

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: Charles Stirling

Organisation (if applicable):

Address: Bristol Design



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 checked="" 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?

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? Shouldn't really be high volume Use of Orphan Works, this should more likely be the exception. No, should not be any discounted price for volume.

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 time limit to claim should exist, or if there is a time limit should be in the order of 50 years. It may well take a rights holder some time to find that material has been used.

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

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

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?

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

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

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

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/how many applications a year would you envisage making?

potential use of the scheme?

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

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?

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 What proportion of your applications would be for unpublished works and what sort of works would these be?

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?

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?

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?

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?

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?

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?

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

<p>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?</p>	
<p>22. Do you agree that we should not implement the optional provision?</p>	
<p>23. Are there any other sources that should be added to this list of essential sources?</p> <p>Yes, since many potential Orphan Works would now come from the internet it should be a requirement to do an exhaustive search on the internet using both image recognition and keyword searches using Google, Bing and a number of other search engines along with image agencies. Individual creators should be allowed to put forward their own sites to be searched.</p>	
<p>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, Individual creators should be allowed to put forward their own sites to be searched.</p>	
<p>25. Is there a realistic prospect that civil sanctions will not provide appropriate remedies? In what circumstances? Yes. Organizations trying to claim that a use is non-commercial, but Selling the image, such as in post cards or online or using in a TV broadcast which is sold. This type of use needs to be treated as commercial with higher fees.</p>	

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

Need to include bodies, societies groups which represent the creators in the panel
Which is helping to set the compensation. At the moment it is very one sided.

27. Is it necessary to provide for an appeals process on the level of fair compensation? Who should administer such an appeals process? If any appeal process is included it should also include the right of creative originators to appeal low compensation levels.

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 consultation is very one sided to only include potential users of orphaned works, it should be more neutral to include those who produce creative works.

The diligent search really does need to be strengthened in how it is done. There needs to be punitive damages against anybody who reports material as orphaned when it later can be shown that it should have been possible to find the creator.

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