

Much of what is written here is understandably difficult for those not familiar with copyright and the world that photographers inhabit. We have created this FAQ in order to make our proposal more approachable, and to answer criticism and objections. For ease of use we have divided this FAQ into sections:

- [About Stop43, Intellectual Property, Copyright, Orphan Works and Extended Collective Licensing](#)
- [About the National Cultural Archive proposal](#)
- [About the Cultural Heritage sector](#)
- [About the Commercial sector](#)
- [Objections to our proposal](#)

This FAQ is being frequently updated and added to as our proposal evolves.

Objection: Stop43's proposal that orphan works should be "on loan" to the public for cultural use is "incapable of implementation" because it is neither a licence nor an exception to copyright, and these are the only two means of permitting the use of a work known to law and there are no others

A specious objection. We fail to believe that it is beyond the wit of lawyers to come up with a form of words that achieves our intention. Such a process is known as "being creative", is what creators do every day, and is what lawyers themselves did when they created the [Statute of Anne](#) in 1709, in which copyright law was first devised. By definition, before 1709, copyright itself was not "known to law".

Ultimately, what we propose will probably take the form of a temporary limited license, revokable if and when the orphan work is readopted by its rights holder. This would require a change in copyright law, as we have called for on the front page of this website since May 2010, and is precisely what legislators are there for.

Objection: The NCA is essentially one person's idea, and that person's analysis is not valid because it is "impossible to implement"

The complaint that our proposal is invalid because it is only one person's idea is fallacious (many people have contributed to it) and that it is impossible to implement (also fallacious, see above) is a rather exotic combination of the [Circumstantial Ad Hominem](#) and [Appeal to Authority](#) Logical Fallacies.

Even if the NCA truly was only one person's idea it is worth remembering that only one person conceived of $E=mc^2$, that that person's idea was decried at the time as invalid, and that his concept was eventually demonstrated to be the unassailable truth.

Objection: The NCA is based on the idea that "we grant permission", but who are "we", who do "we" represent and how could anyone tell?

"We" are undiscoverable creators and rights holders of so-called orphan works. As creatives whose works are routinely orphaned, "we", representing ourselves, grant this permission. Few photographers that we have spoken with have objected to strictly limited cultural use of their work being made without their knowledge or permission, in return for the changes in copyright and contract law that we ask for.

So far, all objectors have withdrawn their objections once they have understood our proposal. When it was publicly introduced at the [2nd National Photography Symposium](#) in Derby on 8th May 2010 our proposal received almost unanimous support from the large audience. No hands were raised in objection.

The NCA would have to be enacted through a change the law, by statute.

Objection: Opposition to OW/ECL from photographers spoils the situation for other creators

Not at all. [Different digital media are used and consumed differently, and have different value chains](#). There is no "one size fits all" solution to the problems of digital copyright; **each medium must be treated on its own merits**.

The NCA idea is particularly relevant to the photographic sector because it is our work that is mostly orphaned and we are set to suffer the most from commercial licensing of orphan work, not least by the collapse in licensing fees for our work that we expect as a consequence of our markets being flooded by cheap ECL orphans. And this will happen: we have established that [there cannot be a "market rate" for orphan photographs](#).

If creatives in other media are comfortable with the commercial use of their orphan works and the collective licensing of their work, that is down to them. Photographers are not.

Objection: The NCA idea has almost no relevance to anyone except photographers

Not at all. We intend it to include *all* appropriate digital media.

Objection: The Stop43 "brand" associated itself with a series of blatantly irrational claims about fictitious dangers of Clause 43, but failed to address the actual dangers

Stop43's claims are not irrational and the [problems and dangers](#) we pointed out are not fictitious. The "actual dangers" that we failed to address have not been elaborated upon by this particular objector, but we guess that Stop43 endangered what has been described as "the best deal we will ever be offered by the EU" prior to its issue of an Orphan Works Directive.

But the best deal for whom? Not original creators, as far as we can tell. Furthermore, this objection assumes that the EU is coming after us with a big stick and that anything it directs will be very much worse than present circumstances. Yes, that old bogeyman. Halloween has been and gone, you know.

Why must it be assumed that the EU is impervious to reason, principle, [the Berne 3-step test](#) and its own Human Rights legislation, not to mention the [Droit 'd'auteur](#) laws of most EU members and [Germany's inalienable moral rights and fair contract law](#)?

Objection: The NCA idea will only benefit those who make a living (or at least earn some income) from their photos - but the vast majority of photos were not created for that purpose, and it does little or nothing to help solve the orphan works problem for those photos.

On the contrary. The NCA should assist all creatives to license their work, should they wish to do so, in a fair and equitable manner using best practice methods and licensing agreements. In this regard the NCA should be of great use to amateurs and the inexperienced, who presently have little idea of how to commercialise their work and are frequently taken advantage of and economically exploited.

It will also protect those who do not wish their photos to be used commercially from such unauthorised use by stating so in plain language, tracking any such use with picture search software, and applying punitive sanctions to those who breach the NCA's Terms of Service.

This objection appeared in the [JISC](#) (Joint Information Systems Committee) [October Newsletter](#).

Objection: What's on offer is so limited to be useless for libraries and archives wishing to copy old photos in their collections

On the contrary. We recommend digitisation to preserve IP and propose a system, the NCA, to make the digital copies available to the public, academics and scholars for their defined cultural use. Apart from archiving, this is a library's core function.

This objection appeared in the [JISC](#) (Joint Information Systems Committee) [October Newsletter](#).

Objection: The NCA idea seems to be aimed at born digital photos and does not address digitising print photos at all

In practice, so-called "orphan works" only become problematic when digitised, for it is [the ease of propagation and anonymisation of the digital copy](#) that creates the central problem for creatives. As the law stands, "orphan" prints cannot legally be digitised to preserve them.

Stop43 proposes that the law be changed as the [Gowers Review](#) recommended to legalise such "format-shifting" of the Intellectual Property embedded in these prints to ensure its preservation. A digital copy of a print is in essence no different from a digital original, and can suffer from the same stripping of metadata and consequent "orphaning" on its journey through the Internet.

This objection appeared in the [JISC](#) (Joint Information Systems Committee) [October Newsletter](#).

Objection: though it is an interesting and innovative idea, the NCA is one that only applies to a tiny minority of photos and does not help resolve the orphan works problem at all

One again, entirely wrong. We intend our proposal not only to apply to *all* photographs, but by extension to all appropriate media. However, being photographers and experts in our field we have left final decisions about the NCA's applicability to other media to experts in those media. We are naturally inclined to place more emphasis on the opinions of creators than others.

This objection appeared in the [JISC](#) (Joint Information Systems Committee) [October Newsletter](#).

Objections to our proposals

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