

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:

Patricia McGuire

Organisation (if applicable):

Archives Centre, King's College, Cambridge

Address:

King's Parade
Cambridge
CB2 1ST

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

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) College of a University

Questions:

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

Yes, by allowing publication of orphan works, in a fair manner should the copyright holder(s) show up. And by running a register of copyright holders' contact details, when the creator is 'known' but not traceable.

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

I have no opinion. I just want to be legally able to make copies for people, of orphan works. What they do with them afterwards should be no concern of mine.

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?

It won't affect me.

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?

Yes there should be a time limit. I would say 6 months after a publication. In cases where publication is not an issue but permission is required anyway, such as photographs or works of art for personal use, it should be 6 months after the copy is made. When another copy/publication appears, the time limit starts over of course, for that use.

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

This is not something upon which I have an opinion.

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

Legal representation. Rights holders will inevitably argue their cases/costs and there should be a way to fund the defense.

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?

No opinion.

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

I personally would make at most 4 applications per year. The scholars who want copies of things I have would make applications about 10 times per year, usually for 1-10 items each time.

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

I sell copies to people who want to publish them in family histories, scholarly journal articles and books, magazine articles and television programmes. I also use images on the website to advertise the archives.

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

I prefer non-exclusive, it makes it easier for me to administer.

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

It is a sorry state of affairs, I have international researchers asking for copies of things that are out of copyright in their country (for example EM Forster's novels being republished in the US), where they want to publish, but I cannot make a copy because the item is in copyright in the UK. Under the licensing scheme I would still have to say no, which is perverse.

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?

I would use it for particular works I know I want to use, and would hope to have approval within 2 weeks. Researchers wanting to use the works would also know which items they wanted to use, some are journalists and need an answer immediately, whilst some are publishing books and could wait months.

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

Most of the applications I personally would make for use on our website, would be for unpublished photographs and letters. About half of the applications our readers make would be for already published (before my time) works, and half for unpublished, usually photographs.

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?

I don't envision clearing a whole collection.

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?

In about 50 cases per year we cannot identify a rights holder. What's 'diligent search' when the photograph has no provenance and you don't know what year it was taken?

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?

We don't carry out diligent searches at this time.

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?

Once a year.

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?

Once a year, for up to 10 items.

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?

We would not recover any costs.

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

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?

No.

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

No. Plenty of other archives services could benefit.

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

No opinion.

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 opinion.

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

No opinion.

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

No opinion.

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

Yes, it is necessary to provide for such a process. I suppose one requires an independent agency to administer it.

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.

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