

Oxford, 28 February 2014

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Consultation “Copyright works: seeking the lost”, published January 2014

The International Association of Scientific, Technical and Medical Publishers (“STM”) is the leading trade association for academic and professional publishers. It has over 120 members in 21 countries who each year collectively publish nearly 66% of all journal articles and tens of thousands of monographs and reference works. STM members include learned societies, university presses, private companies, new starts and established players.

STM would like to make a limited response to the consultation “Copyright works: seeking the lost” by commenting only on the proposed “Licensing of Orphan Works” regulations.

STM submits that any orphan works licence scheme for the United Kingdom must comply with European law, specifically the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. We have a real concern that the legal basis for these proposed Regulations as they stand do not comply with European law.

A further aspect that needs to be considered is that the subject of an orphan work licence could well be a copyright work the rights to which are held by a foreign rightsholder, including rightsholders from other Member States in the European Union. This is particularly so, since, firstly, that English is an international language and is the official language of, and is spoken in, many countries of the world and secondly, a large variety of languages are spoken in the UK by its migrant and immigrant communities. The framework for an orphan works licensing scheme devised for the UK, even if the rights are limited to the UK, may well not provide sufficient protection for rightsholders from outside the UK, even those in other Member States.

We would therefore encourage the Government to reconsider these Regulations in the light of the requirements of European law and the interests of the many foreign rightsholders who will be affected by these Regulations.

As an association in the publishing industry, STM has for a long time concerned itself with the situation where a diligent search for a rightsholder of a copyright work carried out in good faith has not found the rightsholder, but where the rightsholder does in fact later come forward with the result that the work was mistakenly considered as an orphan work. To this end, a substantial number of STM publishers have signed the “STM / ALPSP / AAP-PSP Safe Harbor Provisions for the Use of Orphan Works for Scientific, Technical and Medical Literature” (first issued in 2007, with more signatories added in 2013, at http://www.stm-assoc.org/2013_04_16_Safe_Harbor_Provisions_for_the_Use_of_Orphan_Works.pdf), under which the signatories agree to waive, if the requirements of the statement have been met by the user, any claim or entitlement to all fees or damages including statutory, punitive, exemplary or other special or general damages, other than a reasonable royalty.

We submit that Regulation 12 derogates from those rights that a later-identified rightsholder can legitimately expect, and that STM members who have signed up to the statement referred to above already give sufficient comfort to users of copyright works which are mistakenly classified as orphan.

We therefore submit that more attention has to be given to the framework for the licensing of orphan works in the United Kingdom, and STM will gladly assist in deliberations to do so.

Yours faithfully,

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Michael Mabe
Chief Executive Officer
STM, International Association of Scientific, Technical and Medical Publishers