

# Companion Guide for Copyright Due Diligence

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This document provides additional assistance and should be used in conjunction with the following documents:

- Orphan Works Licensing Scheme: Overview for Applicants;
- Orphan Works Diligent Search Guidance for Applicants: Still Visual Art;
- Orphan Works Diligent Search Guidance for Applicants: Literary Works; and,
- Any others<sup>1</sup> which are deemed necessary for the works being considered for digitisation.

The steps to be followed when undertaking due diligence are as follows:

1. Determine work copyright status (where possible)
2. If work is not in the public domain, not licenced under Creative Commons or another non-Copyright provision, you do not own the copyright yourself and do not know who to request copyright permission from, then start copyright due diligence
3. Depending on outcome of due diligence you may:
  - a. Identify the copyright holder and request permission to digitise from them
  - b. Fail to identify current copyright holder
4. If you fail to identify the current copyright holder you may (as of November 2016)
  - a. License the work as an orphan work under the UK Intellectual Property Office (IPO) Orphan Works Licensing Scheme, or
  - b. License the work as an orphan work under the EU Orphan Works Directive 2012/28/EU<sup>2</sup> provided the work meets certain criteria

## Copyright Status

Each works requires that its copyright status be determined. You may already know this or you can use Annex B, duration of copyright flowcharts, in the guidance documents referenced above. Please record the copyright status once found in a due diligence spreadsheet; this will help track which items require further due diligence work and which do not.

If an item is:

- In the public domain then digitise as such using tools found here: <https://creativecommons.org/publicdomain/>
- Licenced under Creative Commons or other copyleft provision then digitise and license as instructed by the original licence
- Owned by Conway Hall Ethical Society or the library, then digitise under an appropriate Creative Commons licence: <https://creativecommons.org/share-your-work/>

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<sup>1</sup> See <https://www.gov.uk/government/collections/orphan-works-guidance> for latest versions of documents.

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:299:0005:0012:EN:PDF>

- In copyright and you know the identity of the copyright holder, then contact the copyright holder and request permission to digitise the item (also ask if you may use reproductions to promote digitisation project).

If the item's copyright status does not match any of these conditions then undertake copyright due diligence.

## Copyright Due Diligence

Copyright due diligence is undertaken to:

1. Assist you in identifying a current copyright holder, or failing that,
2. Allow you to demonstrate that the work is an orphan work and therefore can either be licenced for use via the UK IPO or the EU Orphan Works Directive.

Licensing via one of the orphan works schemes is a risk mitigation enterprise. Many heritage institutions digitise without making use of these licensing schemes as the risk of being litigated against by a copyright holder for an orphan work is very small. A decision to not make use of the scheme is dependent on the level of risk presented by digitising without licensing versus the level of risk aversion of the institution.

The UK IPO due diligence checklists are used for this process. The notes given below are additional guidance for undertaking copyright due diligence developed throughout the *Architecture and Place* digitisation project and thus all checklists are not currently covered by this advice.

In addition to the guidance below, make use of completed checklists that were accepted for licensing (see *Architecture and Place* files) as examples.

## Standalone Visual Art

The checklist for standalone visual art is quite long but you will not need to complete a search for particular sections of it if they don't relate to your work's medium, i.e. you won't have to undertake searches for photography organisations if the item in question is a drawing.

Source	Details
UK Orphan Works Register	<a href="https://www.orphanworkslicensing.service.gov.uk/view-register">https://www.orphanworkslicensing.service.gov.uk/view-register</a>
Credits and other information appearing on the work	As described.
FOB database	<a href="http://norman.hrc.utexas.edu/watch/fob.cfm">http://norman.hrc.utexas.edu/watch/fob.cfm</a>
Companies House	<a href="https://beta.companieshouse.gov.uk">https://beta.companieshouse.gov.uk</a>
Metadata	For digitally born or digitised items – can be found in record for item (if it exists) or is embedded in digital object itself. For images, open in Irfanview, click on 'image' menu and then 'information.' At the bottom left of image properties there are two buttons, 'EXIF info' and 'IPTC info' – check the metadata included here for creator name or other identifiers. You can also use: <a href="http://regex.info/exif.cgi">http://regex.info/exif.cgi</a> to check embedded metadata.
The provenance of the work	For archives check finding aid/catalogue. For library items check catalogue notes.

