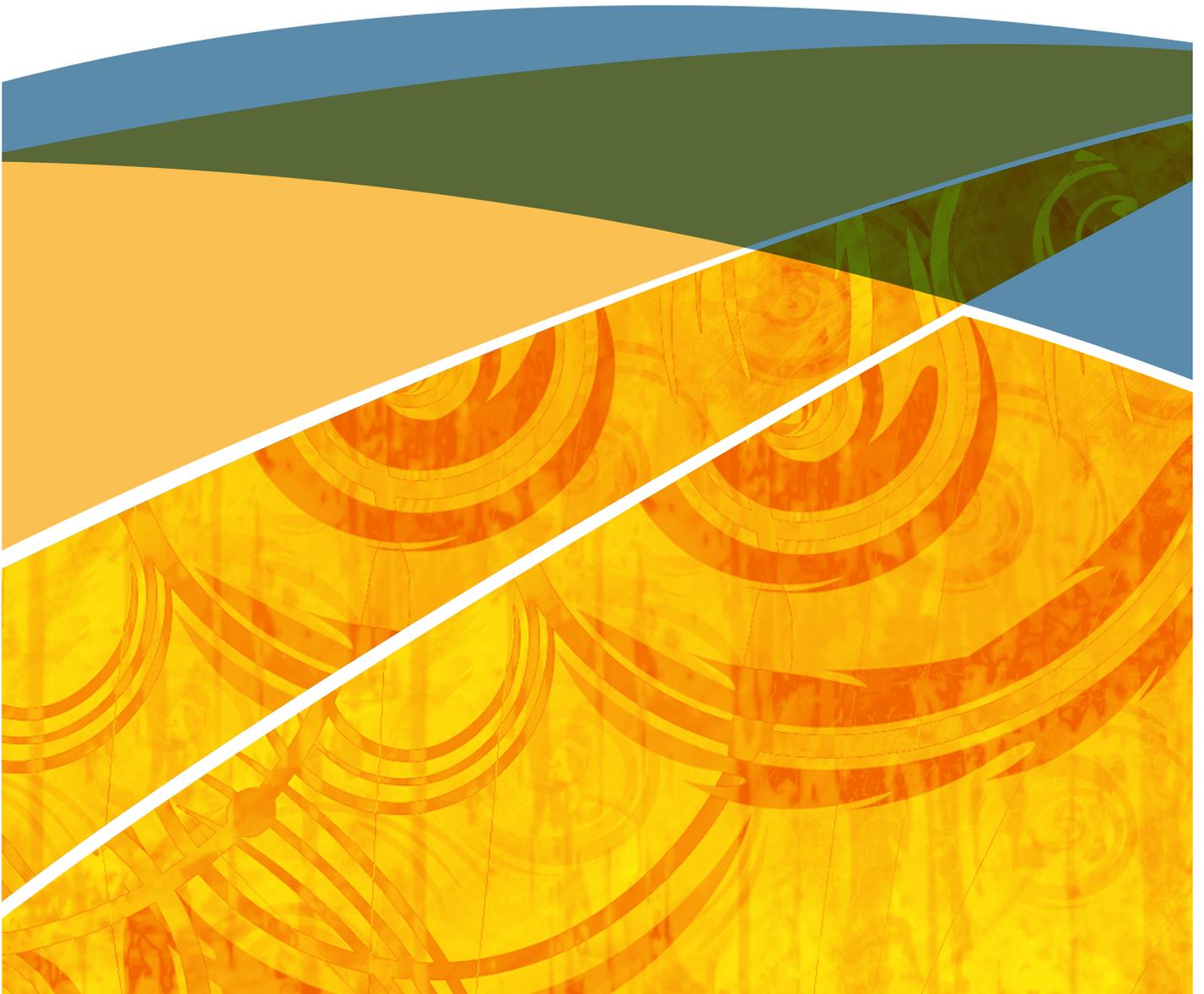




Intellectual
Property
Office

Orphan Works Licensing Scheme Overview for applicants



Orphan Works Licensing Scheme overview for applicants

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1. Before starting an application

1.1 Why do you want to use this particular work?

Orphan works are creative works (or performances) subject to [copyright](#), such as a diary, a photograph, a film or a piece of music, for which one or more of the right holders is either unknown or cannot be found. The orphan works licensing scheme provides a way to reproduce these works lawfully. You will have to pay an application fee to cover the cost of dealing with your application and, if approved, a licence fee to use the work.

