

From: [Andrew Yeates](#)
To: [CopyrightConsultation](#)
Subject: Consultation on implementing a domestic orphan works licensing scheme and the EU Directive on certain permitted uses of orphan works.
Date: 27 February 2014 11:06:59
Attachments: [consult-2014-lost-response.pdf](#)

Response from British Equity Collecting Society Limited
Consultation on implementing a domestic orphan works licensing scheme and the EU Directive on certain permitted uses of orphan works.

Please see attached response and BECS comments to questions 1,2 and 5.

Question 1

BECS does not currently undertake licensing activities, but would refer to correspondence with the IPO about the importance of reconciling the Regulations with :-

- (a) the fact that s 190 Copyright, Designs and Patents Act is to remain unchanged by the proposed Regulations and
- (b) the fact that the existing legislation has provided an effective backdrop to the way in which users seeking clearances for the use of performances frequently refer to the unions responsible for the terms of collective bargaining agreements incorporated within the terms of contracts under which performances are first fixed as a means of ensuring that appropriate consents for specified uses can be confirmed on behalf of performers who might otherwise be held to be "orphan" in terms of the wording used in draft Regulations 3 and 4.

Question 2

The number of different bodies involved in the collating and clearing of content and subsequent inclusion and relay of such content in services accessible by the public, whether on a commercial or a non-commercial basis appears to have been ignored when addressing the difficult issue of transferability.

Question 5

BECS would refer to existing structures in place for the holding on monies on trust for meeting potential claims from performers, when monies are being held for performers for agreed use(s) of their work, but contact details for payment are not available. Such Trusts may be recognised by performer representatives as having this and other charitable purposes.

BECS believes that it is wrong to apply the "bona vacantia" principle to these funds. Bona vacantia applies to existing property which is truly without ownership and therefore necessarily has to pass to the Crown.

In the circumstances of the Regulations, it is the Crown which is "creating" the status of the "property" by granting a statutory license to use copyright works and performances. Works and performances in which rights do exist up to the point of falling into the public domain.

Yours faithfully

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