Orphan Works Directive –to be implemented by an exception – limited to certain institutions & works - cultural use only – requires diligent search
• Authorisation/licensing - based on bona vacantia - broader scheme in UK, incl commercial use - requires greater oversight of diligent searches
• Extended Collective Licensing – BUT as there is no prior diligent search it is not known whether a collection includes orphans or not
Scope of UK scheme

Scope: Territoriality
- Use in the UK only
- Use of works held in the UK but of foreign, mixed or unknown origin

Scope: Unknown copyright status
Scope: Published & unpublished works
Scope: Commercial & non-commercial use

Authorisation/licensing/regulation
- Copyright Tribunal, DCE, collecting societies
- Term of licence/authorisation
- Register of works used
  - Diligent search
    - Sector-specific guidelines
  - Remuneration
    - Market rate appropriate to work & use
    - Paid up front & unclaimed royalties
Moral rights

• Attribution – credit where rights holder’s name is known but not location (and copyright notice about who to contact for all orphan works)

• Derogatory treatment – authorisation for use of works with minimal modification and extracts to be used only in ways unlikely to be objected to by rights holders