

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:

John Walmsley

Organisation (if applicable):

Education Photos

Address:

Withheld on publication

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?

If the first licensee has used the image, then no it could not be transferable. A second person wanting to use it must apply, themselves, for an additional license. So, overall, no it should not be transferable.

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?

Who do you mean by "High volume users". Can't be big publishers or any commercial outfits. So, who might they be, please?

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?

There should be no limit. Why should there be. If someone is owed money, they should be able to claim it. Time is irrelevant to this basic fairness.

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

50 years? It's only fair that money owed to an IP holder should be held for them and paid to them. It would be unjust to have a cut off point after which they would lose their own money.

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?

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?

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?

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?

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

26. Do you agree with this approach? Where should the burden of proof lie, and why?

27. Is it necessary to provide for an appeals process on the level of fair compensation? Who should administer such an appeals process?

You bet it is necessary. As an IP holder who has suffered a great number of cases of infringements, I can confirm that the infringer's view of adequate/fair compensation is wholly different to the artist who had to pay to produce those works. Working at the infringer's level of fees would bankrupt any artist quickly.

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.

General comments overleaf

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

For the past 45 years I have been a freelance photographer working in education. The fees offered by textbook publishers today are far less than they were 30 years ago and they demand far greater rights. To my disappointment, I discovered most of the publishers I have supplied over the last 20 years had been making extra, unauthorised use of my work (extra editions and print runs) and not telling me. This has meant I have had to waste a significant proportion of my time over two years chasing these clients for the payments they should have declared and paid me years ago. Together, the payments added up to several years' income. Were they oblivious to these excesses? Also, am I the only one to have suffered this fate? I'd be amazed if I were. If they have done it to a significant number of their suppliers, they must have saved themselves millions of pounds in fees which rightly belong to the IP holders. I have settled cases against [REDACTED] and have active cases against [REDACTED]. This is the reality of life for freelance photographers these days and neatly illustrates the real-life approach of government to IP holders, in my opinion.

I know the above does not seem directly related to this form and your work, but it definitely is because, once again, the government, through this legislation, is removing from us IP holders the right to charge our rates for material we have paid to produce and which we own outright. The fees being talked about under this scheme are completely inadequate and would be far too low to enable us to pay our bills.

In an earlier response document I brought up a subject no-one seemed to have taken any notice of before. Many of the people in photos are children (anyone under 18 years old). Under the proposed legislation, if a prospective user is unable to identify the IP holder, they would be free to use those images for their own purposes. That is just plain awful. Young people can be greatly hurt by having their image used in ways they have not agreed to, indeed, they can feel humiliated. This should not come as a surprise to anyone and I cannot emphasise it too highly. The images I have in my library are password protected for this reason. The schools and parents allowed me to take those photos on the strict understanding that I would agree or decline each and every single use, myself. Under this proposed legislation any of my images, reproduced somewhere without a clear copyright attribution (many government documents omit copyright attribution), would become "Available" to use without my being able to stop it. I can certainly see court cases by angry parents with truly awful publicity for the picture user and for this government scheme. How would a government minister stand up and defend that sort of outcome? How would a minister defend the use of photos which hurt and humiliate young people?

Would you be happy for a photo of your child, or a photo of yourself, to be used by one of this scheme's licensees in any way they liked? I doubt it, but that is the reality of these proposals.

How would a prospective user do a search? What tools are available and how effective are they. The one I use most and find the most effective by far, is Google Image Search (GIS). But, having used it each week for 2 years I've noted that, for any given image, it will give one set of results one week and a different set the next. This means it knows of far more instances of that image's use than it shows at any one time. I reckon GIS displays about 5% of uses it knows about. This pulls the rug from under anyone searching and expecting/needing to find an IP holder. If the best (and most easily accessible) method is only 5% successful, how can anyone have faith in any so called "Diligent" search? I think it is a hopeless scheme. Hopeless

because it just cannot work in anything like the way proposed. It is wishful thinking.

So, to my mind, both the fees likely to be paid and the methods available to help identify IP holders are hopelessly inadequate. And where, in all this, is any sign of care for the people in the photos, particularly children? I have seen nothing in all the documents dealing with this aspect. Please, tell me where it is. If there is none, that would speak volumes for how this is being approached.

Personally, I think schemes like this would be OK to enable non-commercial scanning of old documents held by libraries/museums etc., which I understand was how this started out, before commercial companies saw a wonderful opportunity for very cheap images. But, I see no reason whatever to include any commercial use of IP found this way.