

The problems with the Digital Economy Bill

Clause 42 – Licensing of Orphan Works

- **Moral rights** need to be implemented in full and made enforceable so that users of images are compelled to identify the creator as per European Library guidelines, helping to prevent creation of new orphan works as is the case in Germany.
- Although current law prohibits **removal of** identifying **metadata** it requires proof of intent to infringe. As human error, lack of care and software deficiencies routinely strip metadata proof is rarely possible, rendering the law unenforceable.
- A licensor of an **orphan work** will not know if minors depicted are wards of court or otherwise protected. Model releases and exclusivity agreements will be ignored, creating **liability** for both the photographer and the licensing authority. Private or personal images at present protected may be licensed as orphans.
- Third party licensing will **damage market value** by setting a fee that does not take account of skill, cost of creation, exclusivity or value of a photographer's reputation.
- The numerous provisions for **statutory instruments** are a carte blanche for future Ministers to change the rules significantly without proper consultation or Parliamentary debate.
- **Unclaimed royalties** will be treated as bona vacantia, diverting the creators' income to the state.
- European Library guidelines that a **non-responsive author** does not make an orphan work have been ignored.
- European Library guidelines for a **reasonable search** are reduced to a small subset with no proposal for effective search protocols.
- The removal of exclusivity, the removal of moral right to objection and the UK licensing of work owned by aliens breaks our **international obligations** under the Berne Convention and TRIPS.

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