



MUSIC PUBLISHERS ASSOCIATION

Response to the consultation on implementing a domestic orphan works scheme and the EU directive on certain permitted uses of orphan works

28 February 2014

MPA response to the Consultation on Orphan Works Schemes

1. The Music Publishers Association (“MPA”) is the trade association representing and safeguarding the interests of its members, who are UK music publishing companies. The MPA owns two collection societies: the Mechanical-Copyright Protection Society Ltd (“MCPS”) which is appointed by its members - publishers and other owners of musical works - to manage certain uses of the mechanical rights in those musical works. These operations are contracted to PRS for Music as defined by a service level agreement. The MPA also owns Printed Music Licensing Ltd (“PMLL”) which was set up in 2013 and manages the licensing of the copying of printed music in the UK on behalf of music publishers. Its Schools Printed Music Licence (“SPML”) covers the copying of printed sheet music in schools and is offered to schools exclusively by The Copyright Licensing Agency (“CLA”), acting as sole agents.

2. Background to the MPA submission

In the music industry in the UK we are fortunate to have well established national systems for licensing rights in musical works including national collection societies which represent and administer the vast majority of musical works in areas where rights are collectively licensed, as well as established systems for direct licensing, licensing which is limited to specific repertoire and multi territory licensing solutions.

With regards to the proposed orphan works schemes, we do not envisage that the music publishing industry will make significant use of the schemes given that if a songwriter or composer wishes to earn from a work, they must be registered with a collection society, so there are very few musical ‘orphan’ works in existence. In addition, when it comes to the licensing of orphan works, the proposed scheme for commercial use of an orphan work is limited to the UK. In the rare instance that a music publisher wishes to use an orphan text or piece of music, it is very unlikely – given the global nature of the consumption of music – that a publisher would invest in a work which could only be exploited in the UK.

From the perspective of the music publishing industry, our key concern is how orphan works are priced. We are particularly interested in how the IPO authorising body will deal with licensing orphan musical works for uses where benchmark tariffs are not readily available. Our members are currently represented in the IPO working group on pricing and licensing. We welcome this engagement and look forward to being involved in further work with this group.

3. Response to consultation questions

The MPA have been involved in and fully support the submissions made by our umbrella organisation, UK Music and that of the British Copyright Council. In addition to these responses, we would like to make the following additional remarks.

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

Collection societies operate for the benefit of their members and we would be reluctant to see collection societies involved in the operation of orphan works schemes beyond the remit of diligent search. Additional licensing responsibilities are likely to incur increased business costs which would reduce the flow of royalty payments back to publishers, composers and songwriters.

It is vital, however, that collection societies continue to be consulted with regards to appropriate market rates for the licensing of orphan works. The inclusion of music industry collection societies within the IPO working group for pricing and licensing of film and sound is welcomed.

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?*

We support the position of UK Music and the BCC that the appropriate period for distribution of unclaimed funds should be in line with the Statute of Limitations i.e. "within six years of the licence being granted."

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

The MPA does not believe that unclaimed funds from exploiting copyright works should go to the Crown. The undistributed funds should be returned to the sector to which they belong and used for cultural or educational activities relevant to that sector.

In addition, we were interested to see in the Canadian Orphan Works scheme that licence fees for the use of an orphan work are often immediately payable to the appropriate collection society and that the collection society is able to "dispose of the amount as it sees fit for the general benefit of its members."

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?*

In addition to a right of appeal for users of orphan works, there must also be a right of appeal to rights holders of the same class of rights as those being licensed by the authorising body. This right of appeal would be used if rights holders believe that the tariffs being set by the authorising body do not accurately reflect the market rates. We agree that the Copyright Tribunal would be a suitable body in the event of an appeal.

8. *Approximately, how often would you anticipate using the Orphan Work scheme/how many applications a year would you envisage making?*
9. *What types of use do you envisage using Orphan Works for?*
11. *How much does the fact that the licences are limited to the UK impact upon your potential use of the scheme?*

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As we mention above, we do not anticipate that the music publishing industry will have great use for the orphan works scheme. However, in discussions with our members, a number of music publishers raised the point that from time to time they do seek to use an 'orphan' text or music in some publications or settings. Given the commercial nature of these uses it will be impossible to qualify under the EU Orphan Works Directive and also the limited nature of the UK scheme means that this will also be an unsuitable vehicle for clearing orphan works given that it is highly unlikely that a music publisher would want to make use of that work within the UK alone.

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

It is vital that licences are non-exclusive.

14. *Would your main use of an Orphan Work 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?*

It is important that institutions with large collections of orphan works are not able to use the introduction of an orphan works scheme to set up a commercial enterprise licensing their orphan works at a price which would disrupt the existing market. We believe that the authorising body has a key role to play in monitoring the development of these markets and in ensuring that market rates for commercial uses prevail at all times.

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ABOUT THE MPA:

The Music Publishers Association (www.mpaonline.org.uk) is the trade association for music publishers in the UK, with over 270 members, representing nearly 4,000 catalogues covering every genre of music. Our members include all three of the UK's "major" music publishers, independent pop publishers, classical publishers, production music publishers and also printed music publishers. We estimate that our members represent around 95% of publishing activity in the UK.

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The vast majority of our member companies are small or medium sized enterprises. Many of our member companies are multi-disciplinary music companies, operating not just as music publishers but as record labels, managers, promoters, producers, manufacturers, distributors and retailers.

The MPA is the owner of the Mechanical Copyright Protection Society (www.prsformusic.com) and of Printed Music Licensing Limited (www.printmusiclicensing.co.uk), which licenses the copying of sheet music in schools.