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Mr Hamza Elahi
Intellectual Property Office
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4 Abbey Orchard Street
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By email to: copyrightconsultation@ipo.gov.uk

Dear Mr Elahi

Response to consultation on extending the benefits of collective licensing

I write on behalf of the Society of London Theatre (SOLT) and UK Theatre in response to the Intellectual Property Office's invitation for comments on the Copyright (Extended Collective Licensing) Regulations 2014 (as currently drafted) (the "Regulations") which introduce extended collective licensing schemes ("ECL") to the UK.

SOLT and UK Theatre are the trade associations representing the interests of those engaged in the production and presentation of medium to large-scale dramatic and lyric theatre in the UK. SOLT represents approximately 190 London-based producers, theatre owners and managers. UK Theatre represents approximately 270 theatres, concert halls, dance companies, producers and arts centres throughout the UK.

We have sought responses to the consultation questions from both memberships. Our submission set out below represents the views of those who responded. We have not answered all of the consultation questions, as they were not all relevant to our members.

Q.2

We agree that it is essential that a collecting society applying to operate an ECL is significantly representative of the sector covered by the ECL, both in terms of rights holder mandates and the number of works that it controls. We agree that given the difficulties in assessing how representative a collecting society is in relation to its sector, it is the correct approach to maintain flexibility by not prescribing percentages, instead leaving the decision to the Secretary of State on a case by case basis based on the evidence presented by the relevant collecting society applying to operate an ECL.

Society of London Theatre is a company limited by guarantee registered in England and Wales, whose registered office is at the above address.

Company No 527227
VAT Registration No 242 2802 92

"UK Theatre" is the operating name of UK Theatre Association, which was founded by Sir Henry Irving in 1894 and is a company limited by guarantee registered in England and Wales, whose registered office is at the above address.

Company No 323204
VAT Registration No 242 2801 94

Q.3

As referred to in our answer to Q.2 above, we consider it to be essential that a collecting society be able to demonstrate that its representation is significant in relation to the proposed ECL as, if the membership of the collecting society is not significantly representative (both in terms of copyright works and in terms of rights holders), a 75% majority is irrelevant. If the collecting society is significantly representative in relation to the proposed ECL then we consider 75% to be an appropriate level of support.

Q.4 and 6

We consider past adherence to a code of practice to be a key factor contributing to a successful application by a collecting society to run an ECL. We are concerned that a signed declaration will be insufficient evidence of adherence to a code of practice as this system is open to abuse. We would prefer a collecting society to be required to provide additional evidence of such adherence to a code of practice. One suggestion would be by way of a random survey of a cross-section of the collecting society's membership. An alternative approach would be by way of a third party review. The latter option may be partially covered by the appointment of a code reviewer as set out in the Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014. However, we would prefer to see a review process forming part of a collecting society's application to run an ECL so as to ensure that the collecting society is adhering to its code of practice at the point when the application is made.

Q.8

We consider the period for representations to the Secretary of State as set out in Regulation 6 to be a vital part of the application procedure as it is an opportunity for those of our members who will be affected by the proposed ECL to voice their opinions on the ECL. We consider 28 days to be too short a period as this gives affected parties less than a month to formulate a response. We consider a minimum period of 90 days to be more appropriate.

Q.11

We would prefer to see a publicity campaign which directly contacts all relevant rights holders (to the extent this is practical) rather than a generic advertising campaign.

Q.12

Although we appreciate that an authorisation period of five years reflects the way extended collective licensing schemes have been run in other countries, we are concerned that this period is too long (for example if due to the number of opt-outs a collecting society is no longer significantly representative) and would suggest a shorter period of three years for the initial authorisation. Alternatively, we would like to see an ongoing review process during the term of the authorisation (see Q.15 below).

Q.15

In addition to breaches of a collecting society's code of practice or the conditions of its authorisation, we consider that a revocation of an authorisation should also take place if and to the extent that the number of rights holders and/or copyright works which have been opted out of an ECL means that the collecting society is no longer representative of the sector covered by the ECL (see Q.2). This would require an ongoing review process during the authorisation period. Alternatively, another approach would be to have a shorter period for authorisations as suggested in Q.12 above, but with no ongoing review process during the authorisation period.

Q19

We consider the obligations on collecting societies with respect to opt out as listed in the Regulations to be adequate. However, the key will be ensuring that collecting societies have fail-safe mechanisms in place to ensure that such obligations have actually been carried out within the relevant time frame. For our memberships, it is essential that the opt out process is as clear as possible so that rights holders understand that they have to opt out to avoid extended collective licensing and how to do so. We therefore welcome the proposal that the Government will, in addition to publishing guidance for collecting societies wishing to run an ECL, also issue guidance to rights holders wishing to opt out of ECL which would clarify for rights holders the mechanics of the procedure for opt outs and multiple opt outs.

Q.20 and 21

We consider the 14 day limit for collecting societies to acknowledge an opt out, notify licensees of an opt out (Q.20) and to list the relevant work as having been opted out (Q.21) to be reasonable. This is on the basis that the proposed time period strikes an adequate balance between the requirements of the collecting societies, who will need a reasonable period of time to implement the practicalities of an opt out, and the requirements of the rights holder and/or the licensees of an opted out work, who may desire a shorter time frame.

Q.22

Our members (most of whom are licensees of copyright work) would like collecting societies to maintain and publish lists of opted out works, although we are unsure of how useful or practical it will be to maintain a pending list if the opt-out is to be carried out within a 14 day period. Our members would particularly welcome an obligation on collecting societies to include on the list of opted out works information as to the rights holder, including where and how to contact the rights holder, so as to facilitate direct licensing. We therefore consider that having the ability and resources to maintain accurate and up to date list of opted out works should be a factor in the application process.

Q.24

We are concerned that the proposal that licences of an opted out work will terminate within six months from the date of opt out may have a detrimental effect on the licensees of such work. For example, a licensee may have been granted by a collecting society a licence for the use of a copyright work for the duration of the run of a production. If that work is then opted out of the ECL but the licensee still requires a licence when the six month period for opt outs expires (for example the production is ongoing), the licensee will be obliged to negotiate a new licence with the rights holder. There are potentially a number of serious knock-on effects for licensees including putting a licensee in an unfavourable negotiating position with the licensee potentially having to negotiate their licence on much less favourable terms. We therefore feel strongly that it would be more equitable for opt outs to come into effect at the point when the relevant licences granted by the collecting society expire.

Thank you for giving us the opportunity to contribute our comments. If you require any further information, please do not hesitate to contact me. We would be grateful if you would keep us informed of any developments.

Yours sincerely

Louise Norman

Louise Norman
Head of Legal Affairs