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## Artists must be paid for online photos of public art

Sweden's Supreme Court has ruled that Wikimedia cannot provide online access to photos of public outdoor art without compensating artists.

Wikimedia, the not-for-profit foundation behind Wikipedia and other online resources, said the ruling could go as far as to hold tourists who post photos of public artwork online in violation of copyright law.

Bildupphovsrätt (BUS), Sweden's visual copyright society, filed the copyright infringement lawsuit against Wikimedia after the foundation refused to take a licence for photos of public artwork in its online database that would have "cost just a few hundred euro a year".

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## Rightscorp plans browser blocks

Anti-piracy outfit Rightscorp is working on technology that would hijack a suspected infringer's web browser until allegations of infringement are settled.

Rightscorp is trying to convince ISPs to take up the system in a bid to increase settlements. They will be able to "greatly reduce their third-party liability" if they cooperate, according to a 30 March filing made to the US Securities and Exchange Commission as part of its yearly financial results.

US-based Rightscorp targets users of peer-to-peer file sharing technology who share infringing files.

It sends notices indicating they are liable for up to \$150,000 in damages, but offers the opportunity for an immediate settlement of \$20 per infringement. Repeat infringers are reported to ISPs, which are then obliged to shut down

their internet access under Section 512 of the Digital Millennium Copyright Act.

But Rightscorp has struggled to extract sizeable settlements, which it splits with copyright owners minus costs, according to its 2015 financial results.

Rightscorp earned \$832,215 in revenue during 2015, a \$98,514 decrease from 2015. The company's management attributed this drop to "changes in the file sharing software intended to defeat detection of copyrights being illegally distributed, less forwarding of the company's notices by ISPs and the shutting down of some file sharing network infrastructure".

To overcome ISPs' reluctance to cooperate, Rightscorp is pushing the launch of its Scalable Copyright system, which it describes as 'next generation' technology.

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## Oracle demands £9.3 billion in damages from Google

Oracle is seeking \$9.3 billion in damages from Google, recently unsealed court documents have revealed.

The software giant and Google are preparing for a trial in May following the Supreme Court's June 2015 dismissal of an appeal against a Court of Appeal for the Federal Circuit ruling that upheld the copyright in, and reinstated Google's infringement of, 37 Java application interfaces (APIs).

The District Court for the Northern District of California must still assess whether Google has a fair use defence to incorporating the APIs in Android, from which the internet company has earned \$31 billion in sales and \$22 billion in profit since the open source mobile operating system launched in 2008.

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# Lost and licensed

## Nick Phillips of Edwin Coe discusses the UK's licensing scheme for orphan works

### How has the UK's licensing scheme for orphan works fared since its inception?

The UK's licensing scheme came into being in November 2014. It has not been very well used so far and its first year received a total of 48 applications for licences relating to nearly 300 works. The majority of those works were still images.

It granted 27 applications in this first year and refused none, although a number were withdrawn pre-decision. It is run by the UK Intellectual Property Office (UKIPO), which keeps a list of all works that it is satisfied are orphan works.

If someone wishes to take a licence to a work and it's either on the list of orphan works or the applicant can satisfy the UKIPO that it should be, they can obtain a licence to use that work, either commercially or non-commercially in the UK without fear of copyright infringement proceedings.

A licensing fee to the UKIPO is payable. The UKIPO keeps that money for eight years and if it remains unclaimed, it is used to cover the set up and running costs of the orphan works scheme, with any surplus going to fund social, cultural and educational activities.

It will often be the case that a work someone wishes to license will not be on the list. In this scenario, it is necessary to demonstrate to the UKIPO that they have carried out diligent searches to try and find the author. If the UKIPO is satisfied that an applicant has done enough research, it will put the work on the list, and a licence of it can be obtained under the scheme.

Appeals from decisions of the scheme go to the Copyright Tribunal. This is chaired by the current judge of the Intellectual Property Enterprise Court, Judge Richard Hacon. No appeals have been brought to date.

### What happens if a copyright owner emerges once a licence has been granted?

The owner of the copyright of a work could be the author, a member of the writer's family or someone else who has acquired the copyright along the way. If the copyright owner, such as a family member, comes to light after the licence has been granted then that rights holder will be entitled to the licence fees paid and no further licences will be granted under the scheme.

The scheme provides a method for people, unsure about the copyright position of a work, to give themselves some certainty. The alternative to a licence through the scheme will often be to just use the work on the basis that it's unlikely that someone will turn up and claim to be the rights holder.

This may be a fair risk to run in some cases, but of course if someone then does show up, and they can show that they are the copyright owner, they would be able to bring an action for copyright infringement and in the usual way could get an injunction to prevent further publication, and damages.

### Do owners often come forward?

Whether or not a rights holder will come forward depends on a number of factors. Quite often, if orphan works are published with

a reasonable amount of press coverage attached to them then that may trigger the rights holder coming forward.

If, for example, the works are old letters of historical importance there may well be some national press coverage. Equally, if the works are valuable and there is money involved, then that may bring people forward.

### Perpetual copyright protection came to an end in 1988. What does this mean for works that lose unlimited protection?

The 1988 Copyright Act stopped the rule that unpublished works would get a perpetual copyright. Many of those rights will now expire at the end of 2039.

This impacts on many works unpublished as at August 1989 where the author has already died. In practice, it affects principally unpublished letters, diaries and manuscripts. In those cases the copyright may simply expire without the owner knowing and indeed may not be important unless there is a desire to exploit those works commercially.

A real life example of this is Beatrix Potter's *Kitty in Boots*. This was written in 1915 but has never been published. It will go on sale in Autumn this year and will remain in copyright until the end of 2039, despite the copyright in all of Beatrix Potter's published books already having expired.

The other works this rule really affects are letters, diaries and manuscripts and works, many of which will never have been published. These works will suddenly lose their copyright protection at the end of 2039. Of course, this is only likely to really matter insofar as there is a desire to exploit them.

### What about other works, such as drawings?

Drawings and paintings were not protected by the Engraving Acts and did not attract statutory copyright until as late as 1862. They were the last things to be protected under modern copyright law.

This was because until photography and chromolithography were perfected, there was no really satisfactory way in which paintings and, to a lesser extent, drawings could be copied commercially.

Even a worthwhile engraving was difficult to make without full access to the original, which, of course, the proprietor was usually in a position to control anyway. [IPPro](#)

