

## 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: Daniel F Taylor

Organisation (if applicable): D Taylor Computing Solutions

Address: **Withheld on publication**

Please return completed forms  
to: Margaret Haig  
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Please select the option below that best describes you as a respondent.

	Business representative organisation/trade body
	Large business (over 250 staff)
	Medium business (50 to 250 staff)
	Small business (10 to 49 staff)
X	Micro business (up to 9 staff)
	Charity or social enterprise
	Central government
	Public body
X	Rights holder
	Individual
	Other (please describe)

Questions:

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

It is possible, but I would be very cautious of any such option. Collecting societies have a historically very poor record of identifying and compensating original artists, and are frequently beholden to large interests that adopt a blanket policy of "copyright everything; license nothing" which is directly at odds with the intent of this consultation.

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

An orphan works licence should be transferable (allowing, for example, the sale of a business which owns such a licence) but such transfer should not extend the licence in question.

(This is not a major issue for me, because the licences are non-exclusive, so transfers are comparatively harmless.)

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?

This is an excellent idea which will greatly enhance the effectiveness of the scheme. Such a licence should be cheap and broad, in order to allow the public benefit of transformative works - in an internet era, it is important to have clear and easily met terms that do not discourage casual home experimentation and non-commercial use.

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 some time limit, but given the low volume of funds expected to be covered by Such a limit is clearly required, but given the small quantities of money at stake in the vast majority of cases it need not be onerous, certainly not on the level of "adverse possession" 12 years.

I would propose a limit of 30 years, twice that allowed for dormant bank accounts (since orphaned works are far harder to track down than lost bank accounts), with liability remaining for seventy years, the current length of copyright beyond author's death. The record-keeping involved need not be onerous in an internet age, as this system will inevitably be electronically administered - as a database expert, I know that a well-designed database could easily handle this requirement without significant increase in project scope.

(The suggestion that "this is why copyright lasts for life plus seventy years" is not historically justified; an analysis of international legislative history in copyright suggests that this time period has much more to do with the wishes of major entertainment corporations who own copyright than it does individual authors - since major movies)

<p>5. At what point should the Government be able to distribute unclaimed funds? What is the rationale for your answer?</p> <p>The government should be able to distribute unclaimed funds at the same time as the limit on claims by a rights holder; there is no gain from complicating the scheme by creating two different time periods.</p>
<p>6. What should any unclaimed funds be used for and why?</p> <p>Charitable work related to orphan rights and rights holders - archiving, preservation and digitisation funds, plus charitable organisations working in the public interest on issues of copyright law, such as the Open Rights Group.</p> <p>Since the government does not currently plan to make any contribution to the running costs, there is no need to reimburse it; instead any such reimbursement should go to organisations that voluntarily</p>
<p>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?</p> <p>Yes, and both. It seems useful for the service to have an external counterbalance in decision making. (Otherwise, what prevents - for example - a malicious actor working for the service from arbitrarily refusing requests on spurious grounds?)</p>
<p>8. Approximately, how often would you anticipate using the orphan works scheme/how many applications a year would you envisage making?</p> <p>Probably only one or two a year - I'm a low-volume user.</p>
<p>9. What types of use do you envisage using orphan works for?</p> <p>My interest is primarily in out-of-print books - I'm an author and game designer and would be using the scheme to use orphan books (and possibly music) for world design.</p>
<p>10. How much does the fact that licences are non-exclusive impact upon your potential use of the scheme?</p> <p>It's extremely positive for me and encourages my use of the scheme, as it prevents larger (and richer) businesses from pre-emptively claiming rights in works of interest.</p> <p>(I can't imagine any gain to the service from exclusive licenses, given that they're not (by definition) being granted to the original artists.)</p>
<p>11. How much does the fact that licences are limited to the UK impact upon your potential use of the scheme?</p> <p>It would be much better if licenses could be more global, but obviously that is beyond the ability of the UK government to ensure - particularly given the intense corporate lobbying that tends to control copyright decisions made in the US and EU.</p>

<p>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? That would depend very heavily on the associated licensing fees; I might be interested in clearing collections relevant to a given subject, but only if this could be done cheaply and easily.</p> <p>I'd consider around a month to be an acceptable normal timescale. (Obviously, faster is always better.)</p>
<p>13. What proportion of your applications would be for unpublished works and what sort of works would these be?</p> <p>None. My applications would deal only with orphaned, published work.</p>
<p>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?</p> <p>I would be developing new services based on orphan works or small collections of orphan works.</p>
<p>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?</p> <p>Because I'm interested primarily in old and marginally-in-copyright work (typically published around 1890-1930), this occurs frequently - perhaps 30-40% of the time.</p>
<p>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?</p> <p>- (not a public archive)</p>
<p>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?</p>
<p>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?</p>

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?

Unlikely, but the volume of work I use is so low that full costs are small. The digitisation and making available would be a fringe public benefit of my primary work.

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?

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

I agree, strongly.

The optional provision gives no benefits, and imposes extra complication, costs and limits.

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

None that I can think of.

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?

- (I don't work with unpublished works, and am not an expert, so I express no opinion.)

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

No, there is no such prospect. This is a clear example of a civil, not criminal, issue.

(Indeed, even in cases of commercial infringement civil sanctions are normally more than sufficient. The UK currently has extremely strong sanctions available.)

<p>27. Do you agree with this approach? Where should the burden of proof lie, and why?</p> <p>Yes. Burden of proof needs to be carefully distributed here:</p> <p>It should lie with the complainant to establish their ownership of the work, and harm caused by infringement (as usual in civil cases) - in other words, to establish that there is a case to answer.</p> <p>The defendant should then have the burden of proving that a "diligent search" was performed for the copyright owner - keeping basic records of this should be an easy, and obvious, requirement for use of orphan works.</p> <p>In the case of the proposed volume licenses, such as granted to public archives, complainant should have a burden to prove individual damage or loss caused by use of the work - otherwise their claim is against the licencing body for fees due, not against the licensee. (This is, of course, the whole point of the system.)</p>
<p>26. Is it necessary to provide for an appeals process on the level of fair compensation? Who should administer such an appeals process?</p> <p>It is not <u>necessary</u>, but strongly <u>desirable</u>. (The advantage should lie with the rightsholder, as otherwise there is an incentive to use the process to bypass due diligence in the search for copyright owners/)</p>

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~~