



**Association  
of illustrators**

## Extending the benefits of collective licensing

Derek Brazell

Projects Manager

Association of Illustrators (AOI)

AOI is a trade association formed to advance and protect illustrators' rights and encourage professional standards, and is dedicated to its members professional interests.

### ***About the AOI***

The Association of Illustrators (AOI) was established in 1973 to advance and protect illustrators' rights and is a non-profit making trade association dedicated to its members' professional interests and the promotion of contemporary illustration. As the only body to represent illustrators and campaign for their rights in the UK, the AOI has successfully increased the standing of illustration as a profession and improved the commercial and ethical conditions of employment for illustrators. AOI offers members professional and business advice.

Our members contribute considerably to the value of the UK's culture, economically and culturally, creating imagery for a large area of the creative industries across the world; book publishing, newspapers and magazines, merchandising, digital content for online and mobile platforms, fashion, design, cards and giftware, animation, storyboarding, character design and much more. They also sell artwork in print or original form through galleries or other outlets.

Today, the AOI has some 1500 self employed members and is the only trade organisation for illustrators in the United Kingdom. Members consist of freelance illustrators, illustration agents, over 30 art colleges and individual students and commissioning bodies. Member illustration agents act for about a further 500 leading illustrators.

### **Extending the benefits of collective licensing**

Question 1: Should a collecting society that is applying for an extension of an existing collective licensing scheme be required to have had the scheme in place for a minimum period? If so, what should that minimum period be? Please provide reasons for your answer(s).

**Yes, the scheme should have been in place for a minimum of 3 years to ensure it is an**

**effective scheme.**

Question 2: What kinds of efforts should a collecting society have to make to demonstrate it is significantly representative? For example, how easy would it be for a collecting society to produce evidence of total numbers of mandates and works?

**A collecting society should demonstrate it represents and has the support of a significant number of rightsholders in the classes of works it states it represents.**

Question 3: Do you agree that a 75 percent threshold for membership support is appropriate? If not, what would be a better way to demonstrate membership support and consent? Please provide reasons for your answer(s).

**A 75 percent threshold of membership support is appropriate. Furthermore, a 75 percent threshold should be demonstrated with regard to each separate professional occupational type/rightsholder that a collecting society represents (for example re: DACS, 75 percent threshold should be achieved amongst illustrators, fine artists and designers). If support 'within' any one of these particular rights holder professional types is less than 75% then the collecting society should not be given a mandate to manage ECL re: that particular type of rights holder.**

Question 4: Should a collecting society have to demonstrate past compliance with its code of practice? If so, what sort of information might satisfy this requirement? Please provide reasons for your answer(s).

**Yes, and declare any complaints against the collecting society from its members or non members who it represents.**

Question 5: Can a collecting society sometimes be justified in treating members and non-members differently, even if the circumstances are identical? Please provide reasons for your answer.

**No, as schemes will cover both members and non-members they should be treated the same.**

Question 6: Do you think that a signed declaration from a collecting society is sufficient evidence that it is adhering to its code? If not, what additional evidence should a collecting society have to produce to demonstrate that it is adhering to its code?? Please provide reasons for your answer(s).

**Yes, provided that there are mechanisms in place to address any situations where the society does not adhere to its code. As Q4, any complaints should be revealed.**

Question 7: Is there a need for any additional minimum standards to protect non-

member rights holders? Do you agree that the protections for non-member rights holders, as articulated in the ECL regulations, and elsewhere (including in this consultation document, where further protections Government would like to see in applications are specified), are sufficient to protect their interests? Is there anything else that could usefully be included in an ECL application to help assess that application's strength? Please provide reasons for your answer(s).

**No reply**

Question 8: Are the minimum periods for representations and subsequent Secretary of State decision sufficient and proportionate? If not, please explain why not, and make a case for a different period or periods.

**No reply**

Question 9: In what circumstances, other than as described above, do you think an application should be narrowed or made subject to certain conditions, without the application being rejected? Please provide reasons for your answer.

**Variations in application conditions may raise questions of fairness in the system.**

Question 10: Do you agree that, aside from judicial review, there is no need for a dedicated appeal route? If not, please say why you think there should be alternative appeal routes and give examples of what they might be.

**No reply**

Question 11: Do you agree that proportionality should be the key principle that determines the scale of the publicity campaign? If not, what other principles should be factored in? What, in your view, should a proportionate campaign look like? It could be that the scale of opt outs, following the period of publicity, reaches a level that raises questions about the collecting society's representativeness. What should happen in this instance? Please provide reasons for your answer(s).

**If the scale of opt outs does reach a level that questions the collecting society's representativeness, then the proposed ECL scheme should come under review and be stopped.**

Question 12: Do you agree that a five year authorisation is appropriate? If not, please explain why not. What information should be required of a collecting society when it re-applies for an authorisation? Should this be contingent on the performance of its previous ECL scheme? How light touch can the re-application process be? Please provide reasons for your answer(s).

