

# Annex F: Response Form

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 28 February 2014

Your Name:

**John Chambers**

Organisation (if applicable):

**Archives and Records Association (UK and Ireland)**

Address:

**Prioryfield House  
20 Canon Street  
Taunton TA1 1SW**

Please return completed forms to:

**Margaret Haig  
Copyright and Enforcement Directorate  
Intellectual Property Office  
First Floor, 4 Abbey Orchard Street, London, SW1P 2HT  
Fax: 020 7034 2826  
Email: [copyrightconsultation@ipo.gov.uk](mailto:copyrightconsultation@ipo.gov.uk)**

Please select the option below that best describes you as a respondent.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Public body
<input type="checkbox"/>	Rights holder
<input type="checkbox"/>	Individual
<input checked="" type="checkbox"/>	Other (please describe) <b>Professional Body</b>

## Questions:

1. Could collecting societies improve the licensing of orphan works in their areas of expertise? If so, how?

No comment

2. Should an orphan works licence be transferable? If so, in what circumstances would this be appropriate?

Yes, in limited circumstances, notably when a licensed body is being merged with, replaced by or taken over by another body with the same or similar purposes.

3. What are your views on allowing high volume users to take out an annual licence or similar arrangement to cover low value, non-commercial use?

The proposed solution to this problem presupposes that the licensee will wish to take out multiple licences. The question presents the issue the wrong way around, proposing a solution before identifying the underlying problem. As a result it fails to consider low volume users wishing to engage in low value non-commercial use. There should be provision permitting a complete waiver of fees in such cases. How a waiver could then be reconciled with an annual licence fee for multiple non-commercial uses is unclear, since it would appear to be unfair to the high volume user. A sliding scale would probably be the fairest answer. +

4. Should there be a limit on the period of time in which a rights holder can claim his/her remuneration? If yes, taking into account the examples of time limits set out at paragraph 5.9, what should that period be and why?

No comment

5. At what point should the Government be able to distribute unclaimed funds? What is the rationale for your answer?

The same date as is decided upon for Q4, to make the system understandable, logical and coherent.

6. What should any unclaimed funds be used for and why?

The Government's costs are already covered by an administration fee and an additional element in the licence fee to cover the licensing body's expenses. There is thus no justification for the Treasury to receive any of the unclaimed money. A combination of support for charitable uses in favour of creators and support for projects to preserve and make available the materials in the collections of cultural institutions would seem appropriate.

7. Should there be a right of appeal for users of orphan works in the event of unreasonable actions by the authorising body (IPO)? If so, should this cover a) licence fee tariffs (e.g. via the Copyright Tribunal) b) refusals to grant licences or c) both?

Yes, otherwise the IPO would be largely unchallenged since judicial review would be a much less accessible remedy. The Copyright Tribunal is the obvious channel, for any type of appeal about fees and licensing.

8. Approximately, how often would you anticipate using the orphan works scheme/how many applications a year would you envisage making?

Not applicable

9. What types of use do you envisage using orphan works for?

Not applicable

10. How much does the fact that licences are non-exclusive impact upon your potential use of the scheme?

Not applicable

11. How much does the fact that licences are limited to the UK impact upon your potential use of the scheme?

Not applicable

12. If you are a potential licensee would you use the scheme only when you are fairly sure you want to use a particular work or would you use it to clear whole collections of works in your archives? What do you consider would be an acceptable amount of time for processing an application to use an orphan work?

Not applicable

13. What proportion of your applications would be for unpublished works and what sort of works would these be?

Not applicable

14. Would your main use of orphan works be as part of works that you produce already, such as a book or a television programme or would you develop a new product or service based on a whole collection of orphan works or a collection that is likely to contain many orphans or partial orphans?

Not applicable

15. The impact assessment assumes that in 10% of orphan works applications, a diligent search would have already established that the work is orphan. Without a lawful means to use an orphan work, this would be wasted time and resource. Approximately, how often, at present, are you unable to locate or identify a rights holder following a diligent search?

Not applicable

16. We have assumed that the majority of diligent searches carried out by publicly accessible archives are likely to be undertaken under the auspices of the EU Directive. Is this the case for your organisation, if you are a publicly accessible archive?

Not applicable

17. If you are an organisation covered by the Directive, how often do you anticipate using a search conducted under the Directive to then support an application under the domestic scheme?

Not applicable

18. If you are an organisation covered by the Directive, able to display much of your material on your website under the provisions of the Directive on certain permitted uses of orphan works, how much will you use the domestic orphan works licensing scheme?

Not applicable

19. If you are a cultural organisation, how likely is it that you would be able to recover the full costs related to the digitisation and making available of an orphan work?

Not applicable

20. How would you do this (for example by charging for access to your website)?

Not applicable

21. Would you attempt to engage in a public-private partnership to digitise and make available such works? Any charges can only reflect the cost of search, digitisation and making available, with no profit margin. What evidence do you have of the level of interest of private enterprises in such partnerships?

Not applicable

22. Do you agree that we should not implement the optional provision?

Yes, certainly. There is no logical reason to exclude historical archival collections merely because they were deposited after an arbitrary date.

23. Are there any other sources that should be added to this list of essential sources?

No

24. Do you agree with the addition for non published works under Part 2 of the Schedule? Are there any other sources that could be added for unpublished works?

No comment

25. Is there a realistic prospect that civil sanctions will not provide appropriate remedies? In what circumstances?

No

26. Do you agree with this approach? Where should the burden of proof lie, and why?

Yes. The putative rights owner should be required to provide adequate proof of ownership, which for older works might require evidence of descent of title. The user body should be required to demonstrate that the use was limited to what was permitted by the Regulations. Both parties should provide evidence in support of their arguments in favour of a particular level of fees.

27. Is it necessary to provide for an appeals process on the level of fair compensation? Who should administer such an appeals process?

Yes. The Copyright Tribunal has the skills and experience.

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

The drafting of the new schedule 7 of the Act is unsatisfactory:

- paragraph 2(2)(a): delete the third word ('published') since it qualifies the whole of the clause and is made superfluous by the second reference to publication in the continuation of the sentence after (c). As drafted it is very far from clear how unpublished works are included since 'a work published in the form of ... other writing' cannot be unpublished.

- paragraph 2(5)(b) presents a major problem for archives since the bulk of archival collections are deposited by the owner of the artefacts who is relatively rarely the owner of copyright in them all. An owner of an original letter, for instance, does not own the copyright in that letter. As a result, very many archival collections will be excluded from the scope of the Regulations because they have not been, and could not have been, made publicly accessible with the consent of the rights holder. They have been made accessible instead with the consent of the donor or depositor.

CONTINUED  
NEXT PAGE

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply Yes  No

At the IPO we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes  No

paragraph 4(6) makes no sense at all. It changes, for no reason, the entire provision set out in the second part of paragraph 4(5) since there is but one case referred to there. It is presumably intended to deal with unpublished works. Instead of 'in the case referred to in sub-paragraph 5' it should say something like 'in the case of an unpublished work or phonogram'.

- paragraph 7 should provide for the updating of the orphan works database to show that the work is no longer orphan