

# In From The Cold

*An online survey to assess the impact of 'orphan works' on the delivery of services to the public*

**DRAFT Summary of findings:**



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# Key Points

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## ① Introduction

- Setting the Scene
- The 'orphan works' problem
- Background and objectives of the survey
- Survey Methodology

## ② Research Findings

- Respondent profile
- Extent of orphan works
- Reasons for orphan works
- Suggestions for addressing the orphan works issue
- Impact of orphan works on public sector delivery



# Introduction

# Introduction

## *Setting the Scene*

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- There are over 2500 museums in the UK, of all shapes and sizes.
- There are over 10,000 cultural heritage organizations
- Cultural heritage organisations will own millions and millions of objects
- Vast range of objects, ranging from low commercial value – high cultural/historic value to those of high commercial value
- Whilst many of these will be “out of copyright”, length of copyright protection means that many still in copyright
  - Standard term
  - NB: Copyright in unpublished text based works can last until end 31st Dec 2039
- Cultural heritage organisations will be rights users themselves
- Onus of responsibility to clear rights before works copied (including placing online)
- Orphan works – works where the rights holder is not known or cannot be traced – are a major problem across the public sector

# Introduction

## *Setting the Scene: The Problem*

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The British Library estimates that over 40% of potentially all creative works in existence are orphan works<sup>[1]</sup>

Carnegie Mellon University Libraries study - 22% of the publishers could not be found.,  
“...over a third (36%) of the publishers we successfully located did not respond to multiple letters of inquiry. Most (79%) of the books about which they did not respond were out of print.”

<sup>[2]</sup>

In a study carried out by the Museums Copyright Group, the percentage of works in collections for which the authors' identity is known is much higher in the case of fine art works, but lower in the case of documentary photographs and other artistic works, where the proportion is in many cases 50% or below.<sup>[3]</sup>

As part of their Archival Sound Project, the British Library identified 299 rights holders whose permission was required. For this collection alone, a total of 150 hours was spent by a freelance researcher, and 152 hours was spent by British Library staff on seeking permission, which resulted in 8 permissions being received.”<sup>[4]</sup>

<sup>[1]</sup> <http://www.bl.uk/news/pdf/ipmanifesto.pdf>

<sup>[2]</sup> <http://www.copyright.gov/orphan/comments/OW0537-CarnegieMellon.pdf>

<sup>[3]</sup> <http://www.farrer.co.uk/Default.aspx?sID=874&cID=814&ctID=11&PRN=1>

# Introduction

## *Orphan Works: The Reaction*

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*“As we come under increased expectation to increase collections access, particularly online, this is a critical issue for us as we hold large photo archives from a wide range of sources.”*

*“We tend to publish and be damned. If our rights are challenged we would sort it out, but we have had no bad experiences so far.”*

*“As and when we come across items that may still be in copyright usually photographs or paintings, we would check the provenance information and see if there is any information from the copyright owner (often artist/photographer) that allows us to use the item. If unknown and we couldn't assume copyright as the owner of the item then we would only use internally.”*

# Introduction

## *Orphan Works: The Direction*

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*“Clarification and transparency in the copyright status of a work is an essential element in a number of areas including the European Digital Library Initiative. In some cases rightholders cannot be identified or located; as a result, works can be classified as “orphan”. **Comprehensive, large scale digitisation and online accessibility, as well as Other uses, are hampered by this phenomenon.** As a result, libraries, museums, archives and other non-profit institutions may be prevented from fully exploiting the benefits Of information technology to carry out their preservation and dissemination mandate”*

i2010: Digital Libraries High Level Expert Group

[http://ec.europa.eu/information\\_society/newsroom/cf/document.cfm?action=display&doc\\_id=295](http://ec.europa.eu/information_society/newsroom/cf/document.cfm?action=display&doc_id=295)

*“Copyright clearance of orphan works can constitute an **obstacle to the dissemination of valuable content and can be seen as hampering follow-on creativity.** However, the extent to which orphan works actually impede uses of works is not clear. There is a scarcity of the necessary economic data which would allow the problem to be quantified on the pan-European level.” EC Green Paper on Copyright in the Knowledge Economy*

[http://ec.europa.eu/internal\\_market/copyright/docs/copyright-infso/greenpaper\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/copyright-infso/greenpaper_en.pdf)

# Introduction

## *Collections Trust & Strategic Content Alliance*

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- The Collections Trust and the Strategic Content Alliance are working on a joint initiative to assess the impact of 'orphan works' (works for which the copyright owner is unknown or cannot be traced) on the delivery of services to the public.
- As part of the work, DJS Research carried out an online survey to allow cultural heritage, education, health and other public service organisations to register how the issue affects their own service provision. ABL Consulting has carried out over 80 case studies picking up on granular details
- The first research of its kind into the extent of orphan works across the UK and Europe, the survey received 503 responses from the collections across the United Kingdom and overseas.
- The survey is the first stage in a wider project to tackle the issue of orphan works. Further work will be undertaken over the coming months, including the publication of case studies providing detailed examples of impact of orphan works on the provision of access to public sector content.
- A one-day conference to explore the issues and propose a way forward is also planned.

