Annex D Consultation response

Dear Sir or madam,

please find herewith the consultation form. I wish to make the following additional points:-

First, the whole idea of selling or redistributing the intellectual property of others without their express consent is wrong, on both a legal and moral level.

Given that the government has already decided to take this course of action, the following should be done to reduce the damage:-

Rights holders must be given the option to opt out before a scheme even begins. Under the proposed scheme an ECL society will be able to start selling other people property on day one and to continue to do so for up to 6 months.

Any such scheme must start with at least 5 years notice and a publicity campaign to notify and allow rights holders to opt out of the scheme before it starts.

Registered copyrighted works such as those registered with the US Copyright Office must be automatically excluded. Those registering the works have by doing so expressed their desire the retain full control of their own intellectual property.

Opting out should be easy. With the ability of intellectual property creates to opt all of their work out in once go without the need to submit individual works or make multiple opt outs to multiple schemes. Creators should have the ability to opt out by making a simple opt out statement displayed with their intellectual property.

I wish to make it clear now, before these schemes start, that I do not wish to participate in any of them under any circumstances.

Yours sincerely

Jonathan C K Webb

Annex D – Consultation response form

Responding to the consultation

On this form, please provide your responses to the questions outlined in this document. You do not have to complete the whole form – please answer the questions that are most relevant to you.

Please note: This consultation forms part of a publication exercise. As such, your response may be subject to publication or disclosure in accordance with access to information regimes (these are primarily the Freedom of Information Act (FOIA), the Data Protection Act (DPA) and the Environment Information Regulations (2004). We plan to post responses on the review website when they are received, and they may be subject to online discussion.

If you do not want part or whole of your response or name to be made public please state this clearly in the response, explaining why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system cannot be regarded as a formal request for confidentiality.

The closing date for responses is Tuesday 28 January 2014 at midday.

About You and Your Organisation

Your name	[Desirable]
Job Title	[Desirable]
Organisation Name	[Desirable]
Organisation's main products/services	[Desirable]

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).

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 preparing to resell the interlectual property of all the worlds creators should have the prior support of all of those creators. Thus a collecting society wishing to resell photographs must have the support of every photographer world wide.

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).

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, a collecting society must also demonstrate compliance with the Bern Convention and the ant article 27 of the universal declaration of human rights.

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.

Yes. a collecting society must not resell the interlectual property of non memebers.

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).

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).

Membership of a collecting society should be volutary with no resale of the rights holders ip without permission. If this is not to be the case, much greater thought must be given to allowing rights holders to opt out including the ability to opt out before an ECL scheme is started. Under this scheme can start selling rights holders interlectual property, without thier permiisson and against their will, for up to 6 months after the rights holder has opeted out.

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.

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.

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.

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).

Publicity must be sufficient to reach every rights hollder.
If there are a large number of opt outs then the scheme should be scrapped as clearly it is damaging to the interestes of ip creators and rights holders.

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 reapplies 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).

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

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.

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.

An authorisation should be revoked if there are a large number of opt outs or if a large number of rights holders request it be revoked. Any society breaching its code should have its licnece immediatly revoked.

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).

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).

Question 18: Is this a reasonable and proportionate requirement? Please provide reasons for your answer.

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.

No, the opt out provisions are woefully inadequet and completly contrary to the Berne Convention.
Provision must be made to opt out before a scheme comences. Registered works should be automatically opeted out, such as thse works registered with the US Copyright Office. Opt out proceedures must not be burdensom, there must be no requirment for submitting individual works to each ECL scheme. See attached letter

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.

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).

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

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.

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.

No, use must be ceased immediatly and "kill notices" issued to the licncee.

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.

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

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).

Any organisation handing out free money will be subject to massive amounts of fraud. One only needs to look at tax credits to see that. If an ECL scheme is to pay money to someone who claims to own a particular piece of interlectual property, they must be required to prove that they own it, otherwise this will just become a wealth redistribution scheme, taking money from people who create and giveing it to those who do not.

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.

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).

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.

No, these rules provide no protection for "absent" rights holders. The whole scheme is contrary to the Bern Convention and the Universla declaration of Human Rights. The very idea that one group of people can sell the property of another is abominable.

Please note: The information you supply will be held in accordance with the Data Protection Act 1988 and the Freedom of Information Act 2000. Information will only be used for its intended purpose. It will not be published, sold or used for sales purposes.