[GB] Changes To Copyright Law relating to Orphan Works

IRIS 2013-8:1/20

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On 25 April 2013, Section (clause) 77 of the Enterprise and Regulatory Reform Act 2013 was given Royal Assent (came into effect) .It introduces a new section 116A to the Copyright, Designs and Patents Act 1988 which provides a framework from which further regulatory provisions will derive in order to regulate the status and exploitation of orphan works. An orphan work is where the author or creator of the copyright cannot be identified, found, or it remains uncertain whether the material remains within copyright.

The key provisions arising from Section 116A are as follows:

- a work will not be an orphan work unless a diligent search is made to try and identify and locate the real copyright owner.

- the definition of diligent search will be defined in regulations yet to be drafted.

- any license by one party to another to use or exploit an orphan work cannot be on an exclusive basis.

- The person or body given authority to grant a licence of an orphan work cannot also have the benefit of a licence.

A consultation period will follow and as a consequence of that consultation draft regulations will be prepared. The timetable for consultation, the extent of consultation and the ultimate implementation of regulations has yet to be determined.

Further it should be noted that the EU Directive on Orphan Works (2012/28/EU, see IRIS 2012-10/1), yet to be transposed into British law, will apply to institutions like public libraries, education establishments, museums and archives. Institutions may only use the orphan work to achieve their public interest mission and may only charge fees that reflect the cost of copying the material, or making it available to the public. In other words orphan works cannot be exploited commercially, whereas the provisions pursuant to the Enterprise and Regulatory Reform Act 2013 does allow for such exploitation.

Another feature arising from the Enterprise and Regulatory Reform Act 2013 is a new section 116B to the Copyright, Designs and Patents Act 1988 which allows

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collecting agencies, for instance the Performing Rights Society, who neither own the work or have the permission of the work's author to license a work. This scheme is known as the extended collective licensing. There will be an opt out whereby it will not be compulsory for this process to be used. The rationale behind the provision is to increase the opportunity for copyrighted work or even eventually orphan works to be licensed and to increase the commercial opportunities amongst the various collecting agencies.

Enterprise and Regulatory Reform Act 2013

http://www.legislation.gov.uk/ukpga/2013/24/enacted

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