# Introduction

## *Survey Methodology*

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- A questionnaire developed by The Collections Trust was set up as an online questionnaire. The survey included predominantly closed questions to provide a measurement of views. Respondents were also given the opportunity to type in any relevant comments or anecdotes.
- A link to the survey was sent out to various e-mailing lists held by the Collections Trust and partners in the Strategic Content Alliance. Various reminders were also sent out during the course of the survey.
- As further incentive to take part, respondents were offered entry into a prize draw to win £100, and a synopsis of the results. Interestingly, more respondents requested a synopsis of results than asked to take part in the prize draw.
- The survey ran from 16.12.08 to 12.01.09. In total, 503 respondents completed the survey.
- This document summarises the key findings from the survey.



# Research Findings

2.1

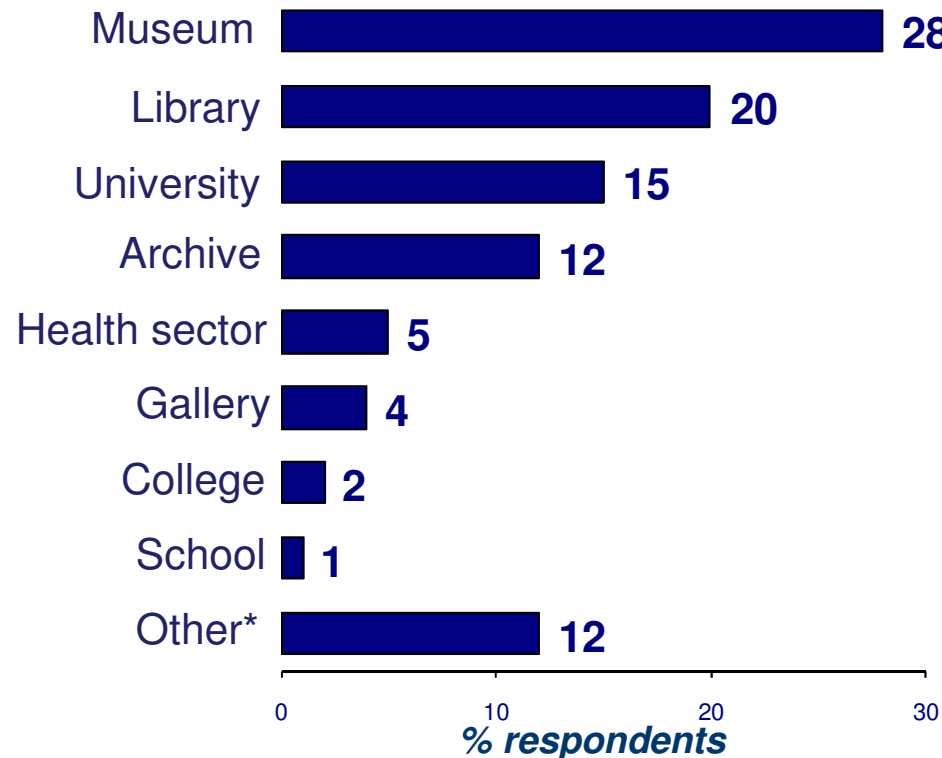


**2.1** Respondent profile

# A cross section of organisations responded, predominantly representing the MLA, education and health sectors.

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**Q) What type of organization do you work for?**



