

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:

Organisation (if applicable):

Address:

B.Totterdell



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.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Public body
<input checked="" type="checkbox"/>	Rights holder
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Other (please describe)

Questions:

1. Could collecting societies improve the licensing of orphan works in their areas of expertise? If so, how?

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

No. How will what is due to a rights holder be traced through a web of secondary uses? Control is reduced and less respected the further away from the original licence issuer.

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?

This should not be allowed, it allows a further diminishing of the value of a rights holder's work. Who is judging a low value, non commercial use. Many public companies with big budgets will slot their work into this category.

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?

No limit - because a rights holder may not realise that their work has been used until a book is in its second/third edition, a newspaper usage is found through a nonrelated search years later etc.

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

There should always be a fund for rights holders to receive remuneration for their work being used without permission.

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

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?

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

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

10. How much does the fact that licences are non-exclusive impact upon your potential use of the scheme?

And how much will a rights holder and their client be compensated for use of material already created under an exclusive license? This not only carries a money implication for the rights holder but also a loss of trust in them by the client. It damages reputations and businesses. There has to be a one-use-only restriction placed on the orphan work user to limit the amount of damage that will be done.

11. How much does the fact that licences are limited to the UK impact upon your potential use of the scheme?

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?

13. What proportion of your applications would be for unpublished works and what sort of works would these be?

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?

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?

A diligent search is undermined by this question, it should be made, proof shown for all images if a company wishes to use an image/work. The economic assessment made is completely one sided and doesn't take into account the cost both in time and money for rights holders in attempting to 'police' their work. If an image/work slips through the net they then have 'The burden of proof of ownership of a work will be on the emerging rights holder.' Will the rights holders costs as a result of this scheme be estimated and included in the fees issued to them?

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?

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?

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?

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?

20. How would you do this (for example by charging for access to your website)?

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?

22. Do you agree that we should not implement the optional provision?

23. Are there any other sources that should be added to this list of essential sources?

Metadata carried by the image/work. Search engines, copyright hub, photographic associations and lists of photographers/libraries.

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?

Metadata carried by the image/work. Search engines, copyright hub, photographic associations and lists of photographers/libraries.

25. Is there a realistic prospect that civil sanctions will not provide appropriate remedies? In what circumstances?

Where an image of an under eighteen year old that should not be published has been declared orphan and used, when certain restrictions were made on the taking a particular photograph or when an image has been placed against text that goes against the principles of the person in the image and vice versa.

<p>26. Do you agree with this approach? Where should the burden of proof lie, and why?</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>Who is judging a fair level of compensation? How will, for example, a committee be able to judge the 'cost' of producing an image in specialised areas? This scheme ensures that many images are going to be seriously undervalued to the detriment of rights holders and their businesses and in the favour of the publishers.</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.

In the opening paragraph of this IPO consultation is the sentence: 'This situation benefits neither the owners of rights, who may miss opportunities for licensing, nor potential users of those works. Ultimately, the UK economy and UK culture lose out.'

Those opportunities for the rights holders are dubious. Their businesses are threatened by these proposals both financially as it opens the doors further to those that want to enhance their own businesses by using other's work for free or little remuneration. It also removes a rights holder's control on how the working component of their business can be used with the result that trust in them by their clients is diminished. Rights Holders businesses will be damaged through orphan work legislation. ~~This~~ document places no emphasis on this.

It is imperative to educate those applying to use an 'orphan' on where to search, that thorough searches HAVE to be made and that metadata exists and should not be removed. Many images/work are not 'lost'.

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