



‘Copyright works: seeking the lost’: Consultation on implementing a domestic orphan works licensing scheme and the EU Directive on certain permitted uses of orphan works - Written response from Equity

Introductory Comments

1. Equity is the UK trade union representing 38,000 performers and creative professionals who work across a range of media and creative industries including theatre, visual broadcasts, sound recordings and film.
2. Licences granted by Equity are a very important source of income for Equity members who take a keen interest in copyright and in particular measures that will help reduce copyright infringement. Equity has supplied evidence to a number of previous IP inquiries and consultations conducted by BIS, the IPO and Ofcom, including the Hargreaves Review. As the representative organisation of creators and performers working in the UK we believe we provide an essential perspective on the importance of IP for artists and the impact of copyright infringement on employment in the creative industries.
3. Equity works closely with British Equity Collecting Society (BECS), the only UK-based collective management organisation for audiovisual performers, and is a member of the British Screen Advisory Council (BSAC), the British Copyright Council (BCC) and the Creative Coalition Campaign (CCC). The CCC is a partnership between trade unions representing workers in the creative industries and organisations representing publishing, sports, television, music and film businesses. The CCC was formed in August 2009 with the aim of articulating the industry’s shared view on the threat that file-sharing poses to jobs and to campaign for measures required to tackle online copyright infringement.
4. Equity recognises that concerns about clearing rights when the identity of a rights holders is uncertain or where a rights holder cannot be located are often perceived to be a barrier to the use of material. We therefore support the broad policy objective of implementing an orphan works scheme in the UK that will allow orphan works to be used while protecting the interests of absent copyright owners and that will help reduce copyright infringement. However, we have serious concerns about the practical application of the proposals that are the subject of this consultation.

Diligent Search provisions

5. Equity believes that the relationship between the draft Regulations and the role of collectively bargained agreements negotiated by trade unions for performers has not been adequately addressed and because of this there will be a failure in the practical application of the orphan works Regulations as currently drafted.
6. Regulation 4 (3) of The Copyright (Licensing of Orphan Works) Regulations 2014 as proposed sets out that ‘The authorising body may issue guidance on what comprises a diligent search for different kinds of orphan work or orphan right and the guidance shall have regard to the sources listed in the Schedule to the 2014 Regulations.’

7. The Schedule lists appropriate sources to be searched in a diligent search under the heading 'Audiovisual works and phonograms' and whilst explicit reference is made to 'producers' associations' and 'the databases of the relevant collecting societies', the databases held by trade unions are not referred to. This is despite the fact that Equity's work in following up any consents secured through collective bargaining goes on indefinitely and Equity is able to assist producers/broadcasters in resolving other clearance issues that may arise.
8. Equity strongly believes that the Regulations must make explicit reference to the databases held by trade unions representing rights holders in the audio and audiovisual industries as being relevant to the diligent search process. The Schedule's reference to 'databases of other relevant associations representing a specific category of rightholders' does not clearly enough direct those carrying out diligent searches to the trade unions. This is a very significant failure in view of the fact that Equity holds records in respect of over 38,000 performers and creative workers and is therefore a vital source of information for those undertaking diligent searches in order to ascertain the identity or location of a rights holder.
9. A specific reference to trade unions in the Regulation's provisions on diligent searches is also essential in view of the fact that, via the application of a collectively bargained agreement, Equity may be able to confirm that it is authorised to grant relevant consents for the purposes of granting any clarification, renewal of consents or new consents linked to the original contract on behalf of the performer who cannot be identified or located.
10. If the Regulations expressly recognise how a diligent search may lead to a trade union being a "mandated body" for clarifying, extending or granting new consents linked to a performers original contract when incorporating a collectively bargained agreement, we believe the practical application of the Regulations will be enhanced for the benefit of both users and rights holders.
11. We also believe that this will help to reduce the level to which the criminal liability provisions of s.198 CDA 1988 may need to be relied upon as background to alternative application of the Orphan Works Regulations.
12. We would urge the IPO to amend the diligent search provisions in the draft Regulations to address Equity's concerns and in addition to put out to consultation the Guidance that will be produced on diligent searches once the Regulations have been agreed.

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