

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:

Sam Edenborough

Organisation (if applicable):

Association of Authors' Agents

Address:

c/o ILA Ltd,
390-391 Strand
London
WC2R 0LT

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 checked="" 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 type="checkbox"/>	Other (please describe)

Questions:

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

Yes. In the event that a CMO running an ECL scheme discovers a rights holder whose work has been licensed as orphan, the CMO should have an obligation to inform the IPO. It is likely that collecting societies' efforts to find rights holders will be more successful than those made by licensees carrying out diligent searches as part of the Orphan Works licence application process.

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

No, under no circumstances.

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 AAA's members are strongly opposed to this option. The IPO/Comptroller is obliged to act in place of the missing rights holders and to scrutinise each application for an orphan work licence. The sort of carte-blanche licence for large organizations envisaged in this question is not at all customary in our sector, even for low value non commercial use. Such an approach risks undermining the value of the market for commercial use of equivalent non-orphan works because it creates a mechanism by which an organisation may license huge volumes of material at negligible cost, with minimal oversight or negotiation by the Authorising Body. As a result such licensees are highly likely to prefer to use orphan works rather than non-orphan works, for which they would be obliged to seek individual permissions in order to use them. ■

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. We propose that the limit should be set at the full term of copyright, i.e. the date of the author's death plus 70 years.

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

Providing that the Government retains liability to pay any reventant rights holder for the full duration of the term of copyright in the work, we would be content for the Government to disburse unclaimed funds as soon as possible, using an actuarial, risk-based approach that manages the ongoing liability to pay out funds. We have no doubt that the CMOs in our sector, in particular the CLA, will be able to provide the IPO with good practical advice on this point.

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

The AAA's members would like to see unclaimed funds being spent on projects that boost literacy, that educate the public about the importance of copyright, on charitable causes within the arts, and on cultural projects that will develop the UK's cultural diversity and strength.

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?

Not applicable: neither the AAA nor its members will be users of the scheme.

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

N/A

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

N/A

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

N/A

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?

N/A

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

N/A

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?

N/A

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?

N/A

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?

N/A

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?

N/A

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?

N/A

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?

N/A

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

N/A

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?

N/A

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

Yes, however we trust that the IPO will play its part in encouraging all cultural institutions/archives to ensure that whenever any copyright work is deposited with them, they properly record details of the rights holder in order to prevent creation of more orphan works.

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

The Copyright Hub, once it is operational.

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?

Yes we agree and refer the IPO to the advice of its sector-specific working groups on this point.

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?
As drafted this regulation is manifestly unfair as it entirely favours the organisation that has used the no-longer-orphan work. As drafted the regulation gives the user complete discretion, with no official oversight, to decide whether or not to accept a rights holder's assertion that a work is their property and thus to avoid, if they wish, paying any compensation for their use of the work in question. We accept that a relevant rights holder must provide the user with reasonable proof that they own the rights in question. However the regulation needs to be drafted in such a way that the user may not defraud the user by claiming unreasonably that the rights holder's proof of ownership is inadequate. More detail is needed therefore in order to clarify how this process will work and to ensure that it is fair.

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

It is essential that the IPO is available to hear appeals from relevant rights holders who are having difficulty in claiming fair compensation from organisations that have used their works under the

Directive. It is logical for the IPO to administer such an appeals process since it will be able to draw on its experience in running the parallel UK Orphan Works scheme in order to make the right judgement in any dispute.

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