1.2 To get a licence to use an orphan work, you will also need to undertake a diligent search to try to find the missing right holders. This takes time and there may be some costs involved.

1.3 You should consider why you want to use the orphan work and consider if there is non-orphan work you could use instead where the right holder is known and locatable (or even commission a new work).

1.4 You should also consider whether your intended use the work falls within one of the [exceptions](#) to copyright. Exceptions to copyright permit limited uses of protected works for certain specific purposes without seeking permission from the owner. The exceptions to copyright are set out in Chapter III of the Copyright, Designs and Patents Act 1988, and include exceptions for uses such as:

- Non-commercial research and private study
- Text and data mining for non-commercial research
- Criticism, review, quotation and reporting current events
- Teaching
- Producing accessible-format copies for disabled people
- Personal copying for private use
- Parody, caricature and pastiche

Guidance on copyright exceptions can be found at; www.gov.uk/exceptions-to-copyright, including 'fair dealing' limitations.

If your intended use of the work is covered by one of these exceptions then you may not require an orphan works licence.

1.5 Another exception relates specifically to orphan works and implements the EU Directive on certain permitted uses of orphan works. The Directive allows cultural and heritage organisations to digitise certain types of orphan works in their collections and to make them available to the public on their websites. It does not allow any other uses.





[To find out if you can use an orphan work under the EU Orphan Works Directive, take our short eligibility questionnaire](#)

1.6 Is the work still in copyright?

You should consider whether it is likely that the work is still in copyright. If the work is in the public domain because the copyright has expired, then you do not need a licence and are free to use the work. To find out if a work is still in copyright, you should consider:

- when the work was created or first published; and
- whether the right holder is still alive, or if you know when they died.

1.7 For more detailed information on how long copyright lasts for different types of work please see: <https://www.gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants>.

1.8 If you do not know when the copyright expires?

If you are unsure whether the work is still in copyright, then you can still apply for a licence.

1.9 Diligent search

If you want to reproduce a copyright work, you need to try to find out who the right holders for that work are, and then need to contact them for permission to use the work. If you cannot find them, or even cannot find out the name of the right holder, then you can use this scheme. The process of searching for the right holders is known as a diligent search.

1.10 Your diligent search will need to cover all the right holders relevant to the types of use/s you want to make and provide us with the details of that search. For example, if you wish to make printed copies of a literary work, you may need the permission of both the author and the publisher, but if you wish to put the work on your website you may only require permission from the author because they have retained the digital publication rights.

1.11 To help you we have provided guidance on how to undertake a diligent search for different types of works. This guidance has been created in partnership with working professionals and is split into sectors covering:

- film and sound – includes films, TV programmes, amateur film footage, music, and non-music sound recordings, such as interviews;
- literary works – includes fiction books, non-fiction books, manuscripts, essays, letters, diaries, short stories, notes, poems and dramatic works such as scripts, plays and screenplays; and
- still visual art – includes photographs, pictures, paintings, posters, sketches, drawings, etchings, cartoons and sculptures.

1.12 A diligent search for a licence under this scheme is valid in the UK for up to seven years and needs to be updated after this time if you wish to renew your licence.

1.13 You will need to submit a completed checklist of your diligent search for each right holder as evidence that this has been completed. This must include the sources checked as well as further information on the process followed by the applicant in determining the work is orphaned. Template checklists are available as well as the guidance:

<https://www.gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants>

1.14 We may refuse to grant a licence if we believe that your diligent search is inadequate.

1.15 Relying on a previous diligent search

If there is an existing diligent search for the right holder in the work you want to use, you can rely on that search without having to conduct a new search, provided that it:

- was submitted with a previous, successful, licence application up to seven years ago (see 1.16); or
- was carried out under the EU Directive with the details published on the Office for Harmonization in the Internal Market (OHIM) database (see 1.17).

1.16 If you are relying on a diligent search submitted with a previous, successful, licence application, then you will simply need to:

- tick the “Orphan Works Register” box on the diligent search checklist and provide the licence reference number in the “Details” section.

1.17 If you are relying on a diligent search carried out under the EU Directive, you will need to use the information from that diligent search to help you fill in the relevant parts of diligent search check-list for your application for a licence.

