



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).

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 Monday 7 October 2013 at 12 midday.

About You and Your Organisation

Your name	Sarah Faulder
Job Title	Chief Executive
Organisation Name	Publishers Licensing Society
Organisation's main products/services	Rights management services to publishers

Question 1: Does the proposed definition correctly capture the type of body on which we consulted? Is it too narrow or too broad? What, if any impact, will this definition have on the various entities that are currently operating in the collective licensing market? Please give reasons for your answer?

It would be helpful to clarify what is meant by “members” in Regulation 2’s definition of “licensing body”. Is a “member” a corporate shareholder or a rightsholder? We suggest it should be the latter and that the definition should mirror that in the CRM directive, ie “a rightholder or an entity representing rightsholders”.

The Regulations should follow the compromise text of the CRM directive and include for-profit organisations carrying out the same functions within the definition of “licensing body”.

Similarly, the definition of rights holders in clause 1 of the special criteria set out in the Schedule should include entities representing rightsholders.

The Regulations’ definition of “licensing body” should also follow the Gallo amendment of the CRM directive which “excludes individual companies who in the normal course of business are engaged in the production of content or licensing of rights on a commercial basis”. The purpose of this amendment is to clarify that the CRM directive should not apply to publishers of books, for example.

Question 2: Are there any other circumstances in which you think that the Secretary of State may need to exercise the power to appoint an Ombudsman and/or Code Reviewer? Please describe what these are and give reasons for your answer.

We are not aware of any circumstances in which these powers would need to be exercised.

Question 3: The Secretary of State must leave at least 28 days for the relevant licensing body to adopt a code of practice once it has been directed to do so. Is this a sufficient period of time for the licensing body to adopt such a code? If so, please say why. If not, please explain why not and make a case for a different period of time.

Any suitable code embodying the special criteria needs drafting, consultation and Board approval if it is to have buy-in of both the licensing body and users / members. Furthermore, staff will need to be trained in how to apply the code. If there is not adequate time to achieve these ends, any code will be of little value. We suggest that a minimum of three months is needed for the successful adoption of a code that will be effective.

Question 4: Do the steps described between the Direction in Regulation 3 to the Imposition of a Code of practice in Regulation 5 make it sufficiently clear what process must be followed? If not, please say where you think the gaps are and how they might be filled.

Yes

Question 5: What should be the principal features that determine whether a Code Reviewer and/or an Ombudsman is “suitably qualified” for their statutory roles?

Each should be independent of licensing bodies and of the rights holders and licensees in the relevant sectors.

Each should have experience that is relevant and appropriate to the functions they will be required to perform.

Question 6: Do you consider the proposals for applying a graduated scale to financial penalties will provide a proportionate response to reflect the respective severity of the breach? Do you consider the proposed difference in the quantum of the penalties is appropriate? If not, please explain your reasons.

Liability of directors should be consistent with that provided for in the Companies Acts. Liability of ‘managers and similar officers’ should be consistent with and limited to the liability that of any employee and citizen under the general law. It is not clear what is meant by “manager and similar officers”, this is not a defined term and does not appear in general law.

The draft regulations put ‘managers and similar officers’ working for licensing bodies in a different, more disadvantaged position to those working in any other corporate entities. This is likely to deter good quality people from working for licensing bodies, making it harder for licensing bodies to achieve the standards of service government is seeking to ensure. Under the existing legal framework, individuals working for corporate entities who do not have “Director” status are subject to civil and criminal law and that should be sufficient to address any concerns.

The proposals penalise ‘managers and similar officers’ in a way that is wholly disproportionate and unjustified. We have not seen any evidence from the Government either to support such level of penalties or to justify discrimination on this level against personnel working in licensing bodies.

Is the Government proposing to introduce balancing penalties for those working within licensee organisations who fail to comply with their obligations to licensing bodies under the special criteria?

Question 7: Do you think that the General Regulatory Chamber is the correct route of appeal? If not could you please say why and suggest an alternative appeal route.

No comment.

Question 8: (Asked on behalf of the Tribunal Procedure Committee):
If you believe that the standard rules of procedure need to be supplemented to deal with appeals arising from these regulations, please explain why this is the case.

No comment.

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.