

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: Fred Saunderson

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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.

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|---|---|
| | Business representative organisation/trade body |
| | Large business (over 250 staff) |
| | Medium business (50 to 250 staff) |
| | Small business (10 to 49 staff) |
| | Micro business (up to 9 staff) |
| | Charity or social enterprise |
| | Central government |
| X | Public body |
| | 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?

While there is little doubt that collecting societies may offer added, and at times valuable, expertise, there is also little cause to doubt that the IPO as authorising body (and a public body) is fully capable of licensing orphan works.

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

Transferable licences would be advantageous, provided they were restricted to specifically like-for-like situations. For example, transfer of an orphan work licence between comparable cultural sector organisations for the same or notably similar use purpose would have clear advantages, with little to no negative impacts. In this respect, it would be appropriate and useful to enable licence transfers between deposit libraries, between public libraries, or between public museums.

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?

Were such a process deemed workable it would likely prove advantageous to all parties. High volume users engaged in low value, non-commercial use of orphan works should be stimulated to make use of dormant content as much as possible, to the benefit of society. It seems evident that a form of controlled annual licensing for such users would benefit their ability to fully exploit holdings and would simultaneously curtail unnecessary administrative costs and high and repetitive licence costs.

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?

There should be such a defined period of time. The examples provided in section 5.9 do not seem the most applicable, as the items of concern here are neither land property nor financial accounts. Limitations legislation may prove a more relevant source for framing this time period.

Irrespective of the specific period established, a limit will be of general benefit to society and will not constitute unfair disadvantage to potential rights holders who do not come forward. Setting limitations is a well-established practice. Any limitation period that is established must be consistent across the United Kingdom, and so if derived from Scottish and/or English and Welsh limitations legislation (as suggested here) it would be appropriate to select the longer of national legislative terms and apply said period wholly to the UK.

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

At the end of the period established under question 4 above. At the point at which it becomes clear that a rights holder is not going to claim funds, and their period for doing so has expired, the government should without unreasonable delay release the funds back into the economy. There is hno reason to delay distribution beyond the limitation date.

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

Funds should, wherever appropriate, be returned to the cultural heritage or public sector bodies that initially paid them. These organisations work for the UK's cultural and economic good and are operated at public expense. It therefore seems correct to return said funds to these bodies in order to enable them further to develop and maintain (access to) national and local collections. Where a fee has not been collected by a rights holder it should not be held back or appropriated as a penalty charge. Non-payment to a rights holder should be seen as indicative of that rights holder's reasonable and acceptable inability or unwillingness to collect fees, and so said money should be reinstated into the bodies which initially divulged them.

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?

There should be a right of appeal wherever possible. Therefore, the answer to this questions is 'yes', with preference for option 'c'.

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

It has been established (for example by the Intellectual Property Office/Department for Business, Innovation and Skill Impact Assessment BIS 1063) that NLS and other UK public organisations have significant orphan works holdings. The BIS assessment notes that around 25% of NLS' book collection is comprised of orphan works, and likewise 20-30% of our manuscript collection. It is therefore evident that NLS will have significant scope for initiating applications (as will similar organisations).

However, it is difficult to quantify the number of applications which will be necessary, and harder still to determine how many will in fact be viable, considering the time and financial investment required for carrying out a diligent check on each item.

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

A primary application reason would likely be for preservation of works that are rare or unique items of the national collection and cannot readily be replaced.

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| <p>10. How much does the fact that licences are non-exclusive impact upon your potential use of the scheme?</p> <p>Not at all. NLS exists to advance universal access to knowledge, and is therefore comfortable with non-exclusivity in this form of licensing arrangement.</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>This could be highly restrictive. The knowledge sector, as other sectors, increasingly operates across borders (whether at the EU or global level). Nation-state restriction to our ability to licence orphan works is undesirably restrictive. Content that we hold is increasingly digital and universally accessible, therefore it will prove increasingly challenging to effectively implement a UK-only licensing framework.</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?</p> <p>N/A</p> |
| <p>13. What proportion of your applications would be for unpublished works and what sort of works would these be?</p> <p>Unpublished works, particularly manuscripts, would likely make up a high proportion of applications.</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>For NLS this is less about product development and more about an ability to fulfill our statutory obligations to preserve the national collection and ensure access to the collection. Creation of new products cannot and should not be excluded as a potential, but would unlikely be the core of NLS' interests in the licencing 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>No answer.</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>No answer.</p> |

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| <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>No answer.</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> <p>No answer.</p> |
| <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?</p> <p>No answer.</p> |
| <p>20. How would you do this (for example by charging for access to your website)?</p> <p>No answer.</p> |
| <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>No answer.</p> |
| <p>22. Do you agree that we should not implement the optional provision?</p> <p>No answer.</p> |
| <p>23. Are there any other sources that should be added to this list of essential sources?</p> <p>None suggested.</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?</p> <p>No answer.</p> |
| <p>25. Is there a realistic prospect that civil sanctions will not provide appropriate remedies? In what circumstances?</p> <p>No.</p> |
| <p>26. Do you agree with this approach? Where should the burden of proof lie, and why?</p> <p>Yes. The burden of proof, as elsewhere, should lie with the claimant.</p> |
| <p>27. Is it necessary to provide for an appeals process on the level of fair compensation? Who should administer such an appeals process?</p> <p>No answer.</p> |

Do you have any other comments that might aid the consultation process as a

6 Copyright works: seeking the lost whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

No answer.

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~~