General internet searching	This is likely to be done several times throughout the due diligence check as new information comes to light.
Water mark search or image recognition software	For digitally born or digitised items – You can search Google Images by image (go to <a href="https://images.google.com/">https://images.google.com/</a> and click on the camera to upload the digital image) to attempt image recognition. There are freely available watermark search applications but different watermarking programmes may code digital watermarks differently and so the search applications may not be useful if they do not recognise the specific code for a digital watermark.
Association of Photographers (AOP)	<a href="http://www.the-aop.org/">http://www.the-aop.org/</a> founded in 1968. Requires photographer name to search by.
British Association of Picture Libraries and Agencies (BAPLA)	BAPLA has an Orphan Works search request page ( <a href="http://www.bapla.org.uk/en/feedback/show_feedback_page.html">http://www.bapla.org.uk/en/feedback/show_feedback_page.html</a> ) but when used received very few responses and email address was added to some libraries and agencies email lists which was annoying. If you have a particular topic which is covered here: <a href="http://www.bapla.org.uk/en/pages/show_subject_search.html">http://www.bapla.org.uk/en/pages/show_subject_search.html</a> then you can click through, open up all the appropriate webpages for that topic and search using appropriate keywords.
British Institute of Professional Photographers (BIPP)	<a href="http://www.bipp.com/Default.aspx?tabid=87">http://www.bipp.com/Default.aspx?tabid=87</a> founded 1901. Search for contemporary photographers by name.
British Press Photographers Association (BPPA)	<a href="https://thebppa.com/galleries/">https://thebppa.com/galleries/</a> founded in 1984. Search for contemporary photographers by name.
British Society of Underwater Photographers (BSUP)	<a href="http://www.bsoup.org/Links/Members.php">http://www.bsoup.org/Links/Members.php</a> or <a href="http://www.bsoup.org/Contributors.php">http://www.bsoup.org/Contributors.php</a> founded in 1967. Search for contemporary underwater photographers by name.
Bureau of Freelance Photographers (BFP)	<a href="http://www.thebfp.com/">http://www.thebfp.com/</a> search using search box. May have to contact by email.
Chartered Institute of Journalists (CIOJ)	Website currently hacked – website is <a href="http://cioj.co.uk/">http://cioj.co.uk/</a>
Editorial Photographers UK (EPUK)	<a href="http://www.epuk.org/">http://www.epuk.org/</a> founded in 1999. Search contemporary photographers by name.
Master Photographers Association (MPA)	<a href="http://www.masterphotographersassociation.co.uk/">http://www.masterphotographersassociation.co.uk/</a> founded in 1952. Search contemporary photographers by name.
National Association of Press Agencies (NAPA)	<a href="http://www.napa.org.uk/directory.aspx">http://www.napa.org.uk/directory.aspx</a> founded in 1982. Search contemporary people by name.
National Union of Journalists (NUJ)	<a href="https://www.nuj.org.uk/home/">https://www.nuj.org.uk/home/</a> founded in 1907. Search for contemporary members by name.
Outdoor Writers and Photographers Guild (OWPG)	<a href="http://www.owpg.org.uk/member-profiles/">http://www.owpg.org.uk/member-profiles/</a> founded in 1980. Search for contemporary people by name.
Pro-Imaging	<a href="http://www.pro-imaging.org/">http://www.pro-imaging.org/</a> founded in 2004. Search for contemporary image makers by name.
Redeye Network	<a href="https://www.redeye.org.uk/portfolios">https://www.redeye.org.uk/portfolios</a> founded in 1998. Search for contemporary photographers by name.
Royal Academy of Art	<a href="https://www.royalacademy.org.uk/">https://www.royalacademy.org.uk/</a> - search by creator name and/or appropriate keywords
Royal Photographic Society (RPS)	<a href="http://www.rps.org/membership/member-search">http://www.rps.org/membership/member-search</a> founded in 1853. Search for photographer by name.

