

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:

Karen Sayers

Organisation (if applicable):

Address:

Withheld on publication

Please return completed forms to:

Margaret Haig

Copyright and Enforcement Directorate

Intellectual Property Office

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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 type="checkbox"/>	Rights holder
<input checked="" 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?

Yes, particularly if someone has died and it is passed on as part of their estate.

Licences should not be transferable to someone who has not got an evident interest or input into the website or work which features the orphan work.

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?

Yes, I think this would simplify the process for the licensing body and for the users. It seems pointless to duplicate information and add to the administrative process and costs of issuing licences and applying for them. Many high volume users who use works for non-commercial purposes do so for education purposes and this should be supported through minimising their administrative burden.

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?

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

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

They should be used for administering the scheme and possibly for paying rights holders who do come forward. The scheme should be as cheap as possible for organisations using works for non-commercial purposes.

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?

As an individual I may well use it several times a year to support my research.

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

To support personal research.

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

It doesn't at present, but might do if I wanted to publish a book.

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

This could have implications if I wanted to publish my research outside the UK so I would welcome partner schemes with other English speaking countries.
As books and journals are increasingly produced in digital formats it is difficult to see how their use can be restricted to the UK. Organisations and individuals who want to publish commercially will often want to do so in more than one country.

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?

It would be hard to find sufficient staff resources in many institutions, particularly museums and archives, to perform the diligence searches. I would anticipate most organisations would only use the scheme to clear a particular work unless working on a specific project. In this case it might be possible to build time and costs into the project bid. I would consider 2 months to be acceptable.

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?

Yes, I don't see any logic in implementing it. Many more orphan works will be deposited with archives and museums after 29 October 2014 having been found in lofts and storerooms. Why should these be unavailable to researchers?

It is to be hoped that organisations keep good accession records. However it may be difficult in future if orphan works form part of an accrual to an existing collection to determine whether they were deposited before or after 29 October 2014.

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?

Yes. Other sources I would consult for unpublished works would be family history websites and databases as many unpublished works I've come across are in family collections. However many of the family history resources are commercial and it could cost money to access these.

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?

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.

I have particular concerns about how students and researchers in further education institutions would use the scheme. I'm assuming that they would have to make their own applications. This would mean that the licence fees would, in general, need to be low to encourage them to make use of orphan works in their research. What would happen if a student made an application for a 7 year licence to enable a university to put his/her dissertation/PhD online? Would the student be expected to apply for another licence after 7 years to enable the university to continue to display the dissertation? Would the university have to trace the student after 7 years? Also would there be a reminder scheme in place so that licensees were contacted automatically when the 7 years was near to expiry? Would this allow them enough time to conduct another due diligence search before the licence expired? Overall I welcome the scheme as it will enable many orphan works to be used instead of languishing in archives. It will also reunite some rights holders with their works.

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