**Base: All respondents (503)**

**\*Others include:**

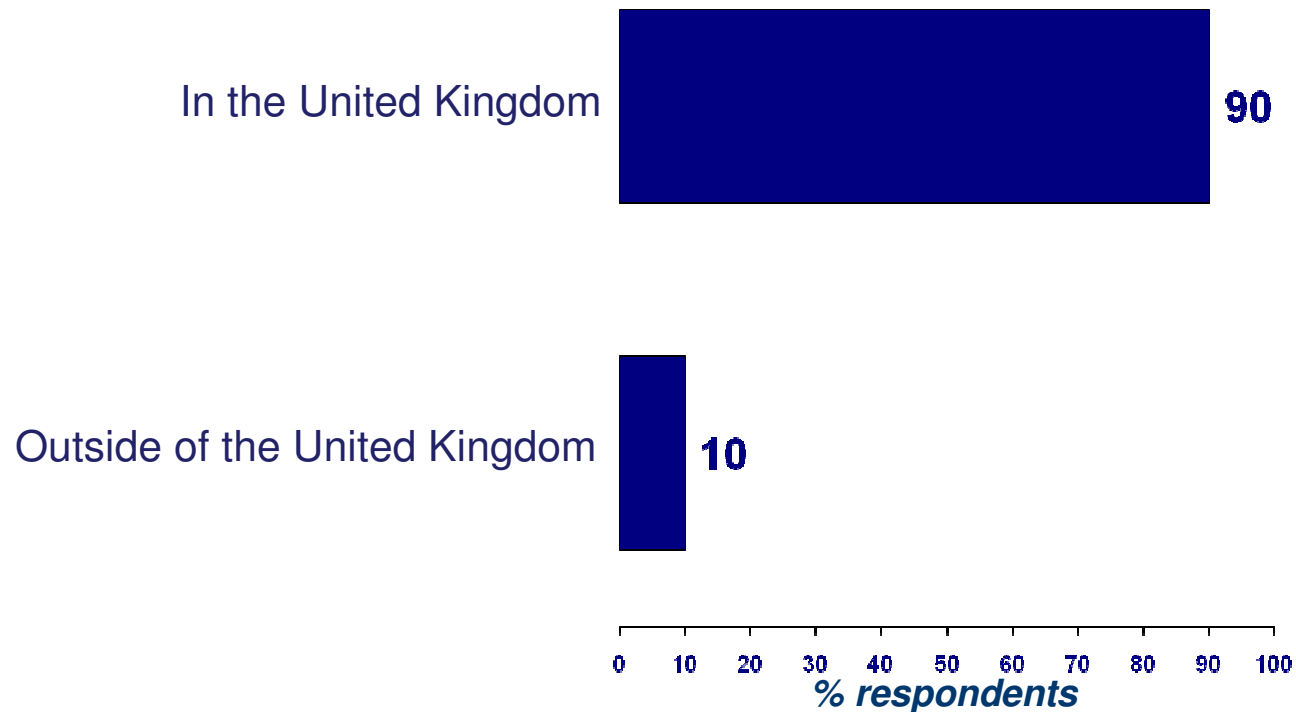
Scientific Organisation, Civil Service (Government Art Collection), Local society, University Museum, Public building, Local Government, Museum-Library-Archive, Charity, Library/Archive within a religious body, UK Academy of Science, Literary or history society

Nine-out-of-ten participants were from the UK, with one in ten respondents from overseas locations.

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**Q) In which country is your organisation based?**