Royal Scottish Academy of Art	<a href="http://www.royalscottishacademy.org/">http://www.royalscottishacademy.org/</a> search by creator name and/or appropriate keywords.
Society of Wedding and Portrait Photographers	<a href="https://www.swpp.co.uk/find_photographer.htm">https://www.swpp.co.uk/find_photographer.htm</a> founded in 1988. Search for contemporary photographer by name.
Association of Illustrators (AOI)	<a href="http://www.theaoi.com/portfolios/index.php/portfolios/artists">http://www.theaoi.com/portfolios/index.php/portfolios/artists</a> founded in 1973. Search for contemporary artist by name.
Cartoonists' Club of Great Britain (CCGB)	<a href="http://www.crgb.org.uk/gallery/">http://www.crgb.org.uk/gallery/</a> founded in 1960. Search for contemporary cartoonists by name.
Comic Creators Guild (CCG)	Unable to search; website no longer available.
Guild of Railway Artists (GRA)	<a href="http://www.railart.co.uk/gallery.html">http://www.railart.co.uk/gallery.html</a> founded in the 1970s. Search for contemporary artist by name.
Institute of Medical Illustrators (IMI)	<a href="http://www.imi.org.uk/find-a-professional">http://www.imi.org.uk/find-a-professional</a> founded in 1968. Search for contemporary illustrator by keyword and geographic location.
Professional Cartoonists' Organisation (PCO)	<a href="http://procartoonists.org/portfolios/?order=alphabetical">http://procartoonists.org/portfolios/?order=alphabetical</a> founded in 2006. Search for contemporary cartoonist by name.
Royal British Society of Sculptors (RBSS)	<a href="http://rbs.org.uk/artists/list">http://rbs.org.uk/artists/list</a> founded in 1905. Search for sculptor by name.
Society for Architectural Illustration (SAI)	<a href="http://www.sai.org.uk/illustrators/">http://www.sai.org.uk/illustrators/</a> founded in 1975. Search for contemporary architectural illustrator by name.
Illustration portfolios	Direct links offered in UK IPO guidance (p. 13).
Commercial photography agencies and libraries	Direct links offered in UK IPO guidance (p. 14). However as many of these would be searched as a part of the BAPLA search you may choose to do the Photo Archive News, Stock Index Online and Press Photo History Project only instead. Note which searched in checklist.
CEPIC	CEPIC is a membership organisation for photo libraries and thus is not of much use when searching for a particular photographer. CEPIC does not offer, at this time, facilities to search across the collections of their members' libraries and so it is appropriate to note "Not applicable, have searched all relevant picture libraries elsewhere in checklist" on the checklist.
Library of Congress	<a href="https://www.loc.gov/">https://www.loc.gov/</a>
DACS	Use <a href="https://www.dacs.org.uk/licensing-works/artist-search">https://www.dacs.org.uk/licensing-works/artist-search</a> to search by name if known; use <a href="https://www.artimage.org.uk/">https://www.artimage.org.uk/</a> to search by keyword for match to image.
Artist Collecting Society	Search <a href="http://artistscollectingsociety.org/members/">http://artistscollectingsociety.org/members/</a> by artist name if known.
WATCH (Writers Artists and their Copyright Holders)	<a href="http://norman.hrc.utexas.edu/watch/">http://norman.hrc.utexas.edu/watch/</a>
BBC painting database	The BBC painting database (Your Paintings) no longer exists and has been replaced by ArtUK: <a href="http://artuk.org/">http://artuk.org/</a>
Library indexes and museum catalogues	Search the British Library <a href="http://explore.bl.uk/primo_library/libweb/action/search.do?vid=BLVU1">http://explore.bl.uk/primo_library/libweb/action/search.do?vid=BLVU1</a> and WorldCat <a href="http://www.worldcat.org/">http://www.worldcat.org/</a> catalogues as well as any identified museum catalogues appropriate to the creator or work.
CopyrightHub	<a href="http://www.copyrighthub.co.uk/get-permission">http://www.copyrighthub.co.uk/get-permission</a> provides guidance on where to look for permission depending on medium. For many graphic and textual works you may include, "all options offered there searched elsewhere in checklist," if true.
Image registers	<a href="https://www.plusregistry.org/cgi-bin/WebObjects/PlusDB">https://www.plusregistry.org/cgi-bin/WebObjects/PlusDB</a>
Web based search tools for	<a href="https://picscout.com/solutions/search/">https://picscout.com/solutions/search/</a> and click 'Launch Tool'.

images (PicScout and TinEye)	<a href="https://www.tineye.com/">https://www.tineye.com/</a> You may have to resize and make images smaller as large images (10MB or more) can cause PicScout to timeout.
British Journal of Photography	A British Journal of Photography editorial staff member <a href="http://www.bjp-online.com/contact-us/">http://www.bjp-online.com/contact-us/</a> may be contacted if you know a photographer's name. Make sure to include the photographer's name, time when active, where they were based and any other salient details your query and state that you are looking to contact the photographer (if contemporary) or their copyright holder. Ask whether there was any mention of photographer in the magazine or its earlier incarnations.
University art faculty alumni	A search may be undertaken if the Art School/University of creator is known.
Arts Council	<a href="http://www.artscouncil.org.uk/">http://www.artscouncil.org.uk/</a>
Digitised newspaper archives	<a href="http://www.britishnewspaperarchive.co.uk/">http://www.britishnewspaperarchive.co.uk/</a> Subscription service.
Genealogy websites	<a href="http://www.ancestry.co.uk/">http://www.ancestry.co.uk/</a> Subscription service. <a href="https://familysearch.org/">https://familysearch.org/</a> requires an account (which is free) and may offer different resources than those available on Ancestry.
Wills – searching for family members or connections of the author	<a href="https://probatesearch.service.gov.uk/#wills">https://probatesearch.service.gov.uk/#wills</a> Requires surname and date of death. Please note tabs for searching – deaths after 1996, deaths between 1858 and 1996, and soldiers wills. At time of writing it costs £10/will. There are some wills accessible via the National Archives (see link below)
Archives	ArchivesHub: <a href="http://archiveshub.ac.uk/">http://archiveshub.ac.uk/</a> , the National Archives: <a href="http://discovery.nationalarchives.gov.uk/">http://discovery.nationalarchives.gov.uk/</a> , and AIM25: <a href="http://www.aim25.com/">http://www.aim25.com/</a>
Treasury solicitors	The unclaimed estates list (CSV file) can be downloaded from <a href="https://www.gov.uk/government/statistical-data-sets/unclaimed-estates-list">https://www.gov.uk/government/statistical-data-sets/unclaimed-estates-list</a> and searched by creator or copyright holder name if known.
Other sources identified	Other sources may become apparent while undertaking due diligence and when searched can be noted here.

## Unpublished Still Visual Art

The sources required for this checklist are covered in the above source list for *Standalone Visual Art*.

## Unpublished Literary Works

This checklist will be used for unpublished letters, notes, manuscripts and so on and used extensively for archival material. The sources required for this checklist are also covered in the above source list for *Standalone Visual Art*.