

Musicians'
Union



Musicians' Union
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MU response to 'Copyright works: seeking the lost' - a consultation on implementing a domestic orphan works licensing scheme and the EU Directive on certain permitted uses of orphan works

1. The Musicians' Union (MU) welcomes the opportunity to respond to this consultation on behalf of our 30,000 members.
2. The MU supports the implementation of an orphan works scheme that will allow orphan works to be used while protecting the interests of absent copyright owners. It further recognises that, when older repertoire is required for secondary or further use, the identity and/or location of rights holders may sometimes be uncertain. However, we have serious concerns about the practical application of the proposals in respect of performances.
3. For many years the MU has fulfilled an important role when clearing the rights of its members for the secondary and further use of their recorded performances originally fixed according to the terms and conditions of our collective bargaining agreements. This service is valued by users and has proved to be an efficient way of ensuring that sound recordings can be the subject of reuse. An important part of this process often involves diligent search of MU archives and sources held by other industry bodies. However the proposed Schedule included in the draft 2014 regulations dealing with diligent search headed 'Audiovisual works and phonograms' makes no reference to the role played by trade unions and the information that they hold on their databases, it only makes reference to 'Producer' organisations.
4. 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 pertaining to a performer's original contract when linked to a collective bargaining agreement, the practical application of the regulations will be enhanced for the benefit of users and rights owners.
5. The MU supports BECS in its reference to existing structures being in place for the holding of monies on trust for meeting potential claims from performers when contact details for payment are not available. It would be wrong to apply the "bona vacantia" principle to these funds.
6. We are concerned that the draft regulations fail to recognise the practicalities of work within our sector. In particular we would like to clarify the position of our collective bargaining agreements (CBAs), under which the vast majority of

our members recorded performances are fixed. These agreements provide the producer of the recording with most of the necessary consents needed to reuse the original phonogram in a variety of ways.

7. The traditional role played by the MU in enabling and supporting exactly the type of licensing that the regulations are purported to facilitate, appears to have been ignored. This role should be recognised if the new regulations are to deliver the benefits that are intended.
8. Currently, as a union, our work in following up any consents secured through collective bargaining and searching for performers whether in membership of the union or not goes on indefinitely and removes this responsibility from the producer, which is vital