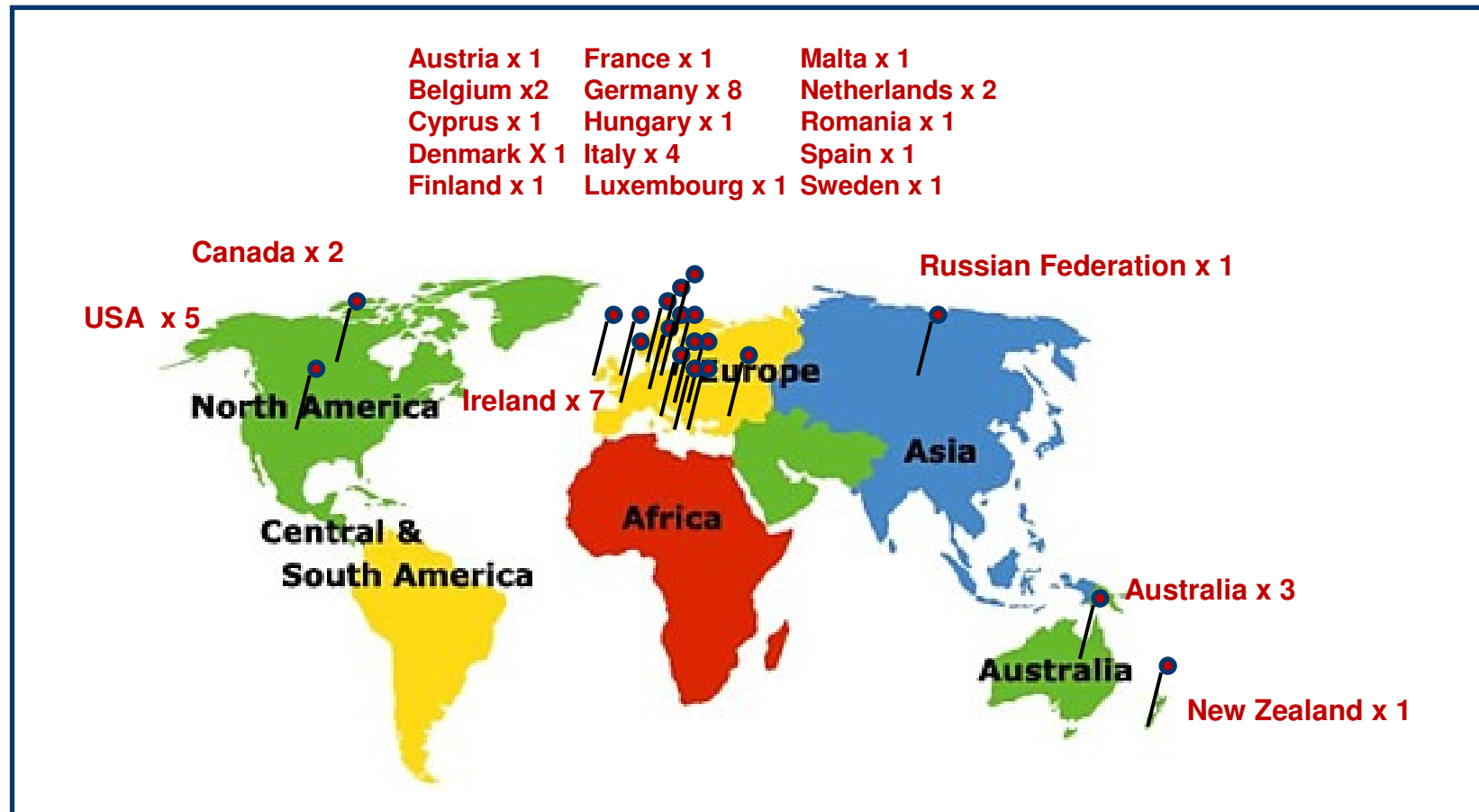
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*Base: All respondents (503)*

# Organisations from a diverse range of overseas locations took part in the survey.

**Q) In which country is your organisation based?  
OVERSEAS RESPONDENTS**



2.2

**2.2**

The extent of the  
'orphan works' issue

# The Extent Of The Issue

## *Example comments: Museums*

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Many respondents added commentary and anecdotes describing how their organisation has been affected by orphan works. Some example comments are provided below

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### **David Dawson, Director, Wiltshire Heritage Museum**

“The material we have got is old; it’s not valuable; most of it’s not fine art in the classic sense; so the commercial value of it is limited.”

*“Orphan works” present a particularly acute problem for documentary photographic collections. These have often been neglected in heritage collections, with the result that provenance records have often not been kept. Moreover, there are few records for professional photographers that are comparable with, say, current or deceased artists. Many commercial photographs are produced by extinct companies, and it is often impossible to glean what happened to the company’s intellectual assets.”*

*‘ This is huge problem for museums with ethnographic (world cultures) collections, which are affected even if the works they hold are not classified as “fine art”.’*

The table below provides a topline summary of the extent of the orphan works issue, both overall and by sector.

	<b>OVERALL (503)</b>	<b>Museum (143)</b>	<b>Library (101)</b>	<b>Archive (61)</b>	<b>Gallery (21)</b>	<b>Education sector (90)</b>	<b>Health Sector (24)</b>
Average number of works in collection	50,000 to 100,000 works	10,000 to 25,000 works	100,000 to 500,000 works	500,000 to 1 million works	5,000 to 10,000 works	50,000 to 100,000 works	1,000 to 5,000 works
Proportion of organisations affected by orphan works	<b>89%</b>	<b>95%</b>	<b>88%</b>	<b>93%</b>	<b>96%</b>	<b>91%</b>	<b>58%</b>
Average proportion of works that are orphans	5% to 10%	5% to 10%	5% to 10%	21% to 30%	5% to 10%	5% to 10%	Less than 5%

2.4

**2.3**

Reasons for works  
being 'orphans'

# Reasons for works being ‘orphans’

## *Example comments: Museums*

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Many respondents added commentary and anecdotes describing why works might be orphans. Some example comments are provided below

