



# The Proposed UK Orphan Works Scheme: Is It Compatible with EU Law?

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# OW Directive and ERRA licensing scheme

	<b>OW Directive</b>	<b>ERRA scheme</b>
<b>Beneficiaries</b>	<ul style="list-style-type: none"> <li>Publicly accessible cultural institutions</li> <li>Public-service broadcasting organizations</li> </ul>	Any
<b>Categories of works (no matter whether published or unpublished)</b>	<ul style="list-style-type: none"> <li>Literary, cinematographic and audiovisual works and phonogram in collections of publicly accessible cultural institutions.</li> <li>No photographs and stand-alone images</li> <li>First published or broadcast in the EU</li> </ul>	Any, including non-UK and non-EU
<b>Permitted uses</b>	<ul style="list-style-type: none"> <li>Only to achieve public interest mission</li> <li>Generate revenues only to recoup digitization &amp; making available costs</li> </ul>	Any
<b>Legal mechanism</b>	Exception to the rights of reproduction and making available	Licence
<b>Timeframe</b>	Implementation by 29 October 2014	Regulations on track for adoption in October 2014



# Is the ERRA scheme just “*complementary*”?

- Is the legal mechanism actually a licence? “*The Secretary of State may by regulations provide for the grant of licences ...*”
  - OW Directive
  - InfoSoc Directive
- OW Directive
  - Requires MSs to adopt *common* approach to determining permitted uses of OWs
  - MSs may undertake independent initiatives to address larger mass digitization issues (*eg* out-of-commerce works)
    - Not the case of UK scheme

# Is mutual recognition enough?

- OW Directive basically just allows digitizing works and placing them online
- Has effectiveness (to say the least) of EU action in the area of OWs been impaired? What if other MSs did like the UK?
  - EU pre-emption
- OW Regulations on track for adoption in October 2014
- UK is thinking of concluding agreements with non-EU English-speaking countries to create OW databases and ensure *mutual recognition* of OW status

Thanks for your attention!

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