

Copyright works: seeking the lost

The Booksellers Association of the UK & Ireland Ltd submission to the consultation on implementing a domestic orphan works licensing scheme and the EU Directive on certain permitted uses of orphan works.

Your Name: **Sydney Davies, Head of Trade & Industry**

Organisation (if applicable): **Booksellers Association of the UK & Ireland Ltd**

Address: **6 Bell Yard, London WC2A 2JR**

Date: **10 February 2014**

To:

Margaret Haig

Copyright and Enforcement Directorate

Intellectual Property Office

First Floor, 4 Abbey Orchard Street, London, SW1P 2HT

Email: copyrightconsultation@ipo.gov.uk

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

Business representative organisation/trade body

Small business (10 to 49 staff)

Questions:

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

No comment

If so, how?

Not applicable

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

No

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?

Annual licences should be allowed but with varying fees depending on volumes.

4. Should there be a limit on the period of time in which a rights holder can claim his/her remuneration?

Yes

If yes, taking into account the examples of time limits set out at paragraph 5.9, what should that period be and why?

For books we suggest 10 years from the issuing of any licence.

5. At what point should the Government be able to distribute unclaimed funds?

What is the rationale for your answer?

After 10 years

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

For books we suggest funds should be allocated to literacy charities.

7. Should there be a right of appeal for users of orphan works in the event of unreasonable actions by the authorising body (IPO)?

Yes

If so, should this cover a) licence fee tariffs (e.g. via the Copyright Tribunal) b) refusals to grant licences or c) both?

Both

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?

It is possible that members of the Booksellers Association may wish to publish some orphan works as printed or e-books.

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?

Not applicable

What do you consider would be an acceptable amount of time for processing an application to use an orphan work?

Four weeks

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?

Any combination would be possible in the digital environment.

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?

Not applicable

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

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

International Standard Text Code (ISTC): www.istc-international.org

24. Do you agree with the addition for non published works under Part 2 of the Schedule?

No comment

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 comment

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

No comment

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

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

No

Please acknowledge this reply

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