



## Copyright Works: seeking the lost

### Consultation on implementing a domestic orphan works licensing scheme and the EU Directive on certain permitted uses of orphan works

28 February 2014

#### About UK Music

1. UK Music is the umbrella body representing the collective interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.
2. UK Music exists to represent the UK's commercial music sector, to drive economic growth and to promote the benefits of music to British society. The members of UK Music are listed in an annex.

#### Introduction

3. We welcome the consultation on Orphan Works and put forward some high level principles in addition to the individual submissions of our members. We stress that the question of orphan works is unlikely to be commercially significant in the music sector given the available databases provided by collecting societies and the existence of standards such as ISWC.
4. Our comments relate to the relation of fees for the use of orphan works; the role of right holders in the process and the procedure re unclaimed monies.

#### Detailed comments on relevant questions

5.

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

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Whilst collecting societies are rightly considered as part of the diligent search requirement their role should be limited to this function. Relevant collecting societies should be consulted when the tariffs for the use of orphan works is established given that they have experience for the respective uses. This corresponds with Regulation 10 which ensures that the tariffs for orphan works do not undercut the tariffs for non orphan works thus undercutting the commercial market.

6.

2. Should an orphan works licence be transferable? If so, in what circumstances would this be appropriate?

No. Orphan works should not by default be turned into a tradable commodity without the authorisation of the right holder. The nonexclusive license for orphan works should remain an exception or an exceptional occurrence. There is also no need for this from a users' perspective given that users can refer to databases of established orphan works (register in Regulation 5 and OHIM). They don't have to carry out further diligent search once orphan status is established.

7.

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?

We agree with the proposals put forward in the consultation document.

8.

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

We refer to our response to question 4 (paragraph 7 above).

9.

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

Point 5.8 of the Consultation expressly states that "(u)nclaimed licence fees belong to the missing rights holders." By consequence any monies left should be distributed for

cultural purposes in the respective sector of the orphan work. Applying a bona vacantia scheme is completely inappropriate.

10.

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?

Yes, but the right of appeal should also be available for right holders.

11.

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

We have no information in general but suspect that musical works and sound recordings are unlikely to be orphans given the available databases provided by collecting societies and the existence of standards such as ISWC and ISRC. We refer to individual members' responses in this regard.

12.

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

Non exclusivity is the only option to enable the use of orphan works by way of Government granting a license without the consent of the right holder.

13.

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

We recognise that the limitation to the UK is the only option for a UK Act which is not based on European law.

14.

22. Do you agree that we should not implement the optional provision?

Unpublished works are sometimes unpublished for a reason so should not be covered by default.

15.

23. Are there any other sources that should be added to this list of essential sources?

In addition to the sources listed in the Schedule, we suggest expressly referring to internet search.

16.

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?

We do not think unpublished works should be covered. Should they be included it is acceptable to require the same sources as for published works.

17.

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

We disagree with the underlying assumption of this question. If the user does not fulfil the criteria to benefit from the Orphan Works Directive or the ERRA mechanism (e.g. by not carrying out diligent search as required) he is infringing copyright and the normal scope of sanctions provided in the CDPA applies.

18.

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

Yes. We believe that fair compensation should be decided between the relevant body and the emerging rights holder.

19.

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

Yes. The Copyright Tribunal should administer the appeals process.

## Annex

### UK Music's membership comprises of:-

- AIM – Association of Independent Music - representing over 850 small and medium sized independent music companies
- BASCA - British Academy of Songwriters, Composers and Authors – with over 2,000 members, BASCA is the professional association for music writers and exists to support and protect the artistic, professional, commercial and copyright interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing
- BPI - the trade body of the recorded music industry representing 3 major record labels and over 300 independent record labels.
- MMF - Music Managers Forum - representing 425 managers throughout the music Industry
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music
- Musicians' Union representing 30,000 musicians
- PPL is the music licensing company which, on behalf of over 75,000 members (65,000 performer members and 10,000 recording right holder members), licences the use of recorded music in the UK
- *PRS for Music* is responsible for the collective licensing of rights in the musical works of 100,000 composers, songwriters and publishers and an international repertoire of 10 million songs
- UK Live Music Group, representing the main trade associations and representative bodies of the live music sector