**Yes, five year authorisation for an ECL scheme is appropriate.**

**Reapplication for authorisation should be contingent on the performance of the collecting society's previous ECL scheme to ensure the rightsholders are satisfied with the performance of the scheme. Rightsholders should be given a vote in synch with each renewal period for collecting society which represents them. No mandate would mean collecting society not authorized.**

Question 13: Under what conditions, if any, would modification to an authorisation be appropriate? Please provide reasons for your answer.

**No reply**

Question 14: Are the proposed time periods for representations and Secretary of State decision adequate? If not, please explain why not, and make a case for a different time period or periods.

**No reply**

Question 15: Aside from breaching its code of practice or the conditions of its authorisation, are there any other circumstances in which revocation of an authorisation might be justified? If so, please specify those circumstances and give your reasons why. What, if anything, should happen if a collecting society had breached its code but remedied it before the Secretary of State had imposed a statutory code? Please provide reasons for your answer.

**A circumstance in which revocation of an authorisation might be justified would be if the society's rightsholders challenged the ECL scheme, or if the society's rightsholder membership declines past the point the society is representative.**

Question 16: Are the proposed time periods for representations and Secretary of State's decision reasonable? Are the post revocation steps sufficient and proportionate? Please provide reasons for your answer(s).

**No reply**

Question 17: Do you agree that a collecting society should be allowed to cancel its authorisation? What, if any, penalties should be associated with a cancellation? Please provide reasons for your answer(s).

**Yes, if the scheme is successfully challenged or opt outs are high enough to challenge representativeness.**

Question 18: Is this a reasonable and proportionate requirement? Please provide

reasons for your answer.

**No reply**

Question 19: Do you consider the opt out requirements listed above to be adequate? If not, please make a case for any additional obligations on collecting societies with respect to opt out.

**These opt out requirements are adequate.**

Question 20: Do you agree that the 14 day time limit for both acknowledgement of opt out, and notification to licensees of that opt out, is reasonable? If not, please propose another period and say why you have done so. Do you agree that a low likelihood of fraud makes verification of identification unnecessary? If not, please say why not.

**Yes, 14 days is reasonable.**

Question 21: Do you agree that the proposed 14 day time limit is a reasonable amount of time for the collecting society to be required to list a work that has been opted out? Is it a reasonable requirement to have separate lists for works which are pending opt out, and works which have been opted out? Please provide reasons for your answer(s).

**Yes, rightsholders would expect this to happen within a short time frame.**

Question 22: Are the obligations in 3.66-3.68 on a collecting society reasonable and proportionate? Please provide reasons for your answer.

**No reply**

Question 23: Is a revocation or cancellation date in line with the end of the licence period a proportionate and reasonable provision? What, if any problems, do you think might result if licence periods started and ended at different points of the year? Please give reasons for your answer(s), and propose an alternative time period or periods as necessary.

**No reply**

Question 24: Is cessation of use of an opted out work after a maximum of six months a proportionate and reasonable provision? If not, please explain why not, and propose an alternative time period or periods.

**Rightsholders would believe that once opted out, a work should cease being used as quickly as possible. We believe a 3 months maximum would be more reasonable.**

Question 25: Do you agree with the proposal that money collected for non-members cannot be used to benefit members alone? If not, please say why.

**Yes, as both are involved in the ECL.**

Question 26: Do you agree with the principle of individual remuneration in ECL schemes? Please provide reasons for your answer.

**As ECL is a collective form of scheme, we do not see individual remuneration working in that context.**

Question 27: Are there any other ways in which a collecting society might publicise the works for which it is holding monies? Is there any danger that there will be fraudulent claims for undistributed monies? If so, how might this problem be addressed? Please provide reasons for your answer(s).

**No reply**

Question 28: To what extent is incomplete or inaccurate data from licensees an issue when it comes to the distribution of monies? If a non-member rights holder fails to claim monies due, what uses of those funds should the Crown promote? Please provide reasons for your answer.

**Regarding unclaimed monies due, these should not be given to the Crown, but the funds should be transferred to relevant trade associations and bodies and initiatives benefitting creators subject to the agreement of the relevant society's membership. It is their labours which have created the works benefiting the scheme in the first place.**

Question 29: What is the appropriate period of time that should be allowed before a collecting society must transfer undistributed monies to the Crown? When this happens, should there be a contingent liability, and if so for how long should it run? Please provide reasons for your answer(s).

**Unclaimed funds should be kept for at least 6 years to allow time for claiming before being distributed elsewhere.**

Question 30: Do you agree that these rules are fair to both absent rights holders and potential users of orphan works? Please provide reasons for your answer.

**If an ECL does not include a diligent search in advance of the use, how are orphan works being prevented from being included in the licence? A diligent search must be applied to any work to register it as an orphan work.**

Association of Illustrators, Somerset House, Strand, London, WC2R 1LA