1.18 In addition, the diligent search must also cover the rights within that work you wish to use. In some circumstances, different rights in a work may have different right holders. For example, in a published book, the print publication rights might be held by the publisher, whereas the digital publication rights might be held by the author.

1.19 If you rely on a previous diligent search you should also bear in mind that the search is only valid for 7 years from when the first licence using that search was issued – or 7 years from when the search was placed on the OHIM database in the case of a search conducted under the Directive.





1.20 This means that, where you rely on a previous diligent search, this will affect the maximum licence duration that can be granted. For example, if a licence was issued 2 years ago and you rely on the same diligent search, the maximum licence duration will be 5 years.

1.21 What other information you will need to complete your application?

As well as providing details of the diligent search for the right holders in a work, you will also need:

- **a debit or credit card** to pay the application fee when you submit your application and the licence fee if your application is approved;
- **information about the work**, for example its title (if it has one) and a description of the work, whether the work has been previously published and information about how you came by the work;
- any **information you have about right holders**; and
- **an image to upload**, if the work is a photograph or other piece of still visual art.

1.22 Permission of known right holders

As with any other copyright work, you also need to gain permission from any relevant known and locatable right holders for the work in order to avoid copyright infringement. The IPO can only licence for unknown right holders or those who cannot be found. You do not have to obtain permissions from known and locatable right holders **before** making your application - but where you have already gained permission(s) from any known and locatable right holders, details of these right holders can be included to support the application.

2. The online application

In keeping with the Government's Digital by Default service standard, you will need to fill in an online application for a licence to use an orphan work – we do not accept applications submitted by any other method – such as by letter.

If you are unable to use the on-line application, please contact us: orphanworkslicensing@ipo.gov.uk

2.1 Can I save my application and come back to it?

Yes. At certain points you have the option of saving your application. It will be saved on the system for 30 days, after which it will be deleted.

2.2 How do I find out how much will it cost?

The total cost consists of an application fee and a licence fee. These must be paid by debit or credit card using a secure payment process. There are two payment points:

- the application fee is due when you submit your application; and
- if your application is successful, the licence fee must be paid before the licence will be issued.



2.3 Application fee

When you submit your application you will have to pay a non-refundable application fee to cover the costs of dealing with your application. How much the application fee is will depend on how many orphan works your application covers.

Number of works	Fee
1	£20
2	£24
3	£26
4	£28
5	£30
6	£32
7	£34
8	£36
9	£38
10	£40
11	£42
12	£44
13	£46
14	£48
15	£50
16	£52
17	£54
18	£56
19	£58
20	£60
21	£62

22	£64
23	£66
24	£68
25	£70
26	£72
27	£74
28	£76
29	£78
30	£80

2.4 Please note that the application fee is charged to cover our costs in dealing with your application and is non-refundable, even if your application is turned down.

2.5 You need to pay the application fee before you can submit your application. The application fee can be paid using either a debit or credit card using the secure on-line payment process. We do not accept payment via any other means.

2.6 Licence fee

As well as an application fee, you will have to pay a licence fee. You can find out how much the licence fee is likely to be before completing your application. Simply select the work type you wish to use (such as photograph) and the use or uses (such as use in a book) and the price will be calculated. The licence fee is held by the IPO on behalf of the absent right holder. Licence fees are set by looking at the prices charged for using similar non-orphan works in the same way.

2.7 In most cases, we will tell you what the licence fee will be when you choose the work type and use during the online application, so you can see how much it will cost to use an orphan work. In a small number of cases, the licence fee will be set on a “price on application” basis, which means you will be asked to email us and we will then provide a licence fee for that type of work and use.

2.8 You do not pay the licence fee when you submit your application, but will have to pay it in order to get your licence, once we have told you that your application was successful. The licence fee can be paid using either a debit or credit card using the secure on-line payment process. We do not accept payment via any other means.

2.9 Title of work

Where the official title of the work is known (such as the title of a book) this will be the title of the work. If you do not know the official title of the work, then please provide a one sentence summary.

EXAMPLE: Photograph of St Paul's Cathedral during the Second World War.

2.10 Work description

You will be asked to provide a short description of the work. The purpose of this is to help us consider your application and also to help absent right holders identify their works. It may expand on the title, or may be a pure descriptive sentence.

The description should include any known relevant details of the work. For example, in the case of a photograph, details should include the subject of the photograph, when it was taken and for what purpose (such as for a magazine).

EXAMPLE: Night-time photograph of St Paul's Cathedral taken from west end for *ARP Times* magazine during the Blitz.





2.11 Known reference

This is where the work has an existing reference number and you know this, you should include that information

For example

ISBN – International Standard Book Number

ISSN – International Standard Serial Number

ISAN – International Standard Audiovisual Number

ISMN – International Standard Music Number

ISWC – International Standard Musical Code

ISRC – International Standard Recording Code

EIDR – Entertainment Identifier Registry

For some work types (such as audio-visual works) you may be able obtain a unique identifier for the work if one does not already exist. For example, *eidr.org* may be able to provide an EIDR reference for a film work.

2.12 Use description

You will need to provide a brief description of exactly how you intend to use the work. This will help us decide if your proposed use of the work is appropriate and matches the use you have selected.

EXAMPLE [where use has been selected as publication of photograph, half page in a book]: To be used in a book on Blitz experiences of ARP wardens.

2.13 Applying for multiple uses

You can apply for more than one use for the same work in one application, but remember each separate use will have its own licence fee.

2.14 You will also need to fill in all the relevant details for the use of a work. Once you have completed this, you will be asked if you wish to add another use.

2.15 Applying for multiple works

You can apply for more than one work in one application. The maximum number of works you can apply for in one application is 30 and the application fee is based on how many works are in your application (see 2.3).

2.16 Once you have filled in all the relevant details for the use of a work, you will be asked if you wish to add another work.

2.17 Changing your application

You can change any details on your application and add or remove works and uses at any point before you submit the application.

2.18 Adaptation of a work

Where your proposed use of the work means that there will be any adaptation, addition, modification, or deletion to the work, you will need to provide details. We will then need to consider whether this could amount to derogatory treatment.

EXAMPLE: Crop photo to focus on dome of St Paul's Cathedral and night sky background with searchlights and flames. Change picture contrast using digital processing to emphasise difference in light from flames and searchlights.

2.19 Examples, of an adaptation of a work include re-sizing or cropping a photograph, re-colouring an artwork, and using only part of a work.

2.20 Derogatory treatment

In law, the author or creator of a work generally has the right not to have their work treated in a derogatory manner (Section 80 of the Copyright, Designs and Patents Act 1988¹). This means that the IPO will consider whether any adaptation of a work might be derogatory.

2.21 The legal definition of “derogatory” is when the treatment of a work amounts to distortion or mutilation of the work, or is otherwise prejudicial to the honour or reputation of the author or director.

2.22 Whether a proposed adaptation might be derogatory will depend on the individual circumstances of each case.

2.23 Although we will consider whether any proposed adaptation of a work might be derogatory, this does not remove liability from you, the user, should the adaptation of a work be found to be derogatory after the licence is granted.

2.24 Inappropriate use

We will also consider, more broadly, whether the proposed use of the work might be inappropriate.

2.25 This will depend on the individual circumstances of each case. However, if the use might be seen as offensive, in poor taste or contentious, then it is likely that it will be inappropriate and we will not grant a licence in those circumstances.

¹ available at <http://www.legislation.gov.uk/ukpga/1988/48/section/80>



2.26 What if you do not own a copy of the work you want to use?

You can apply for an orphan works licence even if you do not own a copy of the work yourself. You would need permission from the owner of the work to reproduce it, although it may not be necessary to obtain this in advance of making your application. You will, of course, still need sufficient details about the work to complete the online application form and diligent search.

2.27 Where the work is a photograph or other piece of still visual art, you will need to obtain a copy from the body or person that has the work because it should be uploaded as part of the application. The regulations allow them to provide you with a copy solely for the purposes of completing your application.

2.28 History of the work

You should provide any details about how the work came into your possession (or from where you obtained a copy for your application), plus any useful additional information. This is sometimes known as the work's provenance.

EXAMPLE: Photograph taken from the collection of the ARP Museum, City of London, in an archive donated by Ian Goodweather in 1975.

2.29 Uploading an image

If the work is a photograph or other piece of still visual art, you will need to upload an image of it when completing your application.

2.30 This may be in the form of a .JPG, a .PNG, a .TIFF or a .GIF image.

2.31 Non-commercial use

There are some uses of an orphan work that can fall into the category of "non-commercial use". If you apply for non-commercial use of an orphan work, you are able to use that work for any of the uses listed below, providing the circumstances of your particular use are non-commercial.

1	Free hand outs for live event, exhibition or similar
2	Use in a live event, exhibition or similar
3	In newsletter, bulletin, e-newsletter or e-bulletin
4	In non-commercial promotional material – print and digital
5	Digitise and make available on-line, including on social media
6	Preservation purposes
7	Use on stage or in performance
8	Educational purposes – use in learning/ training materials, including e-learning
9	Use in thesis/dissertation
10	Personal use



2.32 The licence fee for non-commercial use is significantly lower than for commercial use, with a set licence fee of 10 pence (£0.10) per work for all non-commercial uses.

2.33 It is not possible to provide a comprehensive description of when a use will be non-commercial as it will depend on the circumstances surrounding your intended use of the orphan work.

2.34 The following general principles and examples, however, should help you determine whether or not your proposed use of an orphan work is non-commercial. This has been chosen to reflect the practice of licensor, for the avoidance of doubt, it is not intended as a definition in UK or European copyright legislation more generally.

2.35 Commercial use covers any uses (including by individuals as well as organisations) that make money from the work – such as selling copies of the work or directly charging for access to it whether any charges are intended to make a profit or just to cover costs.

2.36 As well as activities that generate revenue, such as merchandising or selling copies of a publication, commercial use would also cover any other uses that are commercial in nature, such as any use in commercial advertising, marketing or promotion activities.

2.37 For example, where the use was to promote a free exhibition of which the work was a part, for example, then this would not be commercial use. Use of an orphan work, such as a photograph on a poster to promote or market an exhibition or similar where there was a charge would, however, be commercial.

2.38 The above guidance on what uses would be commercial applies equally to not for profit organisations where the activity in question is aimed at making a profit from the use of the work or is otherwise commercial in nature.

2.39 The original use was non-commercial – but you now wish to use the work commercially

If, when you obtained the licence, the use was non-commercial, but now you wish to use the work commercially, you need to apply for a new licence.

3. What happens once you have submitted and paid for your application?

We will send you an acknowledgement by email that we have received your application. We will then consider your application and the information you have provided as part of this. This includes satisfying ourselves that a reasonable diligent search has been carried out.

3.1 How long will it take?

We will consider your application as quickly as possible and normally aim to have made a decision within 10 working days. This may not always be possible if the application is a complex one or involves numerous different works with multiple right holders.

3.2 If it is going to take us longer than 10 working days to consider your application we will email you to let you know.

3.3 Putting details of the application on the register

We will put certain details from your application on the orphan works register. These are identified on the application form. The register is publicly accessible and helps right holders check if their works have been licensed as orphan works or whether there is an application to license them.

3.4 Not all the details you send us are put on the register. The following information will be displayed on the register:

- Organisation name
- Application number
- Application date
- Use
- Status of application
- Title or short description
- Full description
- Category
- Type of work
- Missing right holders
- Known identifiers
- Known right holders
- Where work held
- Located right holders
- Publication or broadcast dates

3.5 Changing your application once it has been submitted

Once you have submitted your application, you cannot change the details of your application.

3.6 If you wish to remove any works (or uses) from your application you will need to wait until we email you with our decision on your application. If we have approved your application, you will then have the opportunity to remove works (and uses) if you so wish. If you do so the licence fee will be reduced by the appropriate amount. Please note that you cannot add works or uses at this stage. These would need to be the subject of a new application.

3.7 If you wish to change your application because of an error in your original application please contact us using the email address contained in the acknowledgement email that we sent you. For example, if you have attached details of a diligent search for another work by mistake.

3.8 What if I need to contact you?

The acknowledgement email that we send you will contain a contact email address. You can contact us via this e-mail, including if you want to withdraw your application. Please be aware that if you do withdraw your application, the application fee that you have paid will not be refunded.

3.9 What if you need to get in contact with me?

If we need more information or wish to clarify something with you, then we will email you at the same email address that we sent the acknowledgement email to.

3.10 Our decision

Once we have reached a decision we will email our decision to you. If we have rejected your application in part or in its entirety, we will provide you with the reasons for our decision.

3.11 Reasons why we may refuse to grant a licence include

- the diligent search is inadequate;
- we consider that the proposed adaptation of the orphan work might be derogatory; or
- that it would not be in the public interest to grant a licence for that use.



4. The Licence

4.1 Granting and issuing a licence

Where the decision is taken to grant a licence, we will email you informing you of this, how much the licence will cost, and what terms and conditions apply to the licence.

4.2 Standard terms and conditions

As well as licence conditions that will apply specifically to the work(s) and use(s) you have applied for, there are also a set of standard terms and conditions that apply to all licences. These are available in the annex to this guidance.

4.3 If you wish to go ahead with the licence, you will need to click on the link in the email in order to pay the licence fee via debit or credit card. Once payment has been received we will then email your copy of the licence and you can then start to use the work in accordance with the conditions of the licence.

4.4 Credits

Whenever the work is reproduced under the licence, the name of the creator must be credited (where known) together with a web-link providing the details of the authorising body (the IPO) and the orphan works licence number.

4.5 Licence duration & licence conditions

The maximum licence duration is seven years. Licences can be offered for shorter periods if that is what you require – the licence application form allows you to specify how long you wish the licence to run for. You can also request other relevant licence conditions such as print run.

4.6 Territoriality

We can only issue licences for the UK. An orphan works licence will cover the lawful use of the work in the UK only. It is the responsibility of the organisation or person using the orphan work to ensure that they comply with the law of any other jurisdictions where they may wish to use the work.

4.7 Where the use of an orphan work is under the EU Directive on Certain Permitted Uses of Orphan Works, this applies across the EU and not just to the UK. The Directive broadly allows cultural heritage bodies to digitise and put online certain types of orphan works.

4.8 Sub-licensing

There is no power to allow sub-licensing under an orphan works licence. Where there is a need to allow further uses of a work by another party, it may be possible for these uses can be specified within the terms of the licence. Alternatively, you can make a separate application.



4.9 Transferring a licence

Licences are granted to the licensee only and normally cannot be passed on or transferred to another party.

4.10 The IPO does have discretion to transfer a licence where there are compelling reasons to so. For example, where an organisation or business is taken over or merged with another.

4.11 Should you wish to request that a licence you hold be transferred to another party please contact us using the email address in the licence details.

4.12 What happens if the right holder for the work comes forward?

If a right holder comes forward in the short period after an application has been submitted but before a decision has been made, then the work cannot be licensed as an orphan work. You will need to get the permission of the right holder to use the work.

4.13 If a right holder comes forward after a licence has been granted, they will be able to claim the licence fee that the IPO is holding for them. The licence will continue for the remainder of the licence term but no new orphan works licences can be issued in respect of that work. In the event that you reach a private agreement with the returning right holder, you may decide to terminate the licence at their request. Guidance for right holders who have registered an interest is provided separately.

4.14 The fact that a right holder may emerge at some point is why we cannot offer licences in perpetuity, so a right holder can stop the use of the work if they want (although not immediately) while providing the licence holder with business certainty for up to seven years.





5. Complaints and appeals – for applicants for orphan works licence

5.1 Appealing to the IPO

If your application has been refused, we will tell you why. If you think we have made a mistake

- in refusing your application;
- in any condition attached to your licence; or
- in the licence fee quoted;

then you should contact us in the first instance. You should provide full details of the matter you are unhappy with and explain why. Please attach any relevant documentation or emails.

5.2 We will acknowledge your appeal on the day we receive it. We aim to reply within two weeks of receiving your appeal, but if the problem is complex and we need more time, we will tell you.

5.3 If you remain unhappy, you can appeal to an IPO Manager who was not involved in the original decision or the appeal response.

5.4 We will acknowledge your further appeal on the day we receive it. We aim to reply within two weeks, but if the problem is complex and we need more time, we will tell you.

5.5 Appealing to the Copyright Tribunal

If you remain dissatisfied, then you have the right to appeal to the Copyright Tribunal, which is an independent judicial body.

5.6 You may appeal to the Copyright Tribunal against any condition imposed by the IPO in connection with the grant of the orphan licence, the licence fee set by the IPO and a decision to refuse the licence.

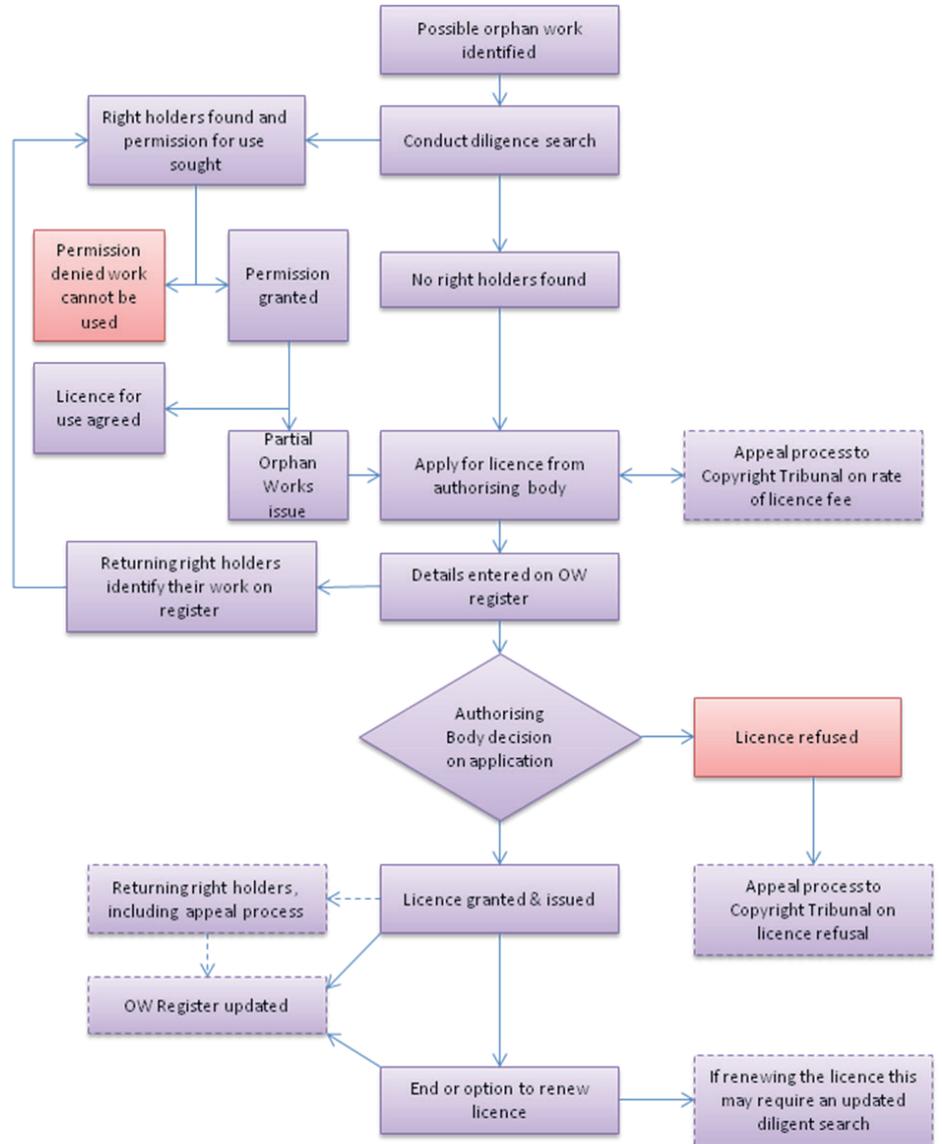
More detailed information on appeal rights is available in separate guidance published by the IPO.

5.7 General comments, complaints and feedback

If you want to make a **general complaint**, which **is not** related to a specific orphan works licence or application, please fill in our customer [feedback form](#).



UK Domestic Process outline



Annex

Orphan works licensing scheme Standard Terms and Conditions

- 1) A Licence is non-exclusive.
- 2) A Licence is valid only in the United Kingdom. For other territories, it is the law of that country that applies.
- 3) The Licensee cannot sub-license the Licensed Material identified in a Licence granted by the Intellectual Property Office (IPO).
- 4) The granting of a Licence does not release the Licensee from the obligation to obtain permission for any other use or uses not covered by the Licence.
- 5) The granting of a Licence does not release the Licensee from the obligation to obtain permission from any other right holder in the work or works, performance or performances covered by the Licence.
- 6) The coming into force of a Licence is conditional on the Licensee complying with the conditions set out in paragraphs (4) and (5) above.
- 7) The coming into force of a Licence is conditional on the Licensee paying the Licence Fee to the IPO.
- 8) No ownership or copyright in any Licensed Material shall pass to the Licensee by the issue of this Licence.
- 9) Provided:
 - i. the Licensed Material is only used in accordance with the applicable Terms and Conditions, and
 - ii. there is no evidence which subsequently invalidates the declaration signed by the Licensee on submitting their application; the Licensee shall not be held responsible for any damages, liabilities and expenses arising out of any action by a third party for infringement of copyright.
- 10) The IPO shall not be held responsible for any damages, liabilities and expenses arising out of any claim by a third party where the Licensee has acted outside the Terms and Conditions set out in a Licence, or where the claim by the third party is not on the basis of an infringement of copyright.
- 11) Any use of the Licensed Material in a manner not expressly authorised by a Licence may result in the termination without refund of the Licence by the IPO.
- 12) The Licensee undertakes that it shall not use any Licensed Material for any purpose other than as expressly authorised under this Licence Agreement.





13) The moral rights of the creator of any work that is licensed by the Licensor are assumed to have been asserted. If the Licensee intends to Share the Licensed Material (including in modified form), the Licensee must retain the following with the Licensed Material:

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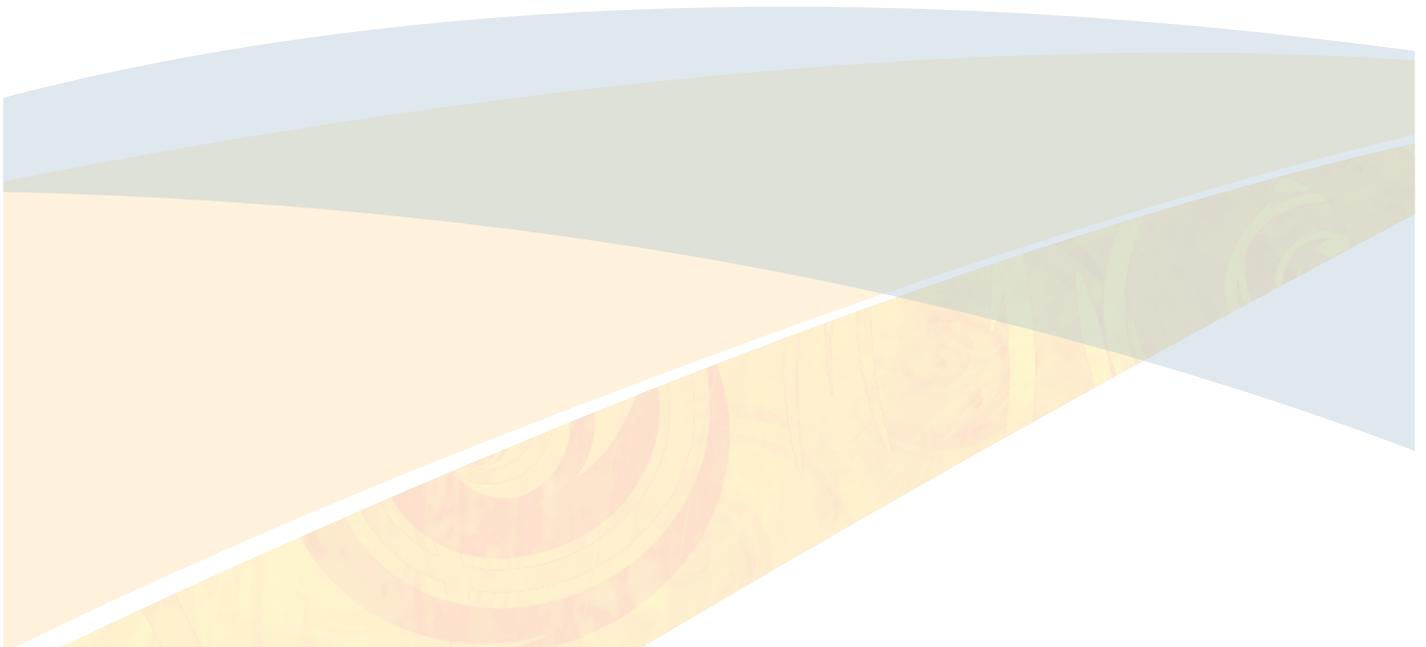
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