

Response from Stock Artists Alliance to Gowers Review of Intellectual Property,
Call for Evidence:

Specific Issue: Copyright – Orphan Works - b) Do you have any suggestions on
how this problem could be overcome?

Stock Artists Alliance is an international professional association of stock photographers who support the Rights Managed model of stock photography licensing. Our members distribute their images through over 150 stock distributors throughout the world. About 30% of SAA member are UK based, and many more have images licensed through UK companies including Getty Images and Alamy. The stock photography industry is estimated at \$2 billion (US Dollars) and relies on a robust copyright regime as a basis for the licensing of images.

The topic of Orphan Works and copyright law is currently under discussion in the United States Congress and Stock Artists Alliance has joined with more than a dozen other photographer and visual artist organizations to submit testimony and negotiate changes to language proposed by the US Copyright Office. Following are several concerns for consideration in the drafting of any UK Orphan Works proposal

€ We acknowledge that there are circumstances where museums and archival groups hold in their archives copyrighted material which they would like to publish, but for which, even after an extensive and time-consuming search, they cannot locate the copyright holder to negotiate a license. These are cases where the publisher wants to find the copyright holder and commits significant time and energy to locate him or her. If they then proceed to infringe the copyright and publish the work without permission, they are concerned lest they be liable for large claims if the copyright holder comes forth. Some level of accommodation so that the users can use such copyrighted material for non-commercial purposes appropriate, as long as it maintains strong protection for the copyright holder's rights.

€ We believe that any solution to this "orphan works" situation must be carefully crafted and narrowly focussed so that it only applies to legitimate users of archival material, such as museums and archivists, and to historical works, rather than contemporary. In the United States, the Copyright Office proposed a solution which applied to any user of any work who wanted to publish any copyrighted work and couldn't find the copyright owner. Such an overly broad regulatory change has great potential for abuse. Not only museums and archivists would be covered, but also opportunists whose aim would be to skirt legitimate copyright licenses. If widespread unauthorized usages occurred as a result of an orphan works proposal, this could have far-reaching negative consequences for the stock photography industry.

€ Photographs licensed for use on the web are particularly susceptible to losing their identification with the copyright holder. Web images seldom have full attribution near or in the image. It is possible to embed within a digital file, full copyright owner and contact information and the history of license arrangements for the image. It is equally possible to completely remove such information from the file. This happens often in a business environment, either accidentally through use of certain software (such as Adobe Photoshop), or deliberately through the malice of a user set on making use of an image as an "orphan". A recent brief study by SAA showed that none of the images on the 30 most popular websites' front pages contained embedded metadata which is customarily included when images are licensed. We encourage efforts to develop standards for maintaining

embedded metadata in photographs across all web uses and we also support statutory proscriptions against removing identifying metadata.

€ Key to any “orphan works” solution will be a robust system for searching for and finding images. If the copyright holder is known then appropriate databases of visual artists must be maintained. In cases where the copyright holder is not known, search becomes more difficult. New technologies including offerings by Idée Inc. and Picscout make it possible to search large volumes of data looking for complete or partial visual matches to a given image. This is promising technology. However setting up a comprehensive database of visual works is a daunting task. Only when such a database is in place will searching for copyright holders of unattributed images indeed be feasible.

€ The commercial stock photography industry offers a wide range of protection for customers who license images. High-end usages such as national advertising can cost over £20,000 and advertisers often rely on exclusive usage provisions offered as part of the rights managed photo license. If such an image became an 'orphan image' and ultimately was used in a competing media outlet, it would undermined the trust advertisers have placed in copyright law and their reliance on their stock photography contracts and the industry.

€ Customary prices for commercial and editorial licenses of stock photography images cover a wide range of prices, depending on usage, the particular image and the branding of the stock photography agency. Therefore, if any image is used under an orphan works proposal and then the the infringement is discovered, compensation ought to be determined by what the photographer would charge for the specific usage and image, taking into account any affect on the marketability of the image.

€ The legal protections of copyright law ought to be maintained. The copyright statutes serve both as a deterrent against abuse and as a mechanism to compensate copyright holders for losses due to infringements. Whereas it is reasonable to consider 'some' limitation of liability for a legitimate orphan works user, it is essential that any proposal preserve the effective legal rights and remedies of the photographer in cases where there is disagreement.

Please feel free to contact us if we can be of further assistance in this study.

Respectfully submitted,

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Stock Artists Alliance
Protecting the Rights of Stock Photographers Worldwide.

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