



Intellectual
Property
Office

Responding to the consultation

The closing date for responses is Monday 7 October 2013 at 12 midday.

About You and Your Organisation

Your name	Mike Holderness
Job Title	Chair
Organisation Name	Creators' Rights Alliance
Organisation's main products/services	<p>Representing the interests of individual authors and performers; disabusing Ministers of any notion that, having spoken to three CEOs of companies that distribute performers' and authors' work, they may have "consulted the industry".</p> <p>The CRA is an affiliation of organisations representing the interests of over 100,000 original creators in a wide range of fields – including music, illustration, journalism, photography and writing. Most of the 100,000 creators we represent make their living by licensing copyright and performers' rights in their work.</p> <p>See www.creatorsrights.org.uk for a list of member organisations.</p>

Question 1: Does the proposed definition correctly capture the type of body on which we consulted? Is it too narrow or too broad? What, if any impact, will this definition have on the various entities that are currently operating in the collective licensing market? Please give reasons for your answer?

We are content that the definition captures *most of* the organisations for which “backstop” regulation powers should be introduced for the purposes of their existing activities; and we have not yet thought of any class of organisation which would be inappropriately captured.

We are, however, concerned about the interaction between the present proposed Regulations and those, yet to come, specifying procedures for a “relevant licensing body” to apply for authorisation to issue extended collective licences.

That privilege should be restricted to organisations that are *democratically* owned *and* controlled by their members *and* are organised on a not-for-profit basis. This stipulation will be necessary to comply with Ministerial undertakings and the requirements for trusteeship of the rights of creators unknown.

Question 2: Are there any other circumstances in which you think that the Secretary of State may need to exercise the power to appoint an Ombudsman and/or Code Reviewer? Please describe what these are and give reasons for your answer.

Failure of a collecting society to comply with the conditions of its authorisation to grant extended collective licences is a notable case not mentioned in the consultation paper; we seek clarification that the suspicion of this state of affairs would be a circumstance in which the Secretary of State *would* appoint a Code Reviewer and an Ombudscreature if none were already in place.

Question 3: The Secretary of State must leave at least 28 days for the relevant licensing body to adopt a code of practice once it has been directed to do so. Is this a sufficient period of time for the licensing body to adopt such a code? If so, please say why. If not, please explain why not and make a case for a different period of time.

No, it is not long enough. The Regulations provide explicitly for collecting societies that are managed by their members; these would typically be obliged to give 28 days’ notice of a meeting to adopt a code of practice; 42 days.

Question 4: Do the steps described between the Direction in Regulation 3 to the Imposition of a Code of practice in Regulation 5 make it sufficiently clear what process must be followed? If not, please say where you think the gaps are and how they might be filled.

Surely “the Secretary of State *shall* have regard to a report produced by a Code Reviewer?”

Question 5: What should be the principal features that determine whether a Code Reviewer and/or an Ombudsman is “suitably qualified” for their statutory roles?

Such a person must be *independent* of:

- ✦ any organisation that licenses creators’ works, whether on an individual or a collective basis; and
- ✦ any organisation representing the interests of those who do so, whether as distributors or as end-users.

It would be appropriate to specify a minimum period of “purdah” between such a person holding a post in any such organisation and being appointed Code Reviewer, not less than the most stringent in existing Civil Service procedures.

Question 6: Do you consider the proposals for applying a graduated scale to financial penalties will provide a proportionate response to reflect the respective severity of the breach? Do you consider the proposed difference in the quantum of the penalties is appropriate? If not, please explain your reasons.

What is of more concern that it is unclear to us *who* will be exercising the powers of the Secretary of State to impose penalties. Also, we may have further comment when the draft Regulations concerning Extended Collective Licensing are published.

Question 7: Do you think that the General Regulatory Chamber is the correct route of appeal? If not could you please say why and suggest an alternative appeal route.

Don’t know. What does it cost to go there?

Question 8: (Asked on behalf of the Tribunal Procedure Committee):

If you believe that the standard rules of procedure need to be supplemented to deal with appeals arising from these regulations, please explain why this is the case.

No comment.

Questions not asked:

The Creators' Rights Alliance is once more concerned at the narrowness of the questions formally put. In particular, we have not been able within the time allotted to produce a formal response on the contents of the proposed Schedule specifying what must be covered by collecting societies' codes of conduct; nor are the rationale and implications of the proposed "micro-business" exception spelled out.

We reserve our option to respond to these and other matters, later.

Please note: The information you supply will be held in accordance with the Data Protection Act 1988 and the Freedom of Information Act 2000. Information will only be used for its intended purpose. It will not be published, sold or used for sales purposes.

