

# 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: Mark Walford

Organisation (if applicable): SAGE Publications Ltd  
1 Oliver's Yard  
55 City Road  
London EC1Y 1SP

Address:

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](mailto:copyrightconsultation@ipo.gov.uk)

Please select the option below that best describes you as a respondent.

	Business representative organisation/trade body
<b>X</b>	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
	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?**

We agree with the Publishers Association position:

Yes. Collecting societies should be able to offer advice and assistance to the authorising body, based on their own experience of the licensing process. Specifically, collecting societies should form part of the group to be consulted on an ad hoc basis, by the authorising body, in determining the rate at which orphan works are licensed. The PA understands that collecting societies are already working with The IPO on pricing and terms, as part of a separate working group. This is welcome and should continue once the authorising body is established and OW licences are granted.

Collecting societies should also form part of the diligent search process, as first port of call for those wishing to determine whether a work is orphan. Collecting societies are also best placed to advise on sector-specific good practice guidance for diligent searches.

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

We would support transferability. Publishers are frequently faced with situations where third party material they are seeking to use from another publication turns out to be an orphan work. Having gone through proper diligent search to establish an orphan work's status, it would reduce risk and administration if such an orphan work could be re-used by subsequent publishers via reference to the initial diligent search, rather than repeating the same search on the same work. While this could also work via a registry of orphan works, that would not cover cases where the initial publisher of the work published it prior to the setting up of the orphan works scheme – ie it wasn't an orphan work at initial publication but has become orphaned subsequently. These cases would be covered by the publisher that establishes the OW status being able to transfer the licence to another party wishing to make sue of the OW. This is a common occurrence.

**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?**

N/A

**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?**

We agree with the Publishers Association position:

The PA would support a limit of 15 years in which a rights holder can claim remuneration, as long as the situation aligned with that for dormant bank accounts whereby the Government retains liability for any claims in perpetuity.

However, we note that the statute of limitation is six years, and would seem a sensible and established legal principle to adopt here.

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

The Government should be able to distribute unclaimed funds after the period of time in which a rights holder can claim remuneration has expired i.e. after either 15 years or 6 years, in line with our response to Q4.

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

Unclaimed funds should be used for the benefit of the creative/cultural community generally, for example to help fund the Copyright Hub.

**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 for users of orphan works, which should cover both licence fee tariffs and refusal to grant licences. It would seem sensible for this to be heard by the Copyright Tribunal, in line with current practice for non orphan works.

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

Perhaps 100 times per year

<p><b>9. What types of use do you envisage using orphan works for?</b></p> <p>Inclusion in collections of works on particular themes. In some (many) cases an orphan work may simply be an illustration or diagram, to be included in a scholarly or educational work</p>
<p><b>10. How much does the fact that licences are non-exclusive impact upon your potential use of the scheme?</b></p> <p>Not at all</p>
<p><b>11. How much does the fact that licences are limited to the UK impact upon your potential use of the scheme?</b></p> <p>Limiting these licences to the UK would make them essentially useless for academic publisher which (almost invariably) operate in a worldwide market.</p>
<p><b>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?</b></p> <p>Longer than three months would be problematic</p>
<p><b>13. What proportion of your applications would be for unpublished works and what sort of works would these be?</b></p> <p>Hardly any at all</p>
<p><b>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?</b></p> <p>Works we already produce</p>
<p><b>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?</b></p> <p>Perhaps 100 times per year</p>

<p><b>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?</b></p> <p>N/A</p>
<p><b>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?</b></p> <p>N/A</p>
<p><b>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?</b></p> <p>N/A</p>
<p><b>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?</b></p> <p>N/A</p>
<p><b>20. How would you do this (for example by charging for access to your website)?</b></p> <p>N/A</p>
<p><b>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?</b></p> <p>N/A</p>
<p><b>22. Do you agree that we should not implement the optional provision?</b></p> <p>N/A</p>
<p><b>23. Are there any other sources that should be added to this list of essential sources?</b></p> <p>N/A</p>

<p><b>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?</b></p> <p>N/A</p>
<p><b>25. Is there a realistic prospect that civil sanctions will not provide appropriate remedies? In what circumstances?</b></p> <p>It seems highly likely that civil sanctions will be sufficient</p>
<p><b>26. Do you agree with this approach? Where should the burden of proof lie, and why?</b></p> <p>Yes, fair compensation should be decided between the relevant body and emerging rightsholder. Provided a diligent search has been carried out, the burden of proof should be with the relevant rights holder to demonstrate that they are the parent.</p> <p>It would be useful, if practicable, for there to be guidelines as to maximum levels of compensation</p>
<p><b>27. Is it necessary to provide for an appeals process on the level of fair compensation? Who should administer such an appeals process?</b></p> <p>Yes. We do not have a view on who should administer this but it would seem sensible for The Copyright Tribunal to take on this role.</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.

The burden of establishing the ownership, and thus usability of orphan works is a significant one for academic publishers, where using material from older sources is a key part of the development of knowledge. Publishers are generally happy to pay to use third party material, and the difficulty with using third party material which is orphan comes not from the financial risk, but from the uncertainty over what might happen if the rightsholder appears. We strongly support efforts to make orphan works more usable, and their use more predictable.

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**

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**