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*“Posters are some of the most difficult to copyright owners to identify, where there may be more than one copyright holder, and a company no longer in business is one of them, and the named designer can not be traced.”*

*“One of our problems is that we have several works that are by amateur artists -useful topographical material but extremely difficult to trace copyright. In many instances we do not have any biographical details so cannot ascertain whether or not the copyright period has expired.”*

*“It's often hard enough getting members of staff to take copyright seriously, when an author is identified. Where one isn't identified, although this varies from project to project and the scale of those projects, images do move around with little regard for their copyright status. Often we are instrumental in creating orphan works because members of staff keep images as slides or digital images for which they have no idea of the source. This is often the case with new acquisitions. I told a curator recently that an image that he'd "acquired" at the same time as buying a work from one of the national auction houses couldn't be used in a publication without consent from the auction house or whoever took the photo. He responded that it didn't matter as we'd paid 500k for the work....”*

# Differences in issues by location are highlighted below.

**Q) What are the most likely reasons for works in your collections and/or projects being ‘orphans’?  
SPLIT BY LOCATION (%)**

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	<b>OVERALL (447)</b>	<b>UK (402)</b>	<b>Overseas (45)</b>
The work has no, or insufficient, information identifying the copyright owner ...	83	83	76
The original owner of copyright can no longer be located at the original address ...	73	73	69
The copyright holder has died ....	70	70	69
Where the copyright owner is a business, the business ceased to exist ....	53	54	42
The copyright ownership has been assigned to a new owner...	23	18	31
The copyright owner does not realise that they benefit	17	22	16

**Base: See sector heading (n)**

2.7

**2.4**

Suggestions for  
addressing the orphan  
works issue

# Suggestions for addressing the issue

## *Example comments: Others*

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Many respondents made suggestions and comments about addressing the orphan works issue. Some example comments are provided below

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*“I suffered from use of my photographs without a publisher/author bothering to find me even before Orphan Rights was an issue when my name is unusual enough that a quick look in a telephone directory would have been sufficient to find me. Real issue is “How hard will publishers work to find original owner?”. On the opposite side as a researcher using images for papers/ongoing research how can I trace a photographer or his heirs especially from 1930s/1940s. Needs to be more work done in terms of creation of a database of creators past and present. Could this be a further function for and organization like DACS?.”*

*“The law needs to be altered for use of “orphan works” to include details of permitted use if every effort has been made to trace the author(s) and that this can be proved.”*

*“It would be helpful to have a central clearing house to tracing copyright owners. Changes to the law to allow archives to utilise orphan works more freely without the risk of legal actions.”*

2.7

**2.5**

**Impact of Orphan  
Works on public service  
delivery**

Overall, 89% of participants stated that their service delivery is at least occasionally affected by Orphan works, with over a quarter frequently affected.

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**Q) To what extent do works for which the rights holders cannot be traced or are unknown ('Orphan Works'), present a problem for the fulfillment of your organisation's public service delivery?**

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*Base: All respondents (503)*

# Differences in how organisations might handle orphan works by sector are highlighted below.

**Q) Typically, what are you likely to do with works for which you are unable to trace the rights holders or the rights holders are unknown?**

**SPLIT BY SECTOR (%)**

	OVERALL (447)	Museum (136)	Library (89)	Archive (57)	Gallery (20)	Education sector (83)	Health Sector (14)
Use them but with a risk managed approach	60	58	56	75	85	52	36
Use them only for educational purposes	14	14	15	4	0	27	14
Use them internally only	10	13	8	7	10	8	21
Not use them	9	10	10	9	0	8	21
Use them regardless	2	2	2	2	0	2	0
Other	4	3	9	4	5	2	7

*Base: See sector heading (n)*

 = Higher than average  
 = Lower than average

# Food for thought!

“The challenge is clearing the rights. It’s virtually impossible.”

“The free-for-all approach is when people put things out there without even bothering to clear copyright. With orphan works, it’s a case of people wanting to but just not knowing how to.”

“The Government on the one hand wants us to be highly IT-literate and yet the law is preventing us from doing that.”

“By and large, the current copyright regime is inappropriate for the knowledge economy agenda. There are too many restrictions on things that need not be restricted in our view.”

“If we can’t digitise the 20th century collections we are failing in this obligation.”

# Next Steps

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- Publication of results and case studies providing detailed examples of impact of orphan works on the provision of access to public sector content.
- A one-day conference to explore the issues and propose a way forward is also planned
- THANK YOU!