



**From the Director of Copyright and
IP Enforcement**

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Our ref: EQ/SMT/BCC
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Dear Janet

Thank you for your letter of 28th May 2009. I am sorry that it has taken some time to get back to you. I do of course look forward to your thoughts on my letter of the 21st May once you have had time to properly consider the issues.

We have been in discussion for well over a year now on the subject of orphan works. We have issued papers, the BCC have commented, and we have sought legal opinions.

I thought it might be helpful at this juncture to set this work in the context of the Digital Britain Report, which you will no doubt have seen, and what it says on orphan works and licensing.

As I have said at many of our meetings, the principal obstacle until now to the development of our policy on orphan works has been the lack of a suitable legislative vehicle. Such a vehicle is needed to enable us to remove the criminal liability which currently attaches to anyone dealing commercially in orphan works, and to provide for a system which limits so far as possible the civil liabilities to which those dealing in such works would be exposed.

The table at p 228 of the Digital Britain Report contains an action on the IPO to consult on the orphan works provisions. As you know, we have in practice been consulting on this subject for some time now, through yourselves in the British Copyright Council whom we consider a comprehensively representative body of relevant industry interests. We will of course continue to consult you on the subject, and in particular, assuming the legislative powers appear on the statute book in due course, we will need to consult carefully with you and other interests on the form of orphan works licences we intend to grant.



With that in mind, I would suggest we regard the mid-September deadline in the DBR as an opportunity for you to put in any further comments you may have on the basic legal principles involved. Please do not feel the need to restate points you have already made, as we have noted these, and taken them on board. But if there is anything new to be said, by yourselves or others, we should be glad to hear it. This invitation also applies to any observations you may have on extended collective licensing although I note from your recent letter that you may not feel in a position to offer any specific expertise on that subject.

As I say, we intend to consult in detail on the form of any orphan works licence, including of course the extent of due diligence searching required, the handling of any monies etc, but I think you will agree it will be more useful to get into this level of detail once we have secured the necessary legislative powers and are looking at what needs to happen by way of regulations to turn the first licences into reality. Given the timetable involved in any Parliamentary legislation, this is still at least a year or possibly two away.

As for the list of five questions referred to in your last letter, as discussed previously these questions concern details that will be a matter for open consultation as and when the legal situation is regularised to allow a scheme of some sort to be created. When we are in the position to devise the necessary regulations, we will be inviting your input into that process.

For the purposes of opening up the debate to the broadest possible range of interests, I intend to publish this letter along with details of our legal paper (which you have seen previously) on our website.

Yours sincerely,

Ed Quilty

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Director of Copyright